

4

Children and Families

In 1998 the General Assembly enacted legislation implementing federal requirements concerning child support, expanding legal protection for victims of domestic violence, and expanding the Smart Start Program to all 100 counties. This chapter summarizes that legislation and other actions by the General Assembly with respect to family law (child support, alimony, divorce, domestic violence, equitable distribution, and child custody) and child care and early childhood development programs.

The 1998 General Assembly also made extensive changes to the laws regarding delinquent and undisciplined juveniles and significant changes to the laws governing proceedings involving child abuse, neglect, and dependency; adoption; and termination of parental rights. These legislative changes are described in Chapter 13 (Juvenile Law) and in Chapter 24 (Social Services).

Child Support

Implementation of Federal Child Support and Paternity Requirements

In 1996, Congress enacted legislation requiring states (as a condition of receiving federal funding for Temporary Assistance for Needy Families and for state child support enforcement programs) to enact a number of specific state laws and procedures to improve the collection of child support. In 1997, the General Assembly enacted legislation (S.L. 1997-433) to implement most of these federal child support requirements. State legislators, however, clearly had misgivings with respect to some of the federal child support requirements and questioned the federal government's authority to impose these child support requirements on North Carolina. Therefore, the 1997 General Assembly (1) directed the Attorney General to explore the feasibility of North Carolina filing a lawsuit against the United States challenging the federal government's authority to impose the 1996 federal child support requirements on the state and (2) provided that the 1997 amendments to North Carolina's child support laws enacted by S.L. 1997-443 would expire on June 30, 1998, unless they were extended during the 1998 regular session.

After being advised by the Attorney General that North Carolina had little chance of winning a lawsuit challenging the federal child support mandates, the General Assembly, quickly and with little debate, passed legislation (S 1182) to repeal the June 30, 1998 "sunset" on the

1997 child support amendments, and Governor James B. Hunt approved Senate Bill 1182 (S.L. 1998-17) on June 25, 1998.

Implementation of the 1996 federal child support requirements, however, may require additional action by the General Assembly.

First, federal law [42 U.S.C. § 666(a)(5)(I)] requires that states eliminate the right to a jury trial on the issue of a child's parentage. If a state must amend its constitution to comply with this federal requirement, it must do so by August 22, 2001. When the General Assembly enacted S.L. 1997-443, however, it declined to eliminate jury trials in civil actions involving paternity. Instead, the General Assembly recognized that the North Carolina Constitution protects the right to jury trials in civil actions to determine the paternity of illegitimate children, concluded that eliminating the right to jury trials in paternity actions would not increase the state's effectiveness in establishing the paternity of illegitimate children, and directed the state Department of Health and Human Services (DHHS) to ask the federal government for an exemption from this requirement. If the federal government denies the state's request for a waiver, the 1999-2000 General Assembly will need to address the issue of whether to eliminate the right to jury trials in cases involving the paternity of illegitimate children.

Second, federal law [42 U.S.C. § 666(a)(5)(E)] requires every state to enact laws or procedures under which an affidavit acknowledging paternity of an illegitimate child constitutes a legal determination of paternity without its being approved or ratified by a state court or agency. The 1997 amendments to North Carolina's laws regarding voluntary acknowledgment of paternity [G.S. 110-132 and G.S. 130A-101(f)], however, failed to fully implement this federal requirement. Instead of providing that an unrescinded affidavit of paternity constitutes a *legal finding* of paternity, S.L. 1997-443 provided that a voluntary acknowledgment of paternity is merely a *legal admission* of paternity, thereby necessitating entry of a court order to constitute a legally binding determination of paternity. The General Assembly did not correct this problem during the 1998 legislative session and may need to do so during the 1999-2000 session in order to avoid the possible loss of federal funding.

