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Children and Families

The 1999 General Assembly enacted legislation to aid in the enforcement of child support orders, to adopt the new Uniform Child Custody Jurisdiction and Enforcement Act, and to further assist victims of domestic violence. The legislators continued the work of the last session of the General Assembly by enacting legislation to clarify and fully implement the Juvenile Justice Reform Act of 1998. This chapter summarizes actions by the 1999 General Assembly with respect to family law, including child support, child custody, domestic violence, abuse and neglect, and juvenile delinquency. Related provisions, including legislative actions regarding child care and early childhood development programs, are discussed in Chapter 23 (Social Services).

Child Support and Paternity

Voluntary Acknowledgment of Paternity

Under G.S. 110-132 (enacted in 1975), the mother and father of an illegitimate child may legally establish the child's paternity by executing affidavits in which they voluntarily acknowledge the child's paternity. Until 1997, G.S. 110-132 required that a district court judge formally approve these voluntary paternity acknowledgments and provided that, once approved by a district court judge, a voluntary paternity acknowledgment constituted a binding legal determination of paternity. In 1997 the General Assembly repealed the portions of G.S. 110-132 that required judicial approval of voluntary paternity acknowledgments and amended the statute to provide that, unless rescinded by either parent within a specified period of time, a voluntary paternity acknowledgment constituted a legal admission, rather than a legal determination, with respect to the child's paternity.

S.L. 1999-293 (H 302) amends G.S. 110-132 to provide that, for purposes of establishing a child support obligation, a voluntary paternity acknowledgment has the same effect as a judgment establishing the child's paternity, without the necessity of judicial review or approval, subject to the right of either parent to rescind his or her acknowledgment within the time limits imposed by the 1997 legislation.

Verification of Income in Child Support Cases

S.L. 1999-293 enacts a new statute, G.S. 110-136.3(d1), providing that a written statement or employee verification form that indicates the amount of an obligor's gross income and is signed by the obligor's employer or the employer's designee is admissible as evidence in any case involving the establishment or modification of a child support order and may be used to establish the amount of the obligor's gross income.

Court-Ordered Child Support Payments

S.L. 1999-293 amends G.S. 50-13.4(c) to require that the amount of an obligor's court-ordered child support obligation be established on a monthly basis and to provide that child support payments become due and payable on the first day of each month. This amendment, however, does not affect the provisions of G.S. Chapter 110, allowing income withholding for child support payments based on an obligor's weekly, biweekly, semimonthly, or other pay period.

Medical Support for Children

G.S. 108A-69 and G.S. 58-51-115 require certain employers and health insurers to enroll a child in a health benefit plan when a court has ordered the child's parent to provide medical support for the child by covering the child under a health benefit plan and the child's parent is eligible for family benefit coverage under the health benefit plan. S.L. 1999-293 amends these statutes to clarify that their provisions apply with respect to the Teachers' and State Employees' Comprehensive Major Medical Plan. This provision was probably enacted in response to a 1995 opinion by the Attorney General stating that these statutes did not apply to the state insurance plan for teachers and other state employees.

Centralized Collection and Distribution of Child Support Payments

Child support enforcement provisions contained in the 1996 federal welfare reform law required North Carolina to establish, by October 1, 1999, a statewide, centralized child support collection unit to collect and distribute child support payments in all cases handled by child support enforcement agencies (termed IV-D agencies) and in all non-IV-D cases in which both (a) a child support order was initially entered on or after January 1, 1994, and (b) child support payments are made through income withholding. The General Assembly enacted G.S. 110-139(f) in 1997 to implement this federal requirement, effective October 1, 1999. That law, had it not been amended in the 1999 session, would have required that child support payments in IV-D cases and in some non-IV-D cases be paid through the centralized child support collection unit rather than through the offices of clerks of superior court. Clerks of superior court would have remained responsible for collecting and distributing child support payments in tens of thousands of non-IV-D child support cases, including some cases in which child support payments were made through income withholding.

S.L. 1999-293 amends G.S. 110-139(f), effective October 1, 1999, to require that child support payments in IV-D cases and *all* non-IV-D cases be paid through the centralized child support collection unit operated by a private vendor under contract with the state Department of Health and Human Services (DHHS), unless (1) child support is not paid through income withholding and (2) the court has ordered the obligor to make payments directly to the obligee.

The 1999 Appropriations Act, S.L. 1999-237 (H 168), transfers from the Judicial Department to DHHS \$2 million in recurring funding for state fiscal year (SFY) 1999-2000 and \$3.3 million for SFY 2000-01 to pay the cost of collecting and disbursing child support payments in the additional non-IV-D cases in which payments will have to be made through the centralized collection unit.

As a result of this change, effective October 1, 1999, clerks of superior court will no longer accept child support payments from obligors or maintain child support payment records. Clerks,

however, will continue to receive payments that are made to purge civil contempt or to satisfy child support liens or judgments and will forward these to the central collection unit. With respect to non-IV-D cases, clerks of superior court will also retain their responsibilities under G.S. 50-13.9(d) for notifying obligors when they are delinquent in making child support payments and for initiating child support enforcement proceedings to collect delinquent child support. To enable clerks of superior court to carry out these duties and provide courts with accurate information regarding obligors' payment of child support, S.L. 1999-293 requires that the new centralized collection unit provide payment information in non-IV-D child support cases to the clerk of superior court for purposes of judicial proceedings and enforcement.

Using Civil and Criminal Contempt to Enforce Child Support Orders

Courts frequently enforce child support orders through proceedings for civil and criminal contempt based on an obligor's willful failure to make court-ordered child support payments. S.L. 1999-361 (S 170) makes several changes with respect to North Carolina's statutes governing civil and criminal contempt proceedings. The act

- makes it clear that a person may be held in civil contempt only if his or her failure to comply with a court order is "willful";
- allows proceedings for civil contempt to be initiated by a motion, affidavit, and notice to appear filed by an aggrieved party (for example, the obligee who has failed to receive court-ordered child support payments) rather than by a show cause notice or order issued by a judicial official;
- provides that, in civil contempt proceedings initiated by the motion of an aggrieved party (without a probable cause finding by a judicial official), the burden of proof at the hearing for civil contempt is on the aggrieved party rather than the alleged contemnor;
- provides that the order in a civil contempt proceeding must contain findings of fact for or against the alleged contemnor with respect to each of the statutory elements of civil contempt; and
- provides that a person may not be held in both civil and criminal contempt with respect to the same conduct.

