UNC SCHOOL OF GOVERNMENT

JUVENILE LAW BULLETIN NO. 2013/03 | NOVEMBER 2013

2013 Legislation Affecting Abuse, Neglect, Dependency, and Termination of Parental Rights

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In 2013, the North Carolina General Assembly enacted legislation that resulted in numerous changes to the laws related to abuse, neglect, or dependency of juveniles and to termination of parental rights. The majority of these changes are found in North Carolina Session Law (hereinafter S.L.) 2013-129, which has also been referred to as the Court Improvement Project (CIP)[1] law (and is referred to in this bulletin as the CIP Law). Although the CIP Law amendments are the focus of this bulletin, other 2013 Session Laws that have a significant impact on the Juvenile Code[2] are also addressed. This bulletin discusses the following twenty-one substantive changes to the Juvenile Code:

- Making the failure to report suspected abuse, neglect, or dependency of a juvenile a misdemeanor crime
- Amending the definition of "abused juvenile" to include human trafficking and treating juveniles engaged in prostitution as victims rather than offenders
- Requiring a report to law enforcement of the disappearance of a child less than 16 years old
- Defining who *must* be a party to an abuse, neglect, or dependency proceeding and who *may* be a party
- Eliminating guardians ad litem of assistance for respondent parents in abuse, neglect, dependency, or termination of parental rights proceedings
- Specifying the findings a court must make when allowing a respondent parent to waive court-appointed counsel in an abuse, neglect, dependency, or termination of parental rights proceeding
- Establishing the proper venue in pre-adjudication stages of abuse, neglect, or dependency proceedings

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1. The Court Improvement Project is a federally funded project with a mission to improve court practice in abuse, neglect, and dependency cases in order to ensure safety, permanence, and well-being for children in a fair and timely manner. For more information, see www.nccourts.org/Citizens/Cprograms/Improvement/Default.asp.

2. Chapter 7B of the North Carolina General Statutes (hereinafter G.S.) is commonly known as the Juvenile Code.

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- Requiring a pre-adjudication hearing in abuse, neglect, or dependency actions
- Specifically including "nonrelative kin" as nonsecure custody placement options, including tribal placement options for Indian children who are members of state-recognized Indian tribes
- Adding certain sexual crimes to the list of aggravating factors allowing for cease reunification efforts
- Creating a new visitation statute that requires court-ordered parental visitation plans to explicitly state certain elements and allowing motions to modify visitation to be referred to mediation
- Replacing the statutes on review hearings and permanency planning hearings with a new consolidated statute
- Defining a juvenile's "return home" to include placement with either parent
- Establishing a state guardianship assistance program
- Requiring an inquiry into terminating jurisdiction and transferring a case to a civil custody order
- Requiring service of a termination of parental rights petition on a respondent parent's attorney
- Revising the statute addressing an unwed father's actions to establish paternity prior to the filing of a termination of parental rights petition
- Requiring the department of social services to consider foster parents who want to adopt when selecting adoptive parents for a juvenile
- Establishing additional criteria for parental relinquishments and for voiding relinquishments
- Amending notice and hearing procedures regarding individuals being placed on the Responsible Individuals List
- Requiring both the party and attorney to sign the notice of appeal

Mandated Reporting Laws

Reporting Suspected Abuse, Neglect, or Dependency of a Juvenile

North Carolina law requires "any person" who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101,[3] to make a report to the director[4] of the county department of social services[5] where the juvenile resides or is found.[6] North Carolina is one of only seventeen states, along with Puerto Rico, to have a universal mandated reporting law.[7] This means that the affirmative duty to make a report of suspected child abuse, neglect,

3. *See* G.S. 7B-101(1), (9), (15).

4. G.S. 7B-101(10) includes in the definition of "director" his or her representative.

5. As of August 2013, sixteen of North Carolina's 100 counties have established a consolidated human services agency that includes the county's department of social services, pursuant to G.S. 153A-77. Those counties are Bladen, Brunswick, Buncombe, Cabarrus, Edgecombe, Gaston, Haywood, Mecklenburg, Montgomery, Onslow, Pender, Rockingham, Swain, Union, Wake, and Yadkin. In these counties, the consolidated human services director is authorized to receive abuse, neglect, or dependency reports.

6. G.S. 7B-301.

7. As of 2012, the other states include Delaware, Florida, Indiana, Idaho, Kentucky, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, Oklahoma, Rhode Island, Tennessee, Texas, Utah, and Wyoming. *See* State Policy & Advocacy Reform Ctr. (SPARC), An Analysis of State Laws

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or dependency applies to everyone and is not limited to statutorily specified professionals. A person who makes a report of suspected abuse, neglect, or dependency in good faith is immune from any civil or criminal liability, and in any such action, there is a statutory presumption that a person acts in good faith.[8]

There is one exception to the universal mandated reporting requirement in North Carolina. An attorney whose grounds for suspicion of child abuse, neglect, or dependency result from privileged conversations with his or her client during representation only in the abuse, neglect, or dependency case is not subject to the mandatory reporting requirement.[9]

In 2013, the General Assembly made several amendments to both the Juvenile Code and the Criminal Code that impact mandated reporting. These amendments are among the minority of amendments reviewed in this bulletin that do not result from the CIP Law.

"Caylee's law," codified by S.L. 2013-52,[10] made a significant change to the mandatory reporting law by establishing a new statutory sanction for noncompliance. Under the new law, anyone who is required to make a report of suspected abuse, neglect, or dependency of a juvenile who knowingly or wantonly fails to make such a report may be charged with a Class 1 misdemeanor. A person may also be charged with a Class 1 misdemeanor for knowingly or wantonly causing another person to fail to make such a report. This amendment to G.S. 7B-301 is effective for offenses committed on or after December 1, 2013.

Prior to this amendment, North Carolina was in a small minority of states and U.S. territories that did not provide an express statutory sanction for noncompliance.[11] North Carolina now joins forty-three states, American Samoa, Guam, and the Virgin Islands in expressly[12] making it a crime to fail to comply with the mandated reporting law.[13]

Through S.L. 2013-368, the 2013 General Assembly also addressed the issue of human trafficking and its relationship to the abuse of juveniles by making amendments to both the

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Regarding Mandated Reporting of Child Maltreatment (Sept. 2012), www.ncdsv.org/images/SPARC-FF-CF_AnAnalysisOfStateLawsRegardingMandatedReportingOfChildMaltreatment_9-2012.pdf. However, on October 28, 2013, the New Mexico Court of Appeals issued a decision finding that "every person" is limited to the itemized list of professionals. This opinion is likely to be heard by the New Mexico Supreme Court. If the New Mexico Court of Appeals decision is reversed, there will be eighteen states that have a universal mandated reporting law.

8. G.S. 7B-309.

9. G.S. 7B-310.

10. For more information about Caylee's Law, see Jessica Smith, *North Carolina's "Caylee's Law,"* N.C. Crim. L., UNC Sch. of Gov't Blog (Oct. 3, 2013), http://nccriminallaw.sog.unc.edu/?p=4479.

11. Maryland, Puerto Rico, and Wyoming currently do not have civil or criminal penalties for failing to comply with mandated reporting laws. *See* Child Welfare Information Gateway, Penalties for Failure to Report and False Reporting of Child Abuse and Neglect (2012), www.childwelfare.gov/systemwide/laws_policies/statutes/report.pdf#Page=1&view=Fit.