Collection of Delinquent Child Support from State Income Tax Refunds

North Carolina's Setoff Debt Collection Act (G.S. Ch. 105A) establishes a legal procedure through which an individual's state income tax refund may be "intercepted" by a state agency and retained by the state to repay a debt that the individual owes to the agency. The act also expressly allows DHHS to use this state income tax refund setoff procedure to collect child support that a taxpayer owes to a child who is receiving services through DHHS's child support enforcement (IV-D) program. In an October 9, 1998 decision, however, the N. C. Supreme Court held that DHHS could not collect delinquent child support by withholding an obligor's state income tax refund unless the agency first obtained advice from the Attorney General with respect to the validity of the debt, the adequacy of pending, alternative collection methods, and the possible impact of collection on federal funding. *Davis v. N.C. Department of Human Resources*, ___ N.C. ___, 505 S.E.2d 77 (1998).

In response to the *Davis* decision, the General Assembly included a special provision in the 1998 Appropriations Act [S.L. 1998-212 (S 1366), sec. 12.3A] amending the Setoff Debt Collection Act [G.S. 105A-3(b)] to repeal the requirement that state agencies obtain the Attorney General's advice before submitting debts to the Department of Revenue for collection under G.S. Ch. 105A. As amended by S.L. 1998-212, the Setoff Debt Collection Act now requires DHHS and other state agencies to collect debts by intercepting the state income tax refunds of debtors whenever *the agency* (rather than the Attorney General) determines that there is no legitimate dispute regarding the validity of the debt; that pending, alternative collection methods are not adequate; and that collection of the debt would not result in a loss of federal funds.

Collection of Delinquent Child Support by Transfer of Real Property

Effective with respect to child support cases pending on or after January 1, 1999, Section 1 of S.L. 1998-176 (H 534) amends G.S. 50-13.4(e) to allow a court to order an individual who owes past-due child support to pay the child support arrearage by transferring to the obligee his or her interest in real property if the net value of his or her interest in the real property does not exceed the amount of the arrearage owed.

Alimony

Collection of Alimony by Income Withholding and Transfer of Real Property

Although North Carolina law, for many years, has authorized a court to issue an income withholding order requiring an employer to withhold money from an employee's wages to pay child support that the employee owes for his or her child, a court's authority to issue an income withholding order to collect alimony or postseparation support payments an employee owes to his spouse or ex-spouse has been far less certain. S.L. 1998-176 (H 534) amends G.S. 50-16.7 to clarify that a court does have the authority to order income withholding to collect current or delinquent payments of court-ordered alimony or postseparation support.

S.L. 1998-176 also amends G.S. 50-16.7 to allow a court to order the transfer of real property to satisfy the property owner's spousal support obligation. Before this amendment, the law only allowed a court to grant a security interest in real property to a dependent spouse to secure the payment of support. The law now also allows a court to order the transfer of title of real property owned solely by the supporting spouse as payment of temporary or permanent spousal support. A court also may order the transfer of real property of the supporting spouse to satisfy past-due support if the value of the property transferred does not exceed the amount of the past-due support.

The changes to the alimony statutes apply to actions pending on or after January 1, 1999.

Divorce

Increased Filing Fee for Divorce; Fund For Displaced Homemakers

S.L. 1998-219 (S 475) amends G.S. 7A-305 to require that persons filing an action for absolute divorce pay an additional court cost of \$20. The additional fee applies to actions for divorce filed on or after December 1, 1998, and will be used to establish a fund, within the Department of Administration, for homemakers displaced as the result of divorce. The legislation also adds a new section, G.S. 143B-394.10, directing the North Carolina Council for Women to use the fund to make grants to programs designed to assist displaced homemakers. The Council for Women must establish the eligibility criteria for receiving grants from the fund and report annually to the Joint Legislative Commission on Governmental Operations on the revenues received by the fund, the programs receiving grants from the fund, the success of these programs, and the costs associated with administering the fund.