S.L. 1999-361 also limits the period of time that a person may be incarcerated for civil contempt in certain types of cases. These time limits, however, do *not* affect civil contempt proceedings based on an obligor's willful and continuing failure to pay child support. If an obligor is found in civil contempt for failing to make court-ordered child support payments, he or she may be incarcerated as long as the contempt continues (that is, until the obligor purges himself or herself of contempt by paying the portion of the unpaid child support that the court has found the obligor able to pay).

License Revocation for Failure to Pay Child Support

In 1997 the General Assembly enacted legislation (G.S. 110-142.2) allowing the court to revoke an obligor's driving, hunting, fishing, or trapping licenses and to order the state Division of Motor Vehicles to refuse to register the obligor's motor vehicle, if the obligor is delinquent in making child support payments.

S.L. 1999-293 amends G.S. 110-142.2 to *require* the court to order one or more of those sanctions if the obligor is found in civil or criminal contempt for a third or subsequent time for failing to pay court-ordered child support. S.L. 1999-293 further requires that a court-approved plan for payment of child support arrearages ordered as a condition of staying one or more of these sanctions

1. consider the amount of the arrearage and the obligor's financial ability to make payments on it;
2. provide for payment of the arrearage within a reasonable period of time;

3. require the obligor to make an immediate payment of \$500 or 5 percent of the arrearage, whichever is less, toward the arrearage; and
4. provide that payments may not exceed the applicable percentage of the obligor's disposable wages set forth in G.S. 110-136.6(b), which limits withholding to a maximum of 40 percent, 45 percent, or 50 percent of an obligor's disposable wages.

Interstate Withholding of Unemployment Benefits

The Uniform Interstate Family Support Act (G.S. Chapter 52C) allows enforcement in North Carolina of a child support income withholding order issued by an agency or a court of a sister state. The order may be sent directly to the North Carolina employer of the person who owes child support. The North Carolina employer is required to withhold child support from the obligor's disposable wages in essentially the same manner as if the order were issued by a North Carolina court or agency.

S.L. 1999-293 amends G.S. 52C-5-501 to also allow this type of "direct" enforcement of child support income withholding orders of other states with respect to unemployment compensation benefits paid by the Employment Security Commission (ESC) to unemployed obligors who owe child support. The ESC may withhold no more than 25 percent of the obligor's unemployment benefits for child support payments under an income withholding order issued by a sister state's tribunal.

Automated Administrative Child Support Enforcement

S.L. 1999-293 enacts a new statute, G.S. 110-139.3, requiring the Department of Health and Human Services to use high-volume, automated administrative child support enforcement methods to collect child support in interstate child support enforcement cases.

Child Custody

Uniform Child Custody Jurisdiction and Enforcement Act

In 1997 the Commissioners on Uniform State Laws adopted the Uniform Child Custody Jurisdiction and Enforcement Act (the UCCJEA) to replace the Uniform Child Custody Jurisdiction Act (the UCCJA) of 1968. With the enactment of S.L. 1999-223 (H 494), North Carolina joins at least eleven other states that have adopted the new uniform act. S.L. 1999-223 completely rewrites G.S. Chapter 50A as the UCCJEA, effective October 1, 1999, and makes the new law applicable to all causes of action filed on or after that date.

Like the UCCJA, the UCCJEA regulates the exercise of jurisdiction by courts in child custody cases for the purposes of reducing interstate conflicts in matters of child custody and promoting cooperation among states concerned with the same child. The ultimate goal of both the UCCJA and the UCCJEA is to reduce the incidence of parental kidnapping by eliminating the incentive for a parent to flee with a child to another state to avoid compliance with a custody determination. The new uniform act clarifies ambiguities that made application of the UCCJA less uniform throughout the country than originally anticipated, adds protections for victims of domestic violence, and attaches specific procedures regulating the enforcement of custody determinations made by courts with appropriate jurisdictional authority.

Jurisdiction Clarifications. Under the UCCJA, which remains the law in many states, a court may exercise jurisdiction in a child custody proceeding in four alternative situations:

1. The state is the child's home state, meaning the child has resided in the state for at least six months.

2. The child and the child's caretaker have a substantial connection to the state, and there is significant evidence in the state regarding the child's care, protection, training, and personal relationships.
3. The child is present in the state and there are emergency circumstances that require the court to exercise jurisdiction in order to protect the child.
4. No other state has jurisdiction.

Because these grounds are listed in the alternative, with no legislative priority given to one ground, it is possible for more than one state to properly exercise jurisdiction under the UCCJA. The most common conflict involves the first two grounds. The home state may claim jurisdiction while another state may have substantial connection/evidence jurisdiction, thus creating the possibility for conflicting orders relating to the same child.

To address this conflict, Congress enacted the Federal Parental Kidnapping and Prevention Act (the PKPA) in 1981. This federal law provides a clear preference for home state jurisdiction and allows a state to exercise jurisdiction based on the substantial connection/evidence ground only when no home state is identified. The UCCJEA conforms state law to the PKPA. G.S. 50A-201 provides that a North Carolina court may exercise jurisdiction based upon the substantial connection/evidence ground only if no state meets the definition of home state.

The UCCJEA also clarifies the proper exercise of emergency jurisdiction. G.S. 50A-204 provides that emergency jurisdiction is a temporary measure designed to enable a court of any state to enter orders necessary to ensure the protection of a child found within the state. This section of the UCCJEA allows a court to enter a temporary order if a child is present in the state and has been abandoned or is subjected to or threatened with mistreatment or abuse. As protection for victims of domestic violence, this section also allows the exercise of jurisdiction when a parent or sibling of the child faces a threat of mistreatment. However, emergency jurisdiction is intended as a temporary exercise of jurisdiction only. The court is required to order the parties to return to the state with appropriate jurisdiction in order to receive a more permanent determination.