12. Under North Carolina common law, there is an argument that a violation of G.S. 7B-301, which commands the performance of an act but does not impose a sanction for a violation, is a general misdemeanor. *See* State v. McNeill, 75 N.C. 15 (1876); State v. Bloodworth, 94 N.C. 918 (1886); State v. Bishop, 228 N.C. 371 (1947).

13. *See* Child Welfare Information Gateway, *supra* note 11. In 2012, Louisiana joined this group by amending its criminal law, specifically Section 14:403 of the state's Revised Statutes. In 2013, Connecticut, Maine, and Missouri passed laws making it a crime for failing to comply with the mandated reporting laws of their respective states.

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Juvenile Code and the Criminal Code. The definition of "abused juvenile"[14] in the Juvenile Code is amended to include a juvenile whose parent, guardian, custodian, or caretaker commits or allows to be committed an offense of human trafficking,[15] involuntary servitude,[16] or sexual servitude[17] of a child. In addition, the criminal statutes for prostitution are amended to provide that a minor, defined as "any person who is less than 18 years of age,"[18] is immune from prosecution for prostitution.[19] These amendments are effective for offenses committed on or after October 1, 2013. With this new law, North Carolina has joined the recent national trend of states enacting laws that treat both domestic and foreign-born juveniles who engage in the commercial sex trade as victims as opposed to offenders.[20]

Under the new law, if a person who is suspected of or charged with prostitution is discovered to be a minor, the person "…shall be taken into temporary protective custody as an undisciplined juvenile…."[21] The law enforcement officer who takes the minor into custody is then bound by the mandatory reporting requirement of G.S. 7B-301 and must immediately make a report of suspected abuse, neglect, or dependency to the director of the department of social services in the county where the minor resides or is found.[22] Upon receiving the report, the county department of social services must initiate an assessment for abuse or neglect within twenty-four hours, pursuant to G.S. 7B-301 and 302.[23] Other amendments to the criminal statutes regarding prostitution, including the offenses of promoting the prostitution of a minor and soliciting or patronizing a prostitute who is a minor, are not discussed here.[24]

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14. G.S. 7B-101(1).
15. G.S. 14-43.11.
16. G.S. 14-43.12.
17. G.S. 14-43.13.
18. G.S. 14-203(2).
19. G.S. 14-204(c).
20. Connecticut, Florida, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Tennessee, Vermont, and Washington have all adopted these so-called "safe harbor" laws for minors engaged in prostitution, and these laws vary from immunity from prosecution based upon differing ages of consent, to diversion to child protection, to filing persons in need of supervision petitions, and to discretionary prosecution. This national trend began after Congress made findings in the federal Trafficking Victims Protection Reauthorization Act of 2005 (Pub. L. No. 109-164, 119 Stat. 3558) that human trafficking occurs domestically as well as internationally and that runaway and homeless children in the U.S. were highly susceptible to being domestically trafficked in the commercial sex industry. The definition of "victim of a severe form of trafficking" under the Trafficking Victims Protection Act of 2000 includes any minor under the age of 18 who is recruited, obtained, or provided for a commercial sex act or who is transported to a location for a commercial sex act. 22 U.S.C.A. § 7102(14).
21. G.S. 14-204(c).
22. *Id*.
23. *Id.*
24. For a summary of legislative changes to these statutes, see Robert L. Farb, Legislative Reporting Serv., Legislative Summaries: 2013 Legislation Affecting Criminal Law and Procedure (UNC School of Government, Sept. 2013), 28, http://www.sog.unc.edu/sites/www.sog.unc.edu/files/2013CriminalLegislation Sept 2013.pdf.

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Reporting the Disappearance of a Child

A new duty to report the disappearance of a child under the age of 16 to law enforcement officials is established by the enactment of G.S. 14-318.5.[25] The key phrase "disappearance of a child" is defined as when a parent or person providing care or supervision for a child less than 16 years old does not know where the child is and has not had contact with the child for twenty-four hours. With this new law, a parent or person who is caring for or supervising a child can be charged with a Class I felony for wantonly and knowingly failing to make a report to law enforcement officials. In addition, "any person" who reasonably suspects both the disappearance of a child and that the child may be in danger can be charged with a Class 1 misdemeanor for failing to report those suspicions to law enforcement officials "within a reasonable time." A person making a good faith report required by these provisions is immune from civil and criminal liability, and in any such action, a statutory presumption exists that the person was acting in good faith.[26] It is important to note that although this new statute mandates that a report be made to law enforcement, it makes no mention of the department of social services or the mandated reporting statute found at G.S. 7B-302. If a person suspects the juvenile may also be abused, neglected, or dependent, that person should make a report to the county department of social services in addition to law enforcement.

Legislative Study

In addition to these significant changes related to mandatory reporting, the 2013 General Assembly directed the Division of Social Services within the North Carolina Department of Health and Human Services to conduct a study related to reports of child abuse, neglect, and dependency and the procedures for responding to those reports.[27] The findings of the study, along with recommendations to improve the process, must be provided to the Joint Legislative Committee on Health and Human Services and the Fiscal Research Division by April 1, 2014.

The Parties in Abuse, Neglect, and Dependency Proceedings

Abuse, neglect, or dependency proceedings involve multiple parties and other interested persons who would like to be a party. Some of these interested persons have a right to be heard but do not have a similar right to be a party.[28] The CIP Law specifically addresses who *must* be a party and who *can* be a party in these cases. It accomplishes this by adding a new statute,

25. S.L. 2013-52, sec. 2.

26. G.S. 14-318.5(g).

27. Section 12C.7 of S.L. 2013-360 requires the study to review eight factors: reports of child abuse in child care facilities; how reports of child abuse are received; the number of inaccurate reports of child abuse received annually; the number of children placed in and the reasons a child is placed in child protective services; the procedures the Division follows after determining child abuse has or has not occurred; the number of reports the Division has determined to be false, with a summary of actions taken in response to those false reports; and procedures the Division follows in redacting reports or other information made available to the public about an individual accused of child abuse or a child care facility alleged to have been the site where child abuse occurred when there is a subsequent determination that no abuse occurred.

28. *See* G.S. 7B-901, -906.1(c).

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G.S. 7B-401.1, and amending several other statutes in the Juvenile Code. These changes are effective for all actions filed or pending on or after October 1, 2013.

The CIP Law provides that the parties must include: the petitioner, who is specifically identified as a county director of a department of social services (or his or her authorized representative), the juvenile, and the juvenile's parents. There are three statutory exceptions to the requirement that a parent be a party in the proceeding. A parent is so excepted in any of the following circumstances:

(1) When his or her parental rights have been terminated
(2) When he or she has relinquished the juvenile for adoption and the juvenile court has not ordered that he or she be made a party to the juvenile proceeding
(3) When he or she has been convicted of first-degree rape[29] or second-degree rape[30] and the juvenile was conceived as a result of that crime

If a juvenile has a guardian or a custodian at the time the abuse, neglect, or dependency petition is filed, the guardian or custodian must also be a party in the juvenile proceeding. The legislation limits the definition of "custodian" to a person who or agency that has been awarded legal custody.[31] If a juvenile has a caretaker, which is a person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting, the caretaker shall be party to the juvenile proceeding only if the juvenile petition contains allegations relating to the caretaker or if the caretaker has assumed the status and obligation of a parent.[32] The juvenile court also has discretion to order that a caretaker not meeting the criteria be a party in the juvenile proceeding.