Court Procedure in Family Law Cases

Family Court Pilot Programs

As part of the comprehensive changes to the juvenile justice system, Section 25 of S.L. 1998-202 (S 1260) requires the Administrative Office of the Courts (AOC) to establish a specialized family court as a pilot program in three judicial districts. The three districts chosen by the AOC

to participate in the pilot program are District Court District 26 (Mecklenburg County), District 14 (Durham County), and District 20 (Stanley, Union, Anson, and Richmond counties).

The family court pilot programs must be conducted according to the guidelines established in the 1996 report of the Commission of the Future of Justice and the Courts in North Carolina. The family courts, using judges and court personnel who are specially trained to deal with family issues, will provide a unified, rational, and caring forum for the resolution of all judicial proceedings involving family members by employing case management strategies designed to efficiently and comprehensively address all issues associated with an individual family. In the three pilot districts, the new family court will be assigned to hear all cases involving "intrafamily rights, relationships, and obligations," including all cases involving child abuse, neglect, and dependency; delinquent and undisciplined juveniles; emancipation of minors and termination of parental rights; divorce; annulment; equitable distribution; alimony and postseparation support; child custody; child support; paternity; adoption; domestic violence civil restraining orders; abortion consent waivers; adult protective services; and guardianship, involuntary commitment, and voluntary admissions to mental health facilities.

The three family court pilot programs will operate from March 1, 1999, until December 1, 2000. The AOC is required to report to the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety and to the General Assembly's Fiscal Research Division by March 1, 2000, on the success of the pilot programs in bringing consistency, efficiency, and fairness to the resolution of family matters and on the programs' impact on the caseloads of the pilot districts. Section 8.1(a)(15) of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), appropriates \$318,228 for the three family court pilot programs.

Pilot Program for Settlement Procedures in Family Law Cases

In 1997, the General Assembly authorized the design, implementation, and evaluation of a pilot program in which parties to district court actions involving equitable distribution, alimony, and child support may be required to attend mediated settlement conferences (or, with the consent of both parties, arbitration or other settlement procedures). G.S. 7A-38.4. In 1998, the General Assembly made several changes to this program.

The most significant change concerns the responsibility for the design of the pilot program. The 1997 legislation required that the program be designed by the Dispute Resolution Commission (a part of the Judicial Department) with advice from the AOC. Section 16.19 of S.L. 1998-212 deletes this requirement and gives the supreme court exclusive responsibility for adopting rules to implement the program. The legislation also allows district court judges to order the parties in a particular case to participate in either a mediated settlement conference or some other type of settlement procedure. Thus, referral of a case to arbitration or a settlement procedure other than a mediated settlement conference no longer requires consent of the parties. The law, however, continues to provide that only mediated settlement conferences may be mandated in every case by local rule. The amendments to G.S. 7A-38.4 became effective October 1, 1998.

Domestic Violence

Crime Victims' Rights

The Crime Victims' Rights Act, enacted by Section 19.4 of S.L. 1998-212 (S 1366), is the most significant 1998 legislation addressing the issue of domestic violence. The act implements a constitutional amendment, approved by North Carolina voters in 1996, that provides that victims of certain crimes have the right to receive information about the prosecution of the person accused of committing the crime, to be heard in court during the prosecution and sentencing of the person accused of committing the crime, to recover restitution from the person convicted of committing the crime, and to be notified when a convicted perpetrator may be released from

incarceration. N.C. Constitution, art. I, sec. 37. A complete summary of the Crime Victims' Rights Act is included in Chapter 7 (Criminal Law and Procedure).

The new Crime Victims' Rights Act provides that only the victims of specified crimes are entitled to the rights created by the 1996 constitutional amendment. Included in the list of crimes covered by the victims' rights amendment are most misdemeanor domestic violence offenses, including assault inflicting serious injury or using a deadly weapon [G.S. 14-33(c)(1)]; assault on a female [G.S. 14-33(c)(2)]; simple assault [G.S. 14-33(a)]; assault by pointing a gun (G.S. 14-34); domestic criminal trespass (G.S. 14-134.3); and stalking (G.S. 14-277.3). Victims of these crimes are covered by the Crime Victims' Rights Act only if the victim and the alleged perpetrator are

- current or former spouses;
- members of the opposite sex who live together or have lived together;
- related as parents and children (including persons acting *in loco parentis* to a minor child) or as grandparents and grandchildren;
- persons who have a child in common; persons who are current or former household members; or
- members of the opposite sex who are in a dating relationship or have been in a dating relationship.