The UCCJA, the older uniform act, also conflicts with the PKPA in regard to jurisdiction to modify custody orders from other states. As rewritten, G.S. Chapter 50A adopts the federal provision granting continuing exclusive jurisdiction to a state that enters an appropriate custody determination. G.S. 50A-202 and -203 define *continuing exclusive jurisdiction* to mean that, once a state enters a custody determination in accordance with the jurisdictional requirements of the UCCJEA, no other state may modify that order as long as at least one parent continues to reside in the issuing state or until the issuing state decides that the other state is a more appropriate forum.

G.S. 50A-105 clarifies that Indian tribes and foreign countries are treated as states for purposes of application of the UCCJEA.

The UCCJA requires a party filing a request for a custody determination to provide information about the past and present locations of the involved children. In recognition of the potential danger associated with the disclosure of this information about victims of domestic violence, G.S. 50A-209 requires that the required information be sealed immediately if the party alleges that disclosure of the information would jeopardize the health or safety of the children or the party.

Enforcement Provisions. The UCCJEA expands the scope of the jurisdictional statute by legislating uniform and expedited enforcement procedures. (The UCCJA does not contain specific provisions regulating the enforcement of custody orders.) G.S. 50A-305 provides for the registration of out-of-state custody orders with the clerk of court. At the time of registration, notice allowing twenty days for an objection to registration is sent to the parties. All objections, including objections to the jurisdiction of the issuing state, must be raised within those twenty days. If no objection is filed, the order is confirmed and subject to enforcement within the state as if it were an order of a North Carolina court.

G.S. 50A-308, -309, and -310 provide for the expedited court hearing of a request for enforcement of a custody determination. Upon the filing of a petition seeking enforcement, the court must enter an immediate order directing the other party to appear for a hearing. The court also may direct that the child be brought to the hearing. The hearing must be scheduled on the first possible judicial day following the filing of the petition, and at the hearing the judge must enforce

the existing custody order unless the respondent can show the order has been vacated or modified by the issuing court.

G.S. 50A-311 clarifies the court's authority to enlist the aid of law enforcement officers in the enforcement of custody orders. This provision allows a court to issue a *warrant* (defined as a court order) directing a law enforcement officer to take immediate physical custody of a child if a petitioner alleges that the child is in danger or the child is about to be removed from the state.

Domestic Violence

In October 1998 Governor James B. Hunt convened the Governor's Domestic Violence Task Force to study North Carolina's response to domestic violence. The task force made forty-four recommendations, most dealing with nonlegislative matters, such as collection of domestic violence statistics, training of governmental officials who deal with domestic violence, and increasing public awareness. Of the eleven task force recommendations that required legislative action, eight were enacted.

Domestic Violence Commission

Government-sponsored commissions on domestic violence exist in twenty-nine states. The Governor's Domestic Violence Task Force recommended the creation of a commission in this state to serve as the overarching agency in developing a statewide approach to domestic violence issues.

Currently in North Carolina many different state agencies have responsibility for disbursing federal domestic violence funds and additional agencies incorporate domestic violence policy and programmatic initiatives into their work. . . . In addition, our state has a history of local control over how each county responds to domestic violence. Although this diversity at both the state and local levels is a strength of our state's response, it has the potential to lead to gaps in services, duplication of services, and unmet needs. The existence of a statewide commission as proposed here, that includes representation from the diverse individuals, agencies and communities involved in this work, would build on this existing statewide capacity and add to our state's ability to respond by providing a needed forum for the exchange of knowledge and information that can minimize gaps, duplications and maximize a consistent and effective statewide approach. (*Governor's Task Force on Domestic Violence: Final Report*, Jan. 1999, p. 26)

Section 24.2 of S.L. 1999-237 (H 168) establishes a permanent Domestic Violence Commission of thirty-nine members to assess statewide needs related to domestic violence; to assure that necessary services, policies, and programs are provided; and to coordinate and collaborate with the North Carolina Council for Women in strengthening domestic violence programs. The membership includes the heads of various state departments that have some connection to domestic violence issues, court officials who handle domestic violence cases, law enforcement officers, representatives from victims' assistance programs, representatives from offender treatment programs, a member of the medical community, attorneys representing the private bar and legal services, a member of the N.C. Coalition against Domestic Violence, a former victim of domestic violence, and members of the General Assembly.

The commission is charged with specific responsibilities, including encouraging adequate funding to promote victim safety and the accountability of perpetrators; developing and recommending training initiatives for law enforcement officials, judicial officials, and persons who provide treatment and services to domestic violence victims; designing a statewide public awareness program; and designing and coordinating improved data collection efforts for criminal domestic violence charges.

Full Faith and Credit for Out-of-State Orders

S.L. 1999-23 (S 197) includes seven substantive law changes recommended by the task force. The task force concluded that no changes needed to be made regarding persons eligible for domestic violence protective orders or the procedure for getting an order. Clarification of the manner in which North Carolina would treat protective orders issued by other states and strengthening of the enforcement of protective orders were needed. In accordance with the federal requirements that North Carolina give full faith and credit to out-of-state protective orders (Violence against Women Act, 18 U.S.C. § 2265), G.S. 50B-4(d) has provided that “protective orders entered by the courts of another state or an Indian tribe shall be accorded full faith and credit by the courts of North Carolina and shall be enforced by the law-enforcement agencies of North Carolina.” States are permitted to determine the procedure they will apply to give out-of-state judgments full faith and credit. The problem in North Carolina has been that the domestic violence law itself set no specific procedure for granting full faith and credit. The general law for granting full faith and credit to out-of-state judgments, G.S. 1C-1701 *et. seq.*, requires that judgments be registered with the clerk of superior court, requires that notice be given to the defendant, and prohibits enforcement until thirty days after notice is given. Thus there was considerable confusion in North Carolina about whether an out-of-state domestic violence protective order could be enforced in North Carolina without compliance with the registration provisions of G.S. Chapter 1C. As a policy matter, many domestic violence advocates were concerned about victims having to comply with the registration requirements. The major concerns were (1) that a victim, who in many cases would have fled to North Carolina to avoid being found, would have to notify the defendant of her whereabouts in order to register the order in North Carolina and (2) that the victim (who had given the defendant due process notice and an opportunity to be heard in the state where the protective order was issued) would not be protected in North Carolina from a defendant who violates the order until thirty days after the order was registered in this state. Also the intention of the federal Violence against Women Act was to make it easy to enforce protective orders anywhere in the United States. S.L. 1999-23 provides that, effective December 1, 1999, the Foreign Judgment Enforcement Act of G.S. Chapter 1C does not apply to domestic violence protective orders. Effective February 1, 2000, it provides that an out-of-state protective order must be accorded “full faith and credit by the courts of North Carolina whether or not the order has been registered and . . . enforced by the law enforcement agencies of North Carolina as if it were an order issued by a North Carolina court.” Thus an out-of-state protective order will be immediately enforceable in North Carolina.