The CIP Law addresses the length of time a person remains a party. As petitioner, the county department of social services stays a party in the action until the court terminates its jurisdiction over the action. If a guardian, custodian, or caretaker is a party in the proceeding, the court has the authority to remove that person after determining that he or she is no longer a necessary party. There are two questions the court must consider in making this determination:

(1) Does the person have legal rights that may be affected by the action?
(2) Is the person's continuation as a party necessary to meet the juvenile's needs?

If the court answers "no" to both questions, it may remove that person as a party.

The addition of parties during the course of a juvenile proceeding is also addressed by the new statute. If, during the proceeding, a guardian is appointed for the juvenile[33] or a person is ordered to be the juvenile's custodian,[34] that person automatically becomes a party to the juvenile proceeding if placement with that guardian or custodian is the juvenile's permanent plan.[35]

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29. G.S. 14-27.2.

30. G.S. 14-27.3.

31. G.S. 7B-101(8). Language in this provision's definition of "custodian" that included a person who has assumed the status and obligation of a parent without being awarded legal custody is repealed by S.L. 2013-129, sec. 1.

32. G.S. 7B-101(3). This definition remains unchanged.

33. G.S. 7B-600.

34. This term is defined at G.S. 7B-101(8).

35. Children who have been removed from their parents or parental figures and adjudicated abused or neglected must receive a permanent plan. A permanent plan is designed to timely place the juvenile in a permanent home, and it may include reunification, termination of parental rights and adoption, legal

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Finally, the new statute places limits on who may intervene in an abuse, neglect, or dependency proceeding. The court shall not allow a person who is not the juvenile's parent, guardian, custodian, or caretaker to intervene, with two exceptions:

(1) A county department of social services that has an interest in the proceeding
(2) A person who has standing to file a petition or motion to terminate parental rights under G.S. 7B-1103 and who is seeking to terminate parental rights

In some cases, an interested person who is not a parent, guardian, custodian, or caretaker may want to be heard in the juvenile proceeding. The CIP Law addresses this situation by giving the court discretion to hear testimony or evidence from a non-party at the disposition and review and permanency planning hearing stages if the court finds that the evidence is relevant, reliable, and necessary to determine the juvenile's needs.[36]

In addition, if a civil custody action regarding the same child in a juvenile proceeding is filed, the court continues to have discretion to consolidate those two proceedings under G.S. 7B-200(d), even if the parties for the two proceedings differ.

Representation for Parents in Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings

It has long been established that a parent has a fundamental constitutional right to rear his or her child.[37] A parent faces state interference with that constitutional right in an abuse, neglect, dependency, or termination of parental rights proceeding. As a result, parents are entitled to procedural due process protections,[38] which include notice, a hearing, the right to present and cross-examine witnesses, and the right to be represented by counsel.[39] In addition, the Juvenile Code provides for appointed counsel in the case of a parent's indigence.[40] The court also has discretion to appoint a guardian ad litem for respondent parents.[41]

Appointment of a Guardian ad Litem for Parents

The CIP Law significantly amends two laws governing the appointment of a guardian ad litem (hereinafter GAL) for a parent in a juvenile proceeding. Prior to the CIP Law, a parent who was a party in an abuse, neglect, or dependency proceeding or a termination of parental rights

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guardianship, relative placement, or another planned permanent living arrangement. *See* 42 U.S.C.A. §§ 675(5), 671(a)(15); 45 C.F.R. § 1355.20(a).

36. G.S. 7B-901, -906.1(c).

37. Troxel v. Granville, 530 U.S. 57, 65 (2000) ("More than 75 years ago, in *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), we held that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and 'to control the education of their own.' Two years later, in *Pierce v. Society of Sisters*, 268 U.S. 510, 534–535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), we again held that the 'liberty of parents and guardians' includes the right 'to direct the upbringing and education of children under their control.'") *See also* Lassiter v. Dep't of Soc. Servs., 452 U.S. 18 (1981).

38. *In re* L.D.B., 168 N.C. App. 206 (2005).

39. *In re* Thrift, 137 N.C. App. 559 (2000).

40. G.S. 7B-602, -1101.1.

41. *Id. See also In re* Montgomery, 311 N.C. 101 (1984).

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proceeding might have been appointed a GAL if the court determined there was a reasonable basis to believe the parent was either incompetent or had diminished capacity so as to not be able to adequately act in his or her own interest.[42] In December 2012, the North Carolina Court of Appeals decided *In re P.D.R.*[43] There, it held that when a trial court appoints a GAL for a parent, it must make a determination as to whether that appointment is based on a parent's incompetence or on his or her diminished capacity. The court of appeals found that the basis for the appointment determines the role of the GAL: a *role of substitution* is undertaken if the parent is incompetent, a *role of assistance* if the parent has diminished capacity. This holding in *P.D.R.* was the first opinion to require trial courts to make and designate the distinction in role when appointing a GAL for a respondent parent.

The 2013 General Assembly responded to the *P.D.R.* decision by repealing the language in both the abuse, neglect, and dependency statute[44] and the termination of parental rights statute[45] that authorized the trial court to appoint a GAL for a parent with diminished capacity, as well as references to the practice of GALs providing assistance to parents. As a result, the authority allowing a respondent parent to have a guardian ad litem of assistance no longer exists. A trial court may appoint a GAL only for a respondent parent who is incompetent, and that GAL will function in a substitutive capacity and, therefore, be in a role of substitution. This change is effective for all actions pending or filed on or after October 1, 2013; it therefore has retroactive application to GAL appointments for parents made prior to October 1, 2013, in actions that are still pending.

GAL appointments for parents in abuse, neglect, dependency, or termination of parental rights proceedings must be made pursuant to G.S. 1A-1, Rule 17 (hereinafter Rule 17). This rule provides that defendants in civil actions who are infants or incompetent persons must defend those actions by either a general or a testamentary guardian if they have one or by a GAL appointed by the court in which the action is pending. By definition and by statute,[46] an unemancipated and unmarried minor parent in an abuse, neglect, dependency, or termination of parental rights proceeding *must* be appointed a GAL pursuant to Rule 17. For this GAL appointment, an inquiry regarding a minor parent's competency need not be made. In contrast, adult parents named as parties in abuse, neglect, dependency, or termination of parental rights proceedings must first be found incompetent by the trial court before a GAL may be appointed for them.

Prior to these recent amendments, the standard for a court's having authority to appoint a GAL for an adult parent was whether a "reasonable basis" existed to believe the parent was incompetent or had diminished capacity. However, the "reasonable basis" language found in the statutes prior to October 1, 2013, has been repealed. The amended statutes[47] are silent on the standard of proof the trial court must apply when making a determination about a parent's competency. Courts will be left to look at current case law for guidance when making a determination about a parent's competency and need for a GAL of substitution. Some questions the court may ask include:

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42. G.S. 7B-602 (abuse, neglect, and dependency proceedings) and -1101.1 (termination of parental rights proceedings).
43. ___ N.C. App. ___, 737 S.E.2d 152 (2012).
44. G.S. 7B-602.
45. G.S. 7B-1101.1.
46. G.S. 7B-602(b), -1101.1(b).
47. G.S. 7B-602, -1101.1.