Most of the substantive provisions of the Crime Victims' Rights Act apply to offenses committed on or after July 1, 1999. A few of the act's provisions, however, apply to offenses committed on or after December 1, 1998.

Crime Victims' Compensation

The Crime Victims' Compensation Act, G.S. Chapter 15B, enacted in 1983, created a Crime Victims' Compensation Commission that, under certain circumstances, may compensate crime victims for economic loss caused by the crime. Section 19.4(1) of S.L. 1998-212 (S 1366), effective December 1, 1998, and applicable to injuries on or after that date, amends G.S. 15B-2 to allow compensation to be paid for "household support loss." Compensation for household support loss is only available if (1) the victim is unemployed; (2) the offender is the victim's spouse; and (3) the crime qualifies as "criminally injurious conduct." [Under G.S. 15B-2(5), criminally injurious conduct is conduct that poses a substantial threat of personal injury or death and is punishable by fine, imprisonment, or death.] Also, to obtain this compensation the victim must meet existing requirements of the act (for example, the victim must report the crime to police within seventy-two hours and must not have been engaged in a crime at the time of the injury).

Household support loss means "the loss of support that a victim would have received from the victim's spouse for the purpose of maintaining a home or residence for the victim and the victim's dependents." The apparent intent of this phrase is to compensate the victim when the victim and his or her spouse (the offender) separate as a result of the crime and the offender ceases to provide support to the family. The limit for this type of compensation is \$50 per week for each dependent child, up to \$300 per week, and is limited to twenty-six weeks commencing with the date of the injury.

Other provisions of the 1998 amendments to the Crime Victims' Compensation Act are discussed in Chapter 23 (Sentencing, Corrections, Prisons, and Jails).

Domestic Criminal Trespass

Section 17.19 of S.L. 1998-212 amends G.S. 14-134.3 to create a variation of the offense of domestic criminal trespass. A person is guilty of a Class G felony (instead of a Class 1 misdemeanor, the normal classification of domestic criminal trespass) if, in addition to committing the acts required for domestic criminal trespass, the person trespasses on property operated as a safe house or haven for domestic violence victims and the person is armed with a deadly weapon.

Injury to a Pregnant Woman

Section 17.16 of the 1998 Appropriations Act, S.L. 1998-212, enacts a new statute, G.S. 14-18.2, creating a new criminal offense for injuring a pregnant woman. A person is guilty of the new offense if he or she commits a felony or a misdemeanor that is an act of domestic violence (as defined in G.S. Ch. 50B) against a pregnant woman and the underlying felony or domestic violence misdemeanor results in miscarriage or stillbirth by the woman. Under the new law, a person who is found guilty of the new offense is punished for a felony or misdemeanor that is one class higher than the underlying felony or domestic violence misdemeanor. If the underlying misdemeanor is a Class A1 misdemeanor, the defendant is guilty of a Class I felony. The new law, which applies to offenses committed on or after January 1, 1999, is discussed in more detail in Chapter 7 (Criminal Law and Procedure).

Unemployment Benefits

Another special provision in the budget bill, Section 12.27A of S.L. 1998-212 (S 1366), amends G.S. 96-14, effective July 1, 1998, to provide unemployment benefits to covered employees who are forced to leave a job as the result of domestic violence. In general, an employee is disqualified from receiving unemployment benefits if he or she leaves a job "without good cause attributable to the employer."

The amendment to G.S. 96-14 provides that good cause is established when an employee who quits his or her job has been determined to be an aggrieved party under G.S. Ch. 50B as the result of domestic violence committed upon the employee, or upon a minor child in the custody of the employee, by a person who has, or has had, a "familial relationship" with the employee or the minor child.