Even though registration is not required, S.L. 1999-23 allows a protective order to be registered in North Carolina if the person protected by the order wishes to register it. The order is registered by filing with the clerk of superior court a copy of the protective order and an affidavit by a person protected by the order that, to the best of that person’s knowledge, the order is presently in effect as written. Notice of registration is not given to the defendant. Upon registration the clerk must forward a copy of the order to the sheriff for entry into the domestic violence protective order registry.

Enforcement of Protective Orders

S.L. 1999-23 makes several changes intended to simplify the enforcement of protective orders. A history of the law is instructive to understand the new law. G.S. 50B-4 provided that a civil protective order may be enforced in two ways. First, the plaintiff in the case may file a motion with the clerk of superior court for the defendant to be held in contempt for a violation of the order. If the clerk finds probable cause from the motion that a violation occurred, the clerk sets the date for a contempt hearing before a district court judge. The clerk issues to the defendant an order to appear at the hearing and show cause why he or she should not be held in contempt. This is the normal procedure for holding a defendant in contempt for violation of a civil order.

Because of the concern about certain potentially violent acts, the original domestic violence law provided a second, unique method of enforcement for contempt. It requires a law enforcement

officer to arrest a defendant without a warrant and to take the defendant into custody if the officer has probable cause to believe that the defendant violated the protective order excluding the defendant from the residence occupied by the victim or directing the defendant to refrain from threatening, abusing, following, harassing, or otherwise interfering with the other party and if the officer determines that a protective order exists. The officer takes the person arrested before a magistrate, who sets a date for a contempt hearing before the district court judge and issues a show cause order to the defendant to appear at that contempt hearing. Conditions of pretrial release must be set for the defendant, but only a judge may set those conditions during the first forty-eight hours after the arrest.

In 1997 the General Assembly added G.S. 50B-4.1, making it a crime to violate a protective order entered by a North Carolina court, thereby creating a third mechanism for enforcing the order. Many law enforcement officers were uncomfortable with the mandatory arrest for contempt rather than charging a crime and were not sure of the procedure to follow. With the enactment of the crime of violating the protective order, the unique provision of arrest for a contempt hearing was no longer necessary to take the defendant into custody; in practice, most officers began charging the crime. S.L. 1999-23, effective February 1, 2000, repeals the provision requiring officers to arrest for the purpose of setting up a contempt hearing and leaves two methods of enforcement of protective orders:

1. The person protected may use the normal contempt procedure of filing a motion with the clerk of superior court, who then will send the defendant a notice to appear at a contempt hearing.
2. The defendant may be charged with the crime of violating the protective order.

The new law strengthens a law enforcement officer's responsibilities with regard to enforcing the crime of violating the protective order. It *allows* an officer to make an arrest without a warrant if the officer has probable cause to believe the defendant has violated any provision of the order, and it *requires* an officer to arrest the defendant without a warrant if the officer has probable cause to believe the defendant has knowingly violated a valid protective order by returning to the victim's residence or by threatening, abusing, following, harassing, or otherwise interfering with the other party. In effect, the new law also transfers the mandatory arrest provisions that previously applied to the arrest for contempt to the crime of violating the order. In determining whether an outstanding protective order is valid, the officer may rely on a copy of the protective order that is provided to the officer and a statement of the person protected that the order remains in effect. S.L. 1999-23 also amends G.S. 50B-4.1 to extend the crime of violating a protective order to the violation of a protective order entered by the court of another state or of an Indian tribe as well as to orders entered by North Carolina courts. A defendant who, in this state, violates a protective order entered in another state commits a crime in North Carolina.

Finally, the act eliminates the provision that permits a law enforcement agency not to respond to a domestic violence call if the agency already has responded multiple times in the previous forty-eight-hour period. Law enforcement officers must respond to any request for assistance from a domestic violence victim as soon as is practicable.

Funding for Domestic Violence Programs

For the past two years, the General Assembly has appropriated \$1 million in non-recurring funds for domestic violence programs. The task force recommended that the funds be placed into the continuation budget so those local programs would have a more dependable funding source. The task force also recommended allocating up to \$50,000 per program as one-time start-up grants to provide domestic violence services in the twenty-six counties currently without programs. Neither recommendation was enacted, although the General Assembly did re-appropriate the \$1 million in non-recurring funds.

The General Assembly did provide additional funding for domestic violence programs by allocating \$1 million from Temporary Assistance to Needy Families (TANF) Block Grant funds to the Department of Health and Human Services, Division of Social Services, to develop a grant

program to support community-based domestic violence services that demonstrate the ability to collaborate and coordinate services with other local human services organizations to serve children and families where domestic violence occurs [sec. 5.(q) of S.L. 1999-237 (H 168)]. The Division of Social Services must consult with the North Carolina Council for Women, the Governor's Crime Commission, local domestic violence programs, and other human services organizations in developing the process to award grants.

Court Procedure in Family Law Cases

Family Court Pilot Programs

Funding and Expansion. Section 25 of S.L. 1998-202 required the Administrative Office of the Courts (AOC) to establish a specialized family court as a pilot project in three judicial districts. The three districts chosen by the AOC were District 26 (Charlotte), District 14 (Durham), and District 20 (Stanly, Union, Anson, and Richmond Counties). The 1999 budget, S.L. 1999-237, provides funding for the three pilot districts on a continuing basis and directs expansion of the project into up to three additional districts by January 1, 2000. The AOC is directed to choose the additional districts.

Parent Education. Section 17.16 of S.L. 1999-237 directs the AOC to establish a program to educate parents who are separating or divorcing about the effects of separation and divorce on children. The programs are to be established in the districts participating in the family court pilot projects.