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1. *What is the role of a GAL of substitution?*

A GAL of substitution ". . . divest[s] the parent of their [sic] fundamental right to conduct his or her litigation according to their [sic] own judgment and inclination."[48] Under Rule 17, the GAL:

> shall file and serve such pleadings as may be required within the times specified by these rules. . . . After the appointment of a guardian ad litem under any provision of this rule and after the service and filing of such pleadings as may be required by such guardian ad litem, the court may proceed to final judgment, order or decree against any party so represented as effectually and in the same manner as if said party had been under no legal disability, had been ascertained and in being, and had been present in court after legal notice in the action in which such final judgment, order or decree is entered.[49]

2. What triggers the inquiry?

Case law establishes the trigger for an inquiry as "whether the circumstances . . . are sufficient to raise a substantial question as to the party's competency . . . ."[50] Whether to conduct an inquiry is in the discretion of the trial court.[51] The question of a party's competency may be raised on a motion by any party or by the court itself.[52]

3. *What is an incompetent adult?*

Case law directs trial courts to the definition of "incompetent adult" as set forth in G.S. 35A-1101(7)[53] when making a determination about a parent's competence under Rule 17.[54]

4. *What procedure does the court use to determine competency of a respondent parent?*

Rule 17 is silent about what procedures a trial court must apply when making a determination as to whether to appoint a GAL for an incompetent party in a civil proceeding. Case law, however, directs the trial court to use the "procedures" set forth in G.S. Chapter 35A. The court of appeals noted those procedures include the parties having the right to ". . . present testimony and documentary evidence, to subpoena witnesses and the production of documents, and to examine and cross-examine witnesses in regard to the party's competence."[55] The court of appeals identified additional procedures available to the party for whom a guardianship is

48. *In re* J.A.A., 175 N.C. App. 66, 71 (2005).
49. *P.D.R.*, ___ N.C. App. ___, 737 S.E.2d 152, 157, *citing* G.S. 1A-1, Rule 17(e).
50. *J.A.A.*, 175 N.C. App. 66, 72, *quoting* Rutledge v. Rutledge, 10 N.C. App. 427, 432 (1971).
51. *J.A.A.*, 175 N.C. App. 66.
52. G.S. 7B-602(c), -1101.1(c).
53. " 'Incompetent adult' means an adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury or similar cause or condition."
54. *See P.D.R.*, ___ N.C. App.___, 737 S.E.2d 152; *J.A.A.*, 175 N.C. App. 66.
55. *In re* L.B., 187 N.C. App. 326, 330 (2007), *aff'd*, 362 N.C. 507 (2008). *See also J.A.A.*, 175 N.C. App. 66.

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sought, which include the right to be represented by an attorney or guardian ad litem, have a trial by jury, and appeal to the superior court for a hearing de novo.[56] However, there is no discussion as to whether all or some of the procedures identified apply to a hearing for a GAL made pursuant to Rule 17. As a result, the answer is unclear.

5. *Is the court required to appoint a guardian over the person?*

No, in fact, the trial court is precluded by statute[57] from appointing a guardian of the person or the estate over an incompetent respondent parent. As such, a Rule 17 proceeding is not a hearing to determine if an adult requires a guardian as provided for under G.S. Chapter 35A. Instead, it is a hearing to make a determination regarding the appointment of a guardian ad litem for the respondent parent in the juvenile proceeding pursuant to Rule 17.[58]

Right to Counsel

North Carolina law establishes that parents[59] have a right to effective assistance of counsel in abuse, neglect, dependency, and termination of parental rights proceedings.[60] If a parent is indigent, the state must provide a court-appointed attorney at state expense.[61] Absent a showing of a substantial reason for replacement counsel, an indigent parent must accept the attorney who is appointed to represent him or her,[62] or a parent may waive his or her right to counsel and appear *pro se*.[63]

Until the CIP Law, there were no clear guidelines governing this waiver. The court of appeals looked for guidance from applicable criminal statutes regarding a parent's waiver of counsel in a juvenile proceeding.[64] However, in April 2012, the court of appeals held that the criminal statute on waiver of counsel does not apply outside the criminal context and, therefore, was not applicable to a parent's waiver of counsel in a termination of parental rights proceeding.[65] The 2013 General Assembly responded to this holding when it enacted the CIP Law,[66] which provides that in order for a parent to waive his or her right to counsel, the court must first examine the parent

56. *L.B.*, 187 N.C. App. 326.

57. G.S. 35A-1102 states that the exclusive procedure for adjudicating a person to be incompetent is set forth in Article 1 of G.S. Chapter 35A.

58. G.S. 35A-1102.

59. It is important to note that the statutory right to a court-appointed attorney does not apply to non-parents, i.e., guardians, custodians, or caretakers. There is, however, a North Carolina Office of Indigent Defense Services (IDS) policy that states IDS's position that it will pay for counsel if the court determines that a particular indigent non-parent respondent would be deprived of a constitutionally protected interest that triggers the right to appointed counsel. N.C. Office of Indigent Defense Services, Appointment of Counsel for Non-Parent Respondents in Abuse, Neglect, and Dependency Proceedings, www.ncids.org/Rules%20&%20Procedures/Policies%20By%20Case%20Type/AND-TPR/AppointmentsCounselNon-parentRespondents.pdf (adopted July 2, 2008).

60. *In re* Oghenekevebe, 123 N.C. App. 434 (1996).

61. G.S. 7B-602, -1101.1.

62. *In re* S.L.L., 167 N.C. App. 362 (2004).

63. G.S. 7B-602(a) & (a1); -1101.1(a) & (a1).

64. *S.L.L.*, 167 N.C. App. 362.

65. *In re* P.D.R., 365 N.C. 533 (2012), *referencing* G.S. 15A-1242.

66. S.L. 2013-129, which created G.S. 7B-602(a1) and -1101.1(a1).

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and make sufficient findings of fact that show the parent has made a knowing and voluntary waiver. The waiver must be recorded as provided for in G.S. 7B-806.

Pre-Adjudication Issues

Venue

The proper venue to commence an abuse, neglect, or dependency proceeding is in the judicial district where the juvenile resides[67] or is present.[68] Because multiple counties may be involved due to a juvenile's or family's mobility or a conflict of interest for a county department of social services, problems determining venue may arise. The CIP Law amends G.S. 7B-400 to provide clarity regarding pre-adjudication venue when more than one county is involved.

Revised G.S. 7B-400(a) includes language addressing the situation where a juvenile is out of his or her home because of either a protection plan developed during an assessment of abuse, neglect, or dependency or case management services provided by the department of social services. If, during that juvenile's absence from his or her home, it becomes necessary to file a juvenile petition, the venue remains the judicial district where the juvenile's home was prior to his or her absence. The CIP Law also adds subsections on the following points to G.S. 7B-400:

- When a director of one county department of social services conducts an abuse, neglect, or dependency assessment in another county because of a conflict of interest, the director of the county department of social services that conducted the assessment may file a petition in *either* county.[69]
- The court has discretion to grant a motion to change venue pre-adjudication for good cause, and if the motion is granted, the petitioner remains the same.[70]
- Any change of venue post-adjudication is made pursuant to G.S. 7B-900.1.[71]

With these new amendments, the Juvenile Code now has provisions that address both pre- and post-adjudication changes of venue.[72]

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67. Legal residence for social services purposes is defined at G.S. 153A-257 as the county in which the person resides. The general rule regarding a minor's legal residence is that it is the residence of the parent or relative with whom the minor lives. One exception to the general rule is when a minor does not live with a parent or relative and is not in a foster home, hospital, mental institution, nursing home, boarding home, educational institution, confinement facility, or other such facility. In that situation, the minor's legal residence is that of the person with whom the minor resides. Any other minor has the legal residence of his or her mother, unless the mother's residence is unknown, in which case the minor's legal residence is that of his or her father. If both parents' residences are unknown, then the minor is a legal resident of the county where the minor is found.