The term "familial relationship" was defined by the domestic violence law (G.S. Ch. 50B) until the law was amended in 1997. The 1997 amendment to G.S. Ch. 50B replaced the term "familial relationship" with "personal relationship," and the term "familial relationship" is no longer found within the domestic violence statutes. It is likely that the General Assembly inadvertently used the repealed term rather than the term presently used in the domestic violence law. But the 1998 amendment's use of "familial relationship" may cause some confusion because "personal relationship" includes a much broader category of persons than the term "familial relationship."

Child Care and Early Childhood Development

Appropriations for Child Care

General Fund Appropriations to the DHHS Division of Child Development. The 1998 Appropriations Act, S.L. 1998-212 (S 1366), appropriates \$42.5 million in additional, recurring funds to the Department of Health and Human Services (DHHS), to expand the Smart Start program to all 100 North Carolina counties. S.L. 1998-212 also replaces approximately \$1 million in state funding for child care regulatory activities by the DHHS Division of Child Development with federal funding from the Child Care and Development Block Grant and transfers funds from the Division of Child Development to the State Auditor for auditing of the Smart Start program.

Federal Social Services Block Grant Funding for Child Care. Section 5 of S.L. 1998-212 allocates \$10,971,241 of North Carolina's federal Social Services Block Grant for child care subsidies.

Federal Child Care Block Grants. Section 5 of S.L. 1998-212 transfers approximately \$67 million from the federal Temporary Assistance for Needy Families Block Grant to the Child Care and Development Fund Block Grant (CCDFBG) and appropriates \$188.1 million of federal CCDFBG and Child Care and Development Block Grant funds for child care subsidies, quality

and availability initiatives, early childhood development programs, before- and after-school child care programs, child care centers at community colleges, and administrative expenses.

Early Childhood Initiatives; Smart Start

Section 12.37B of S.L. 1998-212 (S 1366) rewrites many of the statutory provisions in Part 10B of Article 3, G.S. Chapter 143B, relating to North Carolina's Early Childhood Initiatives (Smart Start) program.

Definitions and Intent. The 1998 amendments to G.S. 143B-168.11 express the General Assembly's intent that local Smart Start programs remain accountable to the N.C. Partnership for Children (the Partnership) and the General Assembly for development and implementation of their Smart Start plans and for the programmatic and fiscal integrity of Smart Start programs and services. Other amendments to G.S. 143B-168.11 (1) define "early childhood" as birth through age five years and (2) rewrite the definition of "local partnership" to (a) refer to "county or regional" (rather than "local") private, nonprofit organizations and (b) add a description of local partnerships' purposes.

North Carolina Partnership for Children, Inc. G.S. 143B-168.12, as rewritten by S.L. 1998-212,

- redefines the membership of the board of directors of the N.C. Partnership for Children, reduces the number of board members from thirty-eight to twenty-five, provides for three-year terms for board members, and allows board members to succeed themselves;
- prohibits members of the General Assembly from serving on the Partnership board;
- authorizes the board to establish a nominating committee to make recommendations to appointing authorities and requires the appointing authorities to consult with, and consider the recommendations of, the nominating committee in making appointments to the board;
- authorizes the Partnership to establish a policy on members' attendance, including provisions for reporting absences from at least three meetings to the appropriate appointing authority, and for replacing members who miss more than three consecutive meetings without excuse or who vacate their membership;
- requires the Partnership to establish a policy on membership of local Smart Start boards, which must include a requirement that local board members be residents of the county or region they represent and must allow regional partnerships to have flexibility in composing their boards so that all counties in the region have adequate representation;
- requires members of the Partnership board to avoid conflicts of interest and the appearance of impropriety;
- requires the Partnership to approve the ongoing plans, programs, and services of local Smart Start partnerships and to hold local partnerships accountable for the financial and programmatic integrity of the programs and services.