Family Law Arbitration Act

S.L. 1999-185 (H 495) creates the Family Law Arbitration Act, G.S. 50-41 through -60. The act allows parties to agree in writing to submit all issues incident to the breakup of a marriage, except the divorce itself, to binding arbitration. The written agreement to arbitrate is enforceable against the parties and is irrevocable absent the consent of both parties. The act provides for arbitration of all issues, including equitable distribution, alimony, child custody, and child support. Arbitration pursuant to the act results in a binding award that is filed with the court and enforced as any other court order; however, a court can vacate an arbitrator's award of child custody or child support if the court finds that the award is not in the best interest of the child. The act allows a court or an arbitrator to modify an arbitration award regarding child support or custody upon a finding that there has been a substantial change of circumstances since the initial arbitration award. Unless the parties agree otherwise, alimony awards also are subject to modification. This act applies to agreements made on or after October 1, 1999.

Unemployment Benefits for Workers with Child Care Responsibilities

S.L. 1999-196 (H 277) amends North Carolina's unemployment compensation law (G.S. 96-8) to provide that an unemployed worker may not be disqualified from unemployment benefits when the individual's bona fide permanent employment would result in an acceptance of undue family hardship or when the individual's separation or discharge is due solely to an inability to accept work during a particular shift as the result of an undue family hardship. Under the new law *undue family hardship* includes an individual's inability to accept employment during a particular shift because he or she cannot obtain child care during the shift for a child fourteen years old or younger. The new law applies to unemployment compensation claims filed on or after July 1, 1999; however, the law expires on June 30, 2001.

Other legislation relating to child care is discussed in Chapter 23 (Social Services).

Abused, Neglected, and Dependent Juveniles

Applicability of G.S. Chapter 7B, the New Juvenile Code

The 1998 Juvenile Justice Reform Act (S.L. 1998-202) provided that G.S. Chapter 7B, the new Juvenile Code, became effective July 1, 1999, and applied to offenses committed on or after that date. That applicability language worked well in relation to cases involving delinquent or undisciplined juveniles; however, it did not provide adequate guidance as to the new code's applicability to cases involving abuse, neglect, dependency, or termination of parental rights. Section 60 of S.L. 1999-456 (H 162) addresses that problem by providing that Articles 1 through 11 of Subchapter I of G.S. Chapter 7B became effective July 1, 1999, and apply to abuse, neglect, and dependency reports received, petitions filed, and reviews commenced on and after that date.

Children in Institutions

Section 1 of S.L. 1999-190 (H 262) amends the Juvenile Code's definition of *caretaker* in G.S. 7B-101(3) to specify that a "person responsible for a juvenile's health and welfare [in a residential setting]" includes "any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services."

Section 2 of the act amends G.S. 7B-302(b) to address the responsibility of a county department of social services when it receives a report of suspected abuse, neglect, dependency, or death from maltreatment relating to a juvenile in an institutional setting, such as a residential child care or educational facility. In those cases the department must ascertain immediately whether or not other juveniles remain in the facility subject to the alleged perpetrator's care or supervision. If they do remain, the department must assess the circumstances of those juveniles to determine whether they require protective services or whether their immediate removal from the facility is necessary for their protection.

Response to Physical Abuse

S.L. 1999-318 (H 1159) amends several sections of Subchapter I of G.S. Chapter 7B, the Juvenile Code, to impose additional requirements on county social services directors in cases involving physical abuse. (Like many other statutory obligations of county social services directors, these are likely to be carried out by authorized staff of the county department of social services.) The act is effective October 1, 1999, and applies to petitions filed on or after that date.

Review of Perpetrator's Background. The act amends G.S. 7B-302 to require the director to conduct a thorough review of the background of the alleged abuser whenever, due to physical abuse, a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care. The review must include a check of the person's *criminal history*, which a new provision, G.S. 7B-101(7a), defines as "a local, State, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, involving violence against a person."

Unlike most other statutes dealing with criminal history checks, this new law does not include any provision specifically giving social services directors access to records of the State Bureau of Investigation (SBI) (or other records that are not public records) or requiring the SBI or others to assist in the criminal history checks. [Compare this act, for example, to S.L. 1999-214 (S 1068), which provides for criminal record checks for volunteers for the McGruff House Program. For a thorough discussion of criminal history checks, see James C. Drennan, "Obtaining Record Checks to Reduce Risk," *Popular Government* 64, No. 2 (Winter 1999): 30-39.] The director's review also must include a review of any "available" mental health records. Generally a person's mental health records will not be available absent that person's consent.

In obtaining the needed information, social services directors may rely on existing wording in G.S. 7B-302(e), which gives the director broad authority to obtain information he or she needs in the performance of "any duties" related to the investigation of abuse, neglect, or dependency

reports or to the provision of or arrangement for protective services. It authorizes the director to consult with agencies or individuals, including state or local law enforcement officers, and requires those persons or agencies to assist in the investigation when asked to do so by the director. In addition the director may make a written demand for any information or reports, whether or not confidential, that the director believes may be relevant to the investigation or to the provision of protective services. A person or agency receiving such a request must give the director access to and copies of the requested information or reports

- to the extent permitted by federal law and regulations,
- unless they are protected by the attorney-client privilege, and
- subject to the right of a custodian of criminal investigative information or records to seek a court order to prevent disclosure, based on a belief that disclosure would jeopardize the state's right to prosecute a defendant or the defendant's right to receive a fair trial.

Petition and Order for Mental Health Evaluation. If the director's review reveals that the alleged abuser has a history of violent behavior against people, G.S. 7B-302(d1) requires the director to petition the court to order the alleged abuser to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. It is not clear whether this "petition" begins a new type of proceeding in juvenile court or is, in effect, a motion in the case of the juvenile who was removed from the home. The latter seems more likely, since the alleged perpetrator almost certainly is a party to that proceeding.

The act amends G.S. 7B-503 to require the court to rule on the petition before returning the child to a home where the alleged abuser is or has been present. If the court finds that the alleged abuser has a history of violent behavior against people, the court must order the alleged abuser to submit to a complete mental health evaluation and may order the alleged abuser to pay the cost of the evaluation. An amendment to G.S. 7B-506 requires the court, in determining whether the juvenile's continued nonsecure custody is warranted, to consider the opinion of the mental health professional who performed the evaluation.