68. G.S. 7B-400.

69. G.S 7B-400(b).

70. G.S. 7B-400(c).

71. G.S. 7B-400(d).

72. The 2009 General Assembly created G.S. 7B-900.1 (titled "Post adjudication venue") through S.L. 2009-311, which became effective October 1, 2009, but did not address pre-adjudication venue at that time.

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Pre-Adjudication Hearing

The CIP Law[73] creates a new requirement for a pre-adjudication hearing through the enactment of G.S. 7B-800.1. During a pre-adjudication hearing, the court should consider the following issues, if applicable, in a given case:

(1) Whether provisional counsel for a respondent parent should be retained or released
(2) Who the parties are in the action
(3) Whether paternity of the juvenile has been established or whether efforts have been made to establish paternity and identify and locate a missing parent
(4) Whether relatives have been identified and notified as potential placement or support options for the juvenile
(5) Whether all summons,[74] service of process,[75] and notice requirements have been met
(6) Pretrial motions, including a Rule 17 guardian ad litem motion for a respondent parent,[76] discovery motions,[77] a motion to amend the petition,[78] or a motion to continue the adjudicatory hearing[79]
(7) Any other issue that is properly raised as a preliminary matter

The CIP Law also makes amendments to provisions covering some of the issues that may be addressed at a pre-adjudication hearing. Regarding service of process, G.S. 7B-407 is rewritten to allow for service by publication pursuant to G.S. 1A-1, Rule 4(j1), without first obtaining authorization from the court.[80] Regarding continuances, G.S. 7B-803 is amended to make it clear that the sole reason for granting a continuance cannot be the resolution of a pending criminal charge against a respondent that has resulted from the same incident as the juvenile petition.[81]

Also, at the pre-adjudication hearing a party may stipulate to specific adjudicatory facts as set forth in G.S. 7B-807.[82] It is important to note that parties may not stipulate to conclusions of law.[83] The parties may enter a consent order as allowed for under G.S. 7B-801.[84]

The trial court must hold a pre-adjudication hearing for all actions filed on or after October 1, 2013, and for all actions pending on or after October 1, 2013, in which an adjudication hearing has not been held. This hearing may be combined with a nonsecure custody hearing or a pre-trial hearing conducted pursuant to a judicial district's local rules.

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73. *See* S.L. 2013-129, sec. 18.
74. G.S. 7B-406.
75. G.S. 7B-407.
76. G.S. 7B-602.
77. G.S. 7B-700.
78. G.S. 7B-800.
79. G.S. 7B-803.
80. *See* S.L. 2012-129, sec. 12.
81. *Id.* § 19.
82. G.S. 7B-807.
83 See *In re A.K.D.*, ___ N.C. App. ___, 745 S.E.2d 7 (2013), which held that stipulations on questions of law are generally invalid and ineffective, and therefore reversed the trial court's reliance on the parties' stipulation that the grounds for termination of the father's parental rights existed.
84. G.S. 7B-801(b1). A court is not required to enter judgment based upon the agreement of the parties. *See In re* L.G.I., ___ N.C. App. ___, 742 S.E.2d 832, 835 (2013), *citing and quoting In re* Thrift, 137 N.C. App. 559, 562 (2000) (holding that "a judgment by consent is the agreement of the parties, their decree, entered upon the record *with the sanction of the court*" (emphasis added)).

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Placement of Juvenile in Nonsecure Custody

The Process and Timing of Hearings

Pursuant to G.S. 7B-502, a district court may order placement of a juvenile in nonsecure custody after an abuse, neglect, or dependency petition is filed but before an adjudication of the juvenile if the court determines custody of the juvenile is necessary. In making this assessment, the court must find both a "reasonable factual basis to believe the matters alleged in the petition are true" and one of the following six factors enumerated in G.S. 7B-503:

- The parent, guardian, custodian, or caretaker consents to the nonsecure custody order or
- The juvenile
  - is abandoned;
  - has suffered physical injury or sexual abuse;
  - is exposed to a substantial risk of physical injury or sexual abuse because the respondent has created conditions likely to cause such injury or has failed to or is unable to provide adequate supervision or protection;
  - is in need of medical treatment for a physical injury that may cause death, disfigurement, or substantial impairment of bodily functions and the respondent is unwilling or unable to provide or consent to the juvenile's treatment; or
  - is a runaway and consents to nonsecure custody.

A juvenile may not be placed in nonsecure custody for more than seven calendar days without a hearing on the merits to determine if continued nonsecure custody is necessary.[85] If the court orders the juvenile to remain in nonsecure custody, a second hearing to determine the juvenile's continued need for nonsecure custody must be held within seven business days of the initial nonsecure custody order, and every thirty days thereafter.[86] This second, and any subsequent, nonsecure custody hearing may be waived if the juvenile's parent, guardian, or custodian and the juvenile's guardian ad litem consent.[87] If these hearings are waived, a juvenile may remain in nonsecure custody with only the initial seven-day hearing having been held until the adjudication hearing, which may be as long as sixty days after the abuse, neglect, or dependency petition was filed.[88] The CIP Law adds language that makes it clear that any party may schedule a hearing regarding the juvenile's continued need for placement in nonsecure custody,[89] even if that party previously consented to a waiver of a hearing on the juvenile's need for continued nonsecure custody.

Placement Options

When it comes to placement options for nonsecure custody, priority is given to placement with a relative. The court must first consider relative placement and determine if there is a relative willing and able to provide a safe home[90] and the proper care and supervision to the juvenile.[91] The

85. G.S. 7B-506(a).
86. G.S. 7B-506(e).
87. G.S. 7B-506(f).
88. G.S. 7B-801(c).
89. G.S. 7B-506(g).
90. G.S. 7B-101(19) defines the term "safe home" as "a home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect."
91. G.S. 7B-505(b).

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CIP Law requires the court to specifically inquire about the efforts that have been made to identify and notify relatives who may be potential placement or support options for the juvenile.[92]

When a juvenile's placement is not ordered to a relative, the role of "nonrelative kin" as a placement option is highlighted by amendments made to G.S. 7B-505[93] and G.S. 7B-506. Effective for all actions pending or filed on or after October 1, 2013, the court may consider placing the juvenile with a nonrelative kin who is able and willing to provide a safe home and proper care and supervision for the juvenile. The court may order placement with a nonrelative kin if it is in the juvenile's best interests.

The term "nonrelative kin" has two statutory definitions.[94] The first, which is applicable to all juveniles, is "an individual having a substantial relationship with the juvenile." The second definition arises when a juvenile is a member of a state-recognized Indian tribe[95] and includes any member of a state-recognized or federally recognized Indian tribe. Unlike the first definition, there need not be a substantial relationship between the member of the tribe and the juvenile. Because of this broader definition, the court may order the county department of social services to notify the juvenile's state-recognized tribe of the need for nonsecure custody for the purpose of locating relatives or nonrelative kin for possible placement.[96]

The CIP Law specifically allows the court to recognize and consider a child's tribal heritage when issuing nonsecure custody orders. These amendments are in addition to the existing state law addressing the collaboration between the Division of Social Services and the Commission of Indian Affairs. The purpose of this collaboration is to establish a relationship and process for reaching agreements on the development of policies and practices that address the best interests of Indian children who are facing foster care placement or adoption.[97]

These new amendments are distinguishable from and are not in lieu of the federal Indian Child Welfare Act (hereinafter ICWA).[98] Significantly, ICWA only applies to an Indian child as defined by Section 1903(4) of Title 25 of the United States Code[99] and not to a member of a state-recognized tribe. In contrast, the amendments to G.S. 7B-505 and -506 apply only to children who are members of state-recognized tribes. Another difference in the provisions of ICWA and the CIP Law involves notice to tribes. ICWA requires that notice of pending proceedings be provided to the Indian child's tribe by registered mail, return receipt requested,[100] whereas, the method for notice to the Indian child's state tribe is not addressed in either statutory

92. G.S. 7B-506(h)(2), as amended by Section 14 of S.L. 2013-129.

93. S.L. 2013-129 organizes G.S. 7B-505 into four subsections—(a) through (d)—when previously there were no subsections in the law.