In carrying out the last responsibility listed above, if the N.C. Partnership for Children determines that a local Smart Start partnership is not fulfilling its mandate and is not being accountable, the Partnership may (1) suspend all funds to the local partnership until the defects are corrected and (2) assume the managerial responsibilities for the local partnership's programs and services until the Partnership determines that it is appropriate to return the programs and services to the local partnership.

Regionalization Plan. Section 12.37B(d) of S.L. 1998-212 (S 1366) requires the N.C. Partnership for Children to review the findings and recommendations of two recent studies that stressed the potential benefits of regionalization; to develop a regionalization plan; and to report the plan to the House and Senate Appropriations Committees on Human Resources and the Fiscal Research Division by April 15, 1999.

Local Partnership Advisory Committee. S.L. 1998-212 amends G.S. 143B-168.12 to delete the provisions that established two-year terms for members of local Smart Start partnership advisory committees and prohibited advisory board members from serving more than two consecutive terms.

Department of Health and Human Services. S.L. 1998-212 amends G.S. 143B-168.13 to require DHHS to present the findings of the needs assessment required by that section to the General Assembly before April 1, 1999, and every three years thereafter, and to delete the requirements that the DHHS Secretary approve all allocations of state funds to local Smart Start projects and approve all local Smart Start plans.

Local Smart Start Partnerships. G.S. 143B-168.12, as rewritten by S.L. 1998-212, requires local partnerships to agree to adopt procedures comparable to those of the state Open Meetings Law and Public Records Law and requires members of local partnership boards to avoid conflicts of interest and the appearance of impropriety. S.L. 1998-212 also deletes the provisions in G.S. 143B-168.14 regarding the membership of local partnership boards of directors and, as described above, directs the N.C. Partnership for Children to establish a policy governing the membership of local Smart Start boards. The 1998 amendments also authorize the Partnership to approve exceptions to the prohibition against existing local, private, nonprofit organizations (other than those established on or after July 1, 1993) serving as local partnerships. Section 12.37B(c) of S.L. 1998-212 prohibits members of the General Assembly from serving on the board of directors of a local Smart Start partnership.

Contract Provisions. New G.S. 143B-168.12(c) requires the N.C. Partnership for Children to require each local Smart Start partnership to place in each of its contracts the following statements:

1. that the contract is subject to monitoring by the local Smart Start partnership and the N.C. Partnership for Children;
2. that contractors and subcontractors must be fidelity bonded, unless they receive less than \$100,000 or unless the contract is for child care subsidy services;
3. that contractors and subcontractors are subject to audit oversight by the State Auditor; and
4. that contractors and subcontractors must be audited as required by G.S. 143-6.1, unless they are organizations subject to the annual independent audit provisions of the Budget and Fiscal Control Act.

Section 12.37B of S.L. 1998-212 rewrites section 11.55(f) of S.L. 1997-443 to require the N.C. Partnership for Children and all local Smart Start partnerships to use the following competitive bidding practices in contracting for goods and services:

- for amounts of \$5,000 or less, three verbal quotes;
- for amounts greater than \$5,000 but less than \$15,000, three written quotes;
- for amounts of \$15,000 or more, but less than \$40,000, a request for proposal process;
- for amounts of \$40,000 or more, a request for proposal process and advertising in a major newspaper.

Child Care Rules

Rep. Russell Capps (R-Wake) introduced legislation (H 1757) during the 1998 session to disapprove, pursuant to G.S. 150B-21.3(b), three rules adopted by the state Child Care Commission regarding outdoor play equipment at child care facilities and training requirements for child care administrators, teachers, and aides. The provisions of House Bill 1757 were incorporated into a House committee substitute for Senate Bill 304 on October 14. On October 27, after lengthy and sometimes heated debate, the House passed this legislation and sent it on to the Senate. The Senate, however, declined to bring the bill to the floor, and it died at the end of the session, thereby allowing the Child Care Commission's rules to remain in effect.

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