The results of the mental health evaluation must be included in the evaluation the social services director prepares pursuant to G.S. 7B-304 for presentation to the court following adjudication. In addition, at disposition under G.S. 7B-903 or G.S. 7B-1003 (disposition pending appeal), if the court has found that the juvenile suffered physical abuse and that the responsible individual has a history of violent behavior against people, the court must consider the opinion of the mental health professional who performed the evaluation before returning the juvenile to that person's custody.

Guardian ad Litem Amendments

S.L. 1999-432 (S 25) rewrites G.S. 7B-601 regarding guardians ad litem who are appointed to represent children alleged to be abused, neglected, or dependent in juvenile court proceedings. As amended the section provides that appointments of guardians ad litem and attorney advocates terminate when a permanent plan has been achieved for the juvenile and approved by the court. The act rewrites the description of the guardian ad litem program's role to include (1) conducting follow-up investigations to insure that court orders are properly executed and (2) reporting to the court when the juvenile's needs are not being met. Previously the court was authorized to order the guardian ad litem program or the county department of social services to do those things.

Most significantly the statute now gives the guardian ad litem authority to obtain any information or reports (except those protected by the attorney-client privilege), whether or not confidential, that in the guardian ad litem's opinion may be relevant to the case. Previously the guardian ad litem had this authority, or some limited version of it, only if the court specifically granted it in the order appointing the guardian ad litem. Finally, the new law provides that in all actions under Subchapter I of the Juvenile Code, the juvenile is a party.

Dispositional Authority over Parents and Others

G.S. 7B-904 describes the court's authority at a dispositional or subsequent hearing in an abuse, neglect, or dependency proceeding to require parents to do specified things. S.L. 1999-318 rewrites the section to give the court most of the same authority in relation to: the juvenile's guardian, custodian, or stepparent; an adult member of the juvenile's household; or an adult relative entrusted with the juvenile's care. Under the new law, which is effective October 1, 1999, and applies to petitions that are filed on or after that date, the court may order those persons as well as the juvenile's parents to

- participate in the juvenile's medical, psychiatric, psychological, or other treatment.
- undergo psychiatric, psychological, or other treatment or counseling designed to remedy behaviors or conditions that led to or contributed to the juvenile's adjudication or removal from that person's custody. This may be a direct order or a condition of the person's having custody of the juvenile.
- pay, if able to do so, for treatment the court orders the person to undergo. If the person is not able to pay, the court may order the county to pay the cost of the treatment.

The act did not amend G.S. 7B-406, which requires that the summons in a juvenile case include specific notice that the court may direct these orders to parents.

Termination of Parental Rights

S.L. 1999-309 (S 310) amends G.S. 7B-1112 to provide that notice of appeal from an order in a proceeding to terminate parental rights must be given in open court at the time of the hearing or in writing within ten days after entry of the order (instead of ten days after the hearing). The timing of the entry of the order is governed by Rule 58 of the North Carolina Rules of Civil Procedure.

State Child Fatality Review Team Findings

Section 4 of S.L. 1999-190 amends G.S. 143B-150.20 to provide that findings of the State Child Fatality Review Team following a fatality review are not admissible as evidence in any civil or administrative proceeding against an individual or entity that participates in a child fatality review conducted pursuant to the section.

“Kids First” Registration Plates

S.L. 1999-277 (S 235) amends G.S. 20-79.4(b) to authorize the Division of Motor Vehicles to issue a special “Kids First” vehicle registration plate and amends G.S. 7B-1302 to provide that a portion of the fee for the special plate will be allocated to the Children's Trust Fund. That fund is used by the State Board of Education to fund abuse and neglect prevention programs.

Felony Child Abuse

S.L. 1999-451 (H 160), effective December 1, 1999, rewrites G.S. 14-318.4 to increase the criminal penalty for child abuse that results in serious bodily injury or permanent loss or impairment of any mental or emotional function of the child. This change is described more fully in Chapter 7 (Criminal Law and Procedure).

Other Legislation Relating to Child Welfare

Other legislation relating to child welfare is discussed in Chapter 23 (Social Services).

Delinquent and Undisciplined Juveniles

Placement in Nonsecure Custody with a Relative

G.S. 7B-1905(a) requires the court, when placing a juvenile alleged to be undisciplined or delinquent in nonsecure custody, to order the child placed with a relative if the court finds that the relative is willing and able to provide proper care and supervision. As amended by Section 14 of S.L. 1999-423 (H 1216), the section provides an exception to that requirement if the court finds that placement with the relative would be contrary to the juvenile's best interest. S.L. 1999-423 also makes a number of technical corrections to the Juvenile Code, G.S. Chapter 7B, and to several related statutes.

Appeal from Transfer Order

S.L. 1999-309 amends G.S. 7B-2603 to provide that notice of appeal to superior court from an order transferring a juvenile's case to superior court for trial as an adult must be given in open court at the time of the hearing or in writing within ten days after entry of the order (instead of ten days after the transfer hearing). The timing of the entry of the order is governed by Rule 58 of the North Carolina Rules of Civil Procedure. This change applies to actions filed on or after October 1, 1999.

Predisposition Report; Risk and Needs Assessment

S.L. 1999-423 restores a provision from prior law relating to the timing of predisposition reports that had not been included in the new Juvenile Code that became effective July 1, 1999. The act amends G.S. 7B-2413 to provide that, when a juvenile is alleged to be delinquent or undisciplined, no predisposition report or risk and needs assessment may be done before the juvenile is adjudicated delinquent or undisciplined, unless the juvenile or the juvenile's parent, guardian, custodian, or attorney files a written statement with the court counselor granting permission and giving consent to the predisposition report or risk and needs assessment.

“Level 2” Community Service Disposition

S.L. 1999-444 (H 661) amends one of the Level 2 dispositions described in G.S. 7B-2506 for delinquent juveniles to authorize the court to order the juvenile to perform up to 200 hours of supervised community service. Previously G.S. 7B-2506(23) provided for at least 100 hours but not more than 200 hours of community service.