94. *See* G.S. 7B-505(c), -506(h)(2a).

95. See G.S. 143B-407(a) for a list of state-recognized Indian tribes in North Carolina.

96. G.S. 7B-505(c).

97. G.S. 143B-139.5A.

98. 25 U.S.C.A. §§ 1901 *et seq*. ICWA was enacted in 1978 after Congress found that an alarmingly high percentage of Indian families were inappropriately broken up by the removal of Indian children by nontribal agencies and placed in non-Indian homes or institutions. ICWA establishes mandatory minimum federal standards addressing the removal of Indian children from their homes in a way that both protects the best interests of Indian children and promotes the stability and security of Indian tribes and families.

99. "Indian child" means an unmarried minor (under 18 years old) who is either a member of a federally recognized Indian tribe or eligible for membership in a federally recognized Indian tribe and is the biological child of a member of an Indian tribe.

100. 25 U.S.C.A. § 1912(a).

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amendment.[101] Regarding application of these laws, ICWA is mandatory, but the amendments to the laws covering placement options of an Indian child who is a member of state-recognized tribe with nonrelative kin are permissive. Although left to the discretion of the court, the statutes as amended specifically allow for placement decisions of Indian children who are members of state-recognized tribes in North Carolina to take into consideration homes that reflect Indian culture.

Cease Reunification

The purposes of the Juvenile Code balance a juvenile's need for safety, continuity, and permanence with the constitutional rights of parents (both to rear their children and to procedural due process protections) and family autonomy.[102] Pursuant to the federal Adoption and Safe Families Act of 1997,[103] the Juvenile Code also ensures that the best interests of the juvenile are accorded paramount concern.[104] When removal of a juvenile cannot be avoided because continuing in his or her home would be contrary to his or her welfare, reunification between the juvenile and his or her parent(s) is a priority,[105] unless specific statutory factors are present.[106] One of these factors is a court's finding that a parent committed certain crimes against his or her child.[107] A parent's sexual abuse of his or her own child or a parent's requirement to register as a sex offender was added to this list of crimes that the court must consider under G.S. 7B-507(b)(4) in making reunification decisions.[108]

Visitation

Reunification requires the provision of services to the family[109] as well as visitation[110] between the juvenile and his or her parent(s). Visitation is one component of a dispositional order and must be addressed in the order when a juvenile is removed from the custody of his or her parent, guardian, custodian, or caretaker and is placed outside of his or her home.[111] The court must

101. G.S. 7B-505(c), -506(h)(2a).
102. G.S. 7B-100.
103. Pub. L. No. 105-89.
104. G.S. 7B-100(5).
105. G.S. 7B-900 (the goal of such services is to "strengthen the home situation") and -904.
106. G.S. 7B-507(b) (these factors are that efforts would be futile or inconsistent with the juvenile's health, safety, and need for a permanent home in a reasonable time; that a parent committed certain crimes against his or her child; that a parent's rights to another child were involuntarily terminated; and that the court found the parent subjected the child to aggravating circumstances, which are defined at G.S. 7B-101(2)).
107. G.S. 7B-507(b)(4) (these crimes are murder or voluntary manslaughter; aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter; or felony assault resulting in serious bodily injury).
108. S.L. 2013-378, sec. 1. The effective date was October 1, 2013.
109. G.S. 7B-900, -904.
110. S.L. 2013-129, sec. 24, creating new G.S. 7B-905.1; s*ee also In re* C.P., 181 N.C. App. 698 (2007).
111. G.S. 7B-905.1; formerly found at G.S. 7B-905(c).

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consider the juvenile's health and safety and order "appropriate visitation" as may be in the juvenile's best interests.[112]

Recent challenges to visitation provisions of dispositional orders have resulted in numerous court of appeals decisions consistently holding that this statutory language requires that the visitation provisions contain a minimum outline of contact (a plan) that includes identification of the time, location, and conditions under which visitation can be exercised (i.e., whether it is to be unsupervised or supervised).[113] As a result, the court of appeals reversed and remanded those portions of dispositional orders that did not meet that minimum outline. Examples include when visitation was wholly in the department of social service's or treatment team's discretion;[114] when the department offered to supervise visitation, every other week, and said visitation would be reduced to once a month if the parent acted inappropriately or missed a visit without prior notice;[115] and when visitation consisted of weekly visits supervised by the department.[116] The CIP Law codifies this line of holdings while also giving the director of the county department of social services more discretion. In addition, it repeals the language regarding visitation found at G.S. 7B-905(c) and enacts a new statute, G.S. 7B-905.1, which not only replaces but expands on the language of G.S. 7B-905(c) regarding visitation.[117]

The CIP Law explicitly requires that a visitation plan state "the minimum frequency and length of visits and whether the visits shall be supervised."[118] However, the law also grants discretion to the director of the department of social services to determine the visit location, the identity of the supervisor, and the right to change the day or time of the visits because of schedule conflicts, illness, or other extraordinary circumstances. If the director temporarily changes the schedule, he or she must promptly notify the appropriate party. If the change is ongoing as opposed to temporary, the party must receive written notice stating a reason for the change. A director may temporarily suspend all or part of a visitation plan if he or she makes a good faith determination that the plan is "not consistent with the juvenile's health and safety"; in such circumstances he or she must file a motion for review.[119]

The new law also addresses visitation when custody or guardianship of the juvenile is with a suitable person as opposed to with the county department of social services. In that case, the visitation plan must specify the minimum frequency and length of visits and whether they are supervised. However, the court also has discretion to authorize additional visits as agreed upon by the respondent parent and the juvenile's custodian or guardian.

Finally, if the court retains jurisdiction, the new law requires all parties be informed of their right to file a motion for review of the visitation plan.[120] Prior to or at the hearing for modification, the court may order the department of social services and the juvenile's guardian ad litem to investigate and make written recommendations as to an appropriate visitation plan—one that is in the juvenile's best interests.

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112. *Id.*

113. *In re* E.C., 174 N.C. App. 517 (2005); *In re* T.B., 203 N.C. App. 497 (2010); *In re* L.G.I., ___ N.C. App. ___, 742 S.E.2d 832, 836 (2013); *In re* J.P., ___ N.C. App.___, 745 S.E.2d 917 (2013).

114. *L.G.I.,* ___N.C. App. ___, 742 S.E.2d 832; *T.B.,* 203 N.C. App. 497.

115. *J.P.,* ___N.C. App. ___, 745 S.E.2d 917.

116. *In re* W.V., 204 N.C. App. 290 (2010).

117. S.L. 2013-129, secs. 23 and 24.

118. G.S. 7B-905.1(b).

119. *Id*. Note that this language had been included in G.S. 7B-905(c).

120. G.S. 7B-905.1(d).

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A court may order the parties to participate in its custody and visitation mediation program.[121] In its order, the court must specify the issues for mediation, but the parties cannot consent to a change in custody. The provisions found at G.S. 50-13.1(d) through (f) apply to the mediation, and under them, either party can seek dismissal of the mediation due to mediator bias or prejudice; the mediator may interview the child or others if appropriate; and the mediation is private and communications made therein are confidential and privileged, with exceptions for disclosure of a crime or fraud, or the duty to report either child abuse, neglect, dependency, or the need for protective services for a disabled adult. Any agreement must be provided to the parties and their counsel, and it must be approved by the court.

Although not addressed by the 2013 General Assembly, another significant change affecting visitation was made by the North Carolina Court of Appeals when it held that G.S. 50-13.2(e), which addresses visitation by electronic communication, applies to all custody actions and not just those commenced under G.S. Chapter 50.[122] Because the Juvenile Code is silent on the issue of electronic communication as a method of visitation, the court of appeals looked to G.S. 50-13.2 for guidance. The case, *In re T.R.T.*,[123] involved a challenge to a dispositional order allowing a mother to visit with her child only by Skype™ (a service that lets people communicate face-to-face via computer webcam). The court of appeals reasoned that only subsection (a) of G.S. 50-13.2 contains language limiting the applicability of the statute to orders "pursuant to this section" and that, therefore, the absence of such language in subsection (e) of the law allowed for the general application of that subsection to all custody proceedings. As a result, Skype™ (along with other electronic means of communication) can only be used to supplement, not replace, visitation. Without a finding that the mother forfeited her right to visitation or that visitation would be inappropriate and not in the child's best interests, the dispositional order establishing a visitation plan through Skype™ was found to be insufficient.[124] Nothing in the new law limits or overturns the holding of *T.R.T.* Given the court of appeal's reasoning, this holding raises the question as to whether other subsections in G.S. 50-13.2[125] apply to the Juvenile Code.

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121. *See* G.S. 7A-494. As of the fall of 2013, this program exists in every judicial district in North Carolina.

122. *In re* T.R.T., ___ N.C. App.___, 737 S.E.2d 823 (2013).

123. *Id.*

124. *Id*. *See also In re* E.C.**,** 174 N.C. App. 517, 522–23 (2005) (citing and quoting *In re Stancil,* 10 N.C. App. 545, 552 (1971), which held that in the absence of a finding that a parent has forfeited his or her right to visitation or that it is in the child's best interests to deny visitation, "the court should safeguard the parent's visitation rights by a provision in the order defining and establishing the time, place and conditions under which such visitation rights may be exercised").

125. G.S. 50-13.2(b) addresses joint or exclusive custody, visitation, domestic violence, and access to the child's records; G.S. 50-13.2(b1) addresses grandparent visitation; G.S. 50-13.2(b2) addresses abstaining from consuming alcohol and submission to a monitoring system; G.S. 50-13.2(c) addresses out of state travel; and G.S. 50-13.2(d) addresses consent to adoption by one parent.

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Review and Permanency Planning

Procedures

Under the North Carolina General Statutes, the purpose of the dispositional order for a child who has been adjudicated abused, neglected, or dependent is to develop and implement a plan that will meet the juvenile's needs and "the objectives of the State in exercising jurisdiction."[126] Children who have been removed from the custody of their parents, guardians, or custodians must receive plans that will hold their best interests paramount to the interests of others and provide them with safe and permanent homes within a reasonable period of time.[127]

Ensuring that this mandate is carried out and continued requires regular and periodic reviews by the court, the first of which must occur within ninety days of the disposition hearing and every six months thereafter.[128] In addition to review hearings, the court must also hold a permanency planning hearing within twelve months of the initial order removing custody of the juvenile.[129] However, if the court decides that the department of social services is relieved of its obligation to make reunification efforts, and that determination is made at a hearing that was not designated as a permanency planning hearing, then a permanency planning hearing must be scheduled within thirty days of that order.[130]

The purpose of the review hearing is similar to the purpose of the permanency planning hearing, namely, to assess the implementation of the plan and progress toward the plan's goals and to make any needed changes. These two hearings had been regulated by two separate statutes,[131] but the CIP Law replaced those statutes with one new law, G.S. 7B-906.1, titled "review and permanency planning hearings."[132] The CIP Law requires the court to consider and make written findings regarding the relevant criteria listed in G.S. 7B-906.1(d)(1)–(7).[133] In addition to these seven factors, for all permanency planning hearings—that is, every hearing scheduled after the initial permanency planning hearing—the court must also consider and make written findings regarding the relevant criteria found at G.S. 7B-906.1(e)(1) –(6).[134]

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126. G.S. 7B-900; *See also* G.S. 7B-100 (although the state's objectives are not specifically defined, one may look to the statutory purpose of the Juvenile Code, found at G.S. 7B-100, for guidance).

127. G.S. 7B-100(5).

128. S.L. 2103-129, sec. 26, amending the Juvenile Code to add new section G.S. 7B-906.1. *See also* S.L. 2013-129, sec. 25, repealing G.S. 7B-906 and -907. These time limits are mandated by federal law. *See* 42 U.S.C.A. § 675(5), which defines "Case Review System" and requires, at subsection (B), a court review once every six months and, at subsection (C), a permanency planning hearing not later than twelve months after the date the child entered foster care.

129. *Id.*

130. G.S. 7B-507(c).

131. G.S. 7B-906 (review hearings), -907 (permanency planning hearings).

132. Most of the language and all of the timeframes that were included in the two distinct statutes are included in the new G.S. 7B-906.1.

133. The seven enumerated factors in the new law replace the factors contained at former G.S. 7B-906(c)(1)–(9).

134. The six enumerated factors in the new law replace the factors contained at former G.S. 7B-907(b)(1)–(6).

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Juvenile's Return Home

In addition to consolidating the review and permanency planning hearings, the CIP Law adds a definition of a juvenile's "return home" which includes the juvenile's reunification with *either parent*.[135] Prior to the CIP Law, the court of appeals interpreted this language to mean the juvenile's return to the parent from whom the juvenile was removed.[136] If the juvenile's parents were not residing together at the time of the juvenile's removal, reunification with the parent from whom the child was not removed was not considered a "return home"; instead, that parent was deemed to be "a relative" under G.S. 7B-907(b)(2).[137] The CIP Law makes it clear that a juvenile's reunification or return home includes that juvenile being placed with either parent, regardless of whose care he or she was removed from. The CIP Law also requires that at each review and permanency planning hearing, the court must make written findings, if relevant, regarding services that were offered and/or efforts to reunite the juvenile with either parent, regardless of whether the juvenile resided with that parent at the time of removal.[138] The recent amendments referring to either parent comport with the stated purpose of the Juvenile Code found at G.S. 7B-100(4): "the return of juveniles to their homes consistent with preventing the unnecessary or inappropriate separation of juveniles from their parents," in addition to "the overriding purposes of respecting family autonomy and protecting the constitutional rights of the juveniles and parents."[139]

Guardianship Assistance

In those cases where a parent is (1) unfit or (2) has acted inconsistently with his or her constitutionally protected parental rights, the court may apply the "best interests of the child" analysis.[140] If the court determines that it is not in the best interests of a juvenile to be reunited with his or her parent, a permanent plan must be developed that considers adoption or legal guardianship or custody of the juvenile with a relative or other appropriate person.[141] While an adoption requires the termination of parental rights,[142] an award of legal guardianship does not.[143] The best interests of some juveniles may be a permanent guardianship without a

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135. G.S. 7B-101(18b) (defining "return home or reunification" as "[p]lacement of the juvenile in the home of *either parent* or placement of the juvenile in the home of a guardian or custodian from whose home the child was removed by court order" (emphasis added)).