Registration of Juvenile Sex Offenders

G.S. 14-208.26 authorizes the court to order certain juveniles who are adjudicated delinquent for committing specified sex offenses to register with the county sheriff as sex offenders. Offenses covered by the section are first-degree rape, second-degree rape, first-degree sexual offense, second-degree sexual offense, and attempted rape or sexual offense. S.L. 1999-363 (S 331) amends the section, effective December 1, 1999, to state that those listed offenses include

- the commission of any of those offenses;
- the attempt, conspiracy, or solicitation of another to commit any of those offenses; and
- aiding and abetting any of those offenses.

Office of Juvenile Justice

Program Evaluations. Section 21(b) of S.L. 1999-237 requires the Office of Juvenile Justice (OJJ) to evaluate wilderness camp programs, the Governor's One-on-One Programs, the On Track Program, the Guard Response Alternate Sentencing Program, and multipurpose group homes. It

directs OJJ to report the results to the chairs of the House and Senate Appropriations Committees and the chairs of the Subcommittees of Justice and Public Safety of the House and Senate Appropriations Committees by March 1 of each year.

Staffing Study. Section 21.4 of S.L. 1999-237 authorizes OJJ to use up to \$75,000 to contract with consultants for a study of staffing in training schools and detention centers. The consultant must consult with OJJ, the Office of State Personnel, and the Fiscal Research Division of the General Assembly in developing objectives and a work plan for the study. OJJ must report the results of the study, including a staffing plan by shift for each training school and detention center, by April 1, 2000.

Local Grant Reporting. Section 21.5 of S.L. 1999-237 requires OJJ, by October 1, 1999, and by May 1 each year thereafter, to report to specified legislative committees a list of and information about recipients of grants awarded or preapproved for award from funds appropriated to OJJ for local grants.

Transfer of Positions. Section 21.7 of S.L. 1999-237 authorizes the transfer to OJJ of three specified positions (executive director of the Criminal Justice Partnership Act; accountant III; and administrative secretary III) from the Department of Correction and one position (research and planning administrator) from the Administrative Office of the Courts.

Transfer of Programs and Funds. Section 21.9 of S.L. 1999-237 transfers from the Judicial Department to OJJ program responsibility and funding for Project Challenge North Carolina, Inc., teen court programs funded through the budget of the AOC, and the Juvenile Assessment Center Project of District Court District 12. The transfers became effective June 30, 1999, and the funds did not revert. The section also requires OJJ to report to specified legislative committees on each of these programs by April 1 each year.

Local Boys and Girls Clubs. Section 21.10 of S.L. 1999-237 requires OJJ to develop a pilot program that grants funds to the local organizations of the Boys and Girls Club in the ten counties with the highest rate of training school commitments in state fiscal year 1997–1998. The local organizations must provide matching funds. The section authorizes the use of \$500,000 for the pilot program in 1999–2000 and requires OJJ to report on the program by April 1, 2000.

Juvenile Facilities

Mecklenburg Secure Facilities. Section 21.1 of S.L. 1999-237 directs that \$1.1 million, which had been allocated to OJJ for the construction of beds for female offenders at Gatling Detention Center in Mecklenburg County, be used to construct an eight-bed secure group home for female offenders in Mecklenburg County and to upgrade the Gatling Detention Center to meet fire marshal standards.

Training School and Detention Sites. Section 21.12 of S.L. 1999-237 requires OJJ to report to the Joint Legislative Commission on Governmental Operations before finalizing site selection for new training school beds and detention beds. It also requires that consideration be given to the renovation of existing units and to the need for additional beds in particular areas of the state.

Multifunctional Juvenile Facility. Section 21.13 of S.L. 1999-237 requires OJJ, if it determines that doing so would most economically and effectively promote the purposes served by OJJ, to establish a pilot program in Eastern North Carolina to provide certain juveniles with custodial, rehabilitation, treatment, and program services, including substance abuse and sex offender services. It requires OJJ to contract, according to law, with a for-profit or nonprofit firm for the construction and operation of a multifunctional juvenile facility with up to one hundred beds. If the surrounding communities demonstrate local interest and commitment, the facility must have the capacity to provide community-based programs, including day-reporting centers, transitional group homes, emergency shelter care, alternative education programs, and outpatient family counseling and substance abuse treatment. The section sets requirements for contracting, construction, employee training, and related matters. Of funds appropriated to OJJ for 1999–2000, the section allocates \$2.5 million for the purchase of custodial, rehabilitation, treatment, and program services, including substance abuse and sex offender services.

Stonewall Jackson. Section 29.6C of S.L. 1999-237 directs that of funds appropriated to OJJ for 1999–2000, \$337,000 be used to relocate or demolish buildings located on the grounds of the Stonewall Jackson Training School (in Cabarrus County) that contain hazardous asbestos materials and pose safety threats to the school’s students and staff. The section also provides that, notwithstanding G.S. 146-30, the Stonewall Jackson Training School may retain and use for capital improvements at the school the net proceeds from the sale or lease of historic properties at the school.

Studies and Reports

Juvenile Crime and Delinquency. Section 2.1 of S.L. 1999-395 (H 163) authorizes the Legislative Research Commission to study the causes and prevention of juvenile crime and delinquency. If the commission chooses to undertake this study, it may report to the General Assembly in the 2000 session or to the 2001 General Assembly.

School Violence. S.L. 1999-257 (H 517), as amended by S.L. 1999-387 (H 1154), directs the Joint Legislative Education Oversight Committee, in consultation with the State Board of Education, the Office of Juvenile Justice, the Center for the Prevention of School Violence, local boards of education, and the North Carolina Congress of Parents and Teachers, to examine the issue of students who threaten to commit or who carry out acts of violence directed at schools. The committee is authorized to make recommendations to the 2000 session.

Juvenile Justice Information System Report. Section 21.8 of S.L. 1999-237 requires the Criminal Justice Information Network Governing Board to evaluate annually the status of the juvenile justice information system and to report by April 1 of each year to specified legislative committee chairs and the Fiscal Research Division of the General Assembly.

Legislation Affecting Other Laws Relating to Minors

Emancipation—Notice of Appeal

S.L. 1999-309 amends G.S. 7B-3508 to provide that notice of appeal from an order in a proceeding for emancipation of a juvenile must be given in open court at the time of the hearing or in writing within ten days after entry of the order (instead of ten days after the hearing). The timing of the entry of the order is governed by Rule 58 of the North Carolina Rules of Civil Procedure. This change applies to actions filed on or after October 1, 1999.

Juvenile Crime Prevention Councils

Section 16 of S.L. 1999-423 amends G.S. 147-33.64 to require local Juvenile Crime Prevention Councils to meet at least bimonthly (instead of monthly). Section 15 of the act amends G.S. 147-33.62 to clarify the length of terms of members of the local councils and to state that, after the specified initial terms, all terms of appointment begin on July 1.

Section 21.2 of S.L. 237 requires each county in which programs receive Juvenile Crime Prevention Council grant funds from OJJ to certify annually, through the local council to OJJ, that the grant funds are not used to duplicate or supplant other programs in the county.

Governor’s Crime Commission Membership

Section 11 of S.L. 1999-423 amends G.S. 143B-478 to increase the membership of the Governor’s Crime Commission from forty to forty-two members by (1) adding the director of the Office of Juvenile Justice as a voting member and (2) adding as nonvoting members, in place of a

representative of the Office of Juvenile Justice, the assistant director of the Intervention/Prevention Bureau and the assistant director of the Detention Bureau of the Office of Juvenile Justice.

Parental Liability for School-Related Offenses by Unemancipated Minors

Section 5 of S.L. 1999-257 (H 517), as amended by S.L. 1999-387, adds a new section, G.S. 1-538.3, that allows a school entity to recover monetary damages from the parent or individual legal guardian who has the care, custody, and control of an unemancipated minor who commits certain offenses. To recover under the section, the school entity must prove by clear, cogent, and convincing evidence that the minor committed one of the following offenses on school property:

- malicious use of explosive or incendiary [G.S. 14-49],
- malicious damage of occupied property by use of explosive or incendiary [G.S. 14-49.1],
- making a false report concerning destructive device [G.S. 14-69.1(c)],
- perpetrating hoax by use of false bomb or other device [G.S. 14-69.2(c)],
- possession or carrying of any dynamite cartridge, bomb, grenade, mine, or powerful explosive on educational property or causing, encouraging, or aiding a minor to do so [G.S. 14-269.2(b1) and (c1)],
- a felony offense involving injury to persons or property through the use of a gun, rifle, pistol, or other firearm of any kind as defined in G.S. 14-269.2(b).

In order to recover, the school entity also must prove by clear, cogent, and convincing evidence that the parent or individual legal guardian who has the care, custody, and control of the unemancipated minor

1. knew or reasonably should have known of the minor's likelihood to commit such an act;
2. had the opportunity and ability to control the minor; and
3. made no reasonable effort to correct, restrain, or properly supervise the minor.

If the school entity prevails, it can recover actual compensatory and consequential damages of (a) up to \$50,000 for damages to educational property resulting from the discharge of a firearm or detonation or explosion of a bomb or other explosive and (b) up to \$25,000 for damages resulting from the disruption or dismissal of school or the school-sponsored activity arising from a false report, a hoax, or bringing or possessing a bomb or other explosive device onto educational property or to a school-sponsored activity.

The act also amends various criminal statutes relating to bomb threats, perpetrating hoaxes, and bringing weapons or other prohibited items onto school property or to school-sponsored events, and it amends G.S. 115C-391 to require a one-year suspension of students who commit specified offenses. These changes are discussed in Chapter 7 (Criminal Law and Procedure).

Lose Control, Lose Your License

The 1997 General Assembly enacted legislation, which went into effect in August 1998, connecting the driver's license privilege of a person under age eighteen to his or her school status. Under that law, G.S. 20-11(n), if the young person does not have a high school diploma or its equivalent, he or she must have a "driving eligibility certificate" showing (1) that he or she is enrolled in school and making progress toward a high school diploma or its equivalent, or (2) that the denial of a certificate would place a substantial hardship on the person or his or her family, or (3) that the person cannot make progress toward a high school diploma or its equivalent.

Effective July 1, 2000, S.L. 1999-243 (S 57), as amended by Section 4 of S.L. 1999-387, adds a new section, G.S. 20-11(n1), which makes students ineligible for the driving certificate if they are subjected to disciplinary action for certain enumerated student conduct. "Disciplinary action" includes (1) expulsion, (2) suspension for more than ten consecutive days, or (3) assignment to an alternative educational setting for more than ten consecutive days. Behavior that constitutes

“enumerated student conduct” includes any of the following that occur after July 1 before the school year in which the student enrolled in the eighth grade or after the student’s fourteenth birthday, whichever is earlier:

- the possession or sale of an alcoholic beverage or an illegal controlled substance on school property;
- the bringing, possession, or use on school property of a weapon or firearm that resulted in a 365-day suspension under G.S. 115C-391(d1) or that could have had that result if the behavior had occurred in a public school;
- the physical assault on a teacher or other school personnel on school property.

The definition of *school property* includes school-sponsored curricular or extracurricular activities that occur on or off the physical premises of the school.

A person who loses his or her eligibility for a certificate under this new provision becomes eligible for a certificate when the school administrator determines that the student has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

1. The enumerated student conduct occurred before the student reached age fifteen, and the student is now at least sixteen.
2. The enumerated student conduct occurred after the student reached age fifteen, and it is at least one year after the date the student exhausted all administrative appeals connected to the disciplinary action.
3. The student needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling program, or a mental health treatment program, and no other transportation is available.

In addition a student whose permit or license is denied or revoked due to ineligibility for a certificate under the new provision may be eligible for a certificate if, after six months from the date of ineligibility, the school administrator determines that

- the student has returned to school or has been placed in an alternative educational setting and has displayed exemplary student behavior, as defined by the applicable state entity, or
- the disciplinary action was for the possession or sale of an alcoholic beverage or an illegal controlled substance on school property and the student subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate.

The act also requires the State Board of Education (for public schools or charter schools), the Secretary of Administration (for home schools or nonpublic schools), and the State Board of Community Colleges (for community colleges) to develop forms for parents, guardians, emancipated minors, or other appropriate individuals to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles limited information from the student’s school records relating to the student’s eligibility for a certificate.

This act is also discussed in Chapter 9 (Elementary and Secondary Education) and Chapter 18 (Motor Vehicles).

Joan Brannon

Cheryl Howell

Janet Mason

John L. Saxon