136. *See In re* J.M.D., 210 N.C. App. 420 (2011) (holding return home means to the home from which the child was removed and not the home of either biological parent); *see also In re* Eckard, 148 N.C. App. 541 (2002) (holding that the trial court erred when it ordered cessation of reunification efforts with the father and instead should have considered placement with the father).

137. *Eckard*, 148 N.C. App. 541.

138. G.S. 7B-906.1(d)(1), (3).

139. *Eckard*, 148 N.C. App. at 547 (citing G.S. 7B-100(1), (3)).

140. *In re* B.G., 197 N.C. App. 570 (2009) (citing and quoting Price v. Howard, 346 N.C. 68, 79 (1997) (holding that the "best interests of the child" test may be applied without offending due process rights if the court also finds conduct inconsistent with a parent's constitutionally protected status)); *see also* Adams v. Tessener, 354 N.C. 57, 61–62 (2001).

141. G.S. 7B-906.1(e)(2).

142. G.S. 7B-1111(a)(10); G.S. 48-2-603(4).

143. G.S. 7B- 600. *See also* G.S. 35A-1220 through -1228.

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termination of parental rights. The appointment of a legal guardian in a juvenile proceeding is authorized by G.S. 7B-600.

There are Title IV-E[144] monies available to provide financial assistance to children who are placed in foster care and for children who exit foster care through adoption.[145] In order to receive a foster care maintenance payment, the juvenile must be in a licensed foster care placement.[146] The federal Fostering Connections to Success and Increasing Adoptions Act of 2008,[147] commonly referred to as "the Fostering Connections Act," created a subsidized guardianship program that states could opt into, which specifically allows federal IV-E[148] monies to be used to support children who are permanently placed with relative guardians at a rate no higher than the foster care maintenance rate.[149] This program is known as the Guardianship Assistance Program, or GAP. As of December 2012, twenty-nine states and the District of Columbia had an approved GAP that uses federal IV-E funds.[150]

Prior to the Fostering Connections Act, children placed with relatives and fictive kin, referred to as "nonrelative kin" in North Carolina, were only able to receive financial assistance through a state's individual plan.[151] From 1997 to 2002, North Carolina implemented a Child Welfare Demonstration Project that had as one component a guardianship assistance program in eight counties[152] and that received a five-year extension to implement a second phase, which

144. "Title IV-E" references that title number in the federal Social Security Act. *See* 42 U.S.C.A. § 671(a)(10) (discussing state authorities' roles). The Title IV-E program was created to give states funds to, among other things, guarantee that children in foster care are properly cared for.

145. *See* 42 U.S.C.A. § 671(a), referencing *id*. § 672 (foster care maintenance payments) and *id.* § 673 (adoption assistance program).

146. Title 10A, Chapter 70B, Section .0102, of the N.C. Administrative Code; 45 C.F.R. § 1355.2.

147. Pub. L. No. 110-351.

148. 42 U.S.C.A. § 671(a)(28); *id*. § 673(d).

149. *Id.* §§ 673(d)(2), (d)(3)A). Eligibility requires the following: (1) that the child was voluntarily placed or judicially removed from his or her home because continuation in the home would have been contrary to his or her welfare; (2) that the child has resided in the prospective guardian's licensed or approved home for six consecutive months; (3) that neither reunification nor adoption is an appropriate permanent plan; (4) that the child demonstrates a strong attachment to the prospective guardian and the guardian has a strong commitment to permanently caring for the child; and (5) if the child is 14 or older, that the child has been consulted about the guardianship plan.

150. Alabama, Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Washington, and Wisconsin. *See also* Nat'l Resource Ctr. for Permanency & Family Connections, Federal Title IV-E Guardianship Assistance Program State Policies and Laws, www.nrcpfc.org/fostering_connections/state_gap.html.

151. Several states created their own subsidized guardianship programs, with funding sources, subsidy rates, and eligibility criteria that varied from state to state. Most of the programs were state-funded, although some utilized monies from the federal Temporary Assistance to Needy Families (TANF) program, Title IV-E waivers, and social services block grant monies. *See* Children's Defense Fund et al., Making it Work: Using the Guardianship Assistance Program (GAP) to Close the Permanency Gap for Children in Foster Care (Oct. 2012), www.childrensdefense.org/child-research-data-publications/data/making-it-work-using-the.pdf.

152. *See* C.L. Usher et al., Evaluation of the Title IV-E Waiver Demonstration in North Carolina: 1997–2002 (UNC Jordan Institute for Families, 2002), www.unc.edu/~lynnu/ncwaivrpt.htm.

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ultimately was terminated early due to the fact that it was not cost-neutral.[153] North Carolina has not had a guardianship assistance program since 2008. However, Section 12C.4 of S.L. 2013-360 establishes a guardianship assistance program in North Carolina. Specifically, it allows the Division of Social Services to provide financial assistance to children who are "(i) in a permanent family placement setting, (ii) eligible for legal guardianship, and (iii) otherwise unlikely to receive permanency." This guardianship assistance program will reimburse legal guardians for room and board at the same rate as the foster care reimbursement for those items.[154] However, the law makes no reference to the state seeking federal approval to opt in to the GAP under the Fostering Connections Act. Instead, Section 12C.4 is intended to be cost-neutral by allowing existing funds for foster care to be used for guardianship assistance. The Division of Social Services must develop the program, and the Social Services Commission must promulgate the rules that govern it.

Transfer to G.S. Chapter 50

Abuse, neglect, and dependency proceedings involve the legal and physical custody of juveniles. Custody may be removed from or awarded to a parent, guardian, custodian, private agency, or county department of social services.[155] These custody proceedings are separate from civil custody actions initiated pursuant to G.S. Chapter 50. The juvenile court has exclusive original jurisdiction over any case involving an allegation of the abuse, neglect, or dependency of a child, and that action has priority over any other civil custody action in the state.[156] This means that a civil custody order entered prior to a county social services petition is superseded by any orders entered in the juvenile proceeding while the court retains jurisdiction of the juvenile proceeding.[157] It also means that any civil custody action that is pending during a juvenile proceeding is automatically stayed, unless the court orders otherwise.[158] In the event that a civil custody action was filed before or during the juvenile proceeding, the court has discretion to consolidate the two actions.[159]

One possible final disposition in an abuse, neglect, or dependency proceeding is a civil custody order entered pursuant to G.S. Chapter 50.[160] In such a case, the court may terminate its jurisdiction over a juvenile proceeding;[161] otherwise, the court retains jurisdiction over the

153. *See* Children's Bureau et al., Profiles of the Title IV-E Child Welfare Waiver Demonstration Projects, Vol. 1 (Arlington, VA: James Bell Associates, Inc., Apr. 2013), 13, www.acf.hhs.gov/sites/default/files/cb/waiver_profiles_vol1.pdf.

154. *See* G.S. 108A-49.1, listing the following rates: $475.00 a month for each child age birth through 5 years old; $581.00 per month for each child age 6 through 12 years old; and $634.00 per month for each child age 13 through 18 years old.

155. G.S. 7B-903(2).

156. G.S. 7B-200.

157. G.S. 7B-200(c)(2).

158. G.S. 7B-200(c)(1).

159. G.S. 7B-200(d).

160. G.S. 7B-911(a).

161. G.S. 7B-201, -911(a), (c).

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juvenile proceeding until the juvenile turns 18 or is emancipated, whichever occurs first.[162] In order for a court to terminate its jurisdiction, the following must occur:

- the court has to have made appropriate findings of fact and conclusions of law supporting the custody order and then found that there is no further need for state involvement,[163] and
- where custody was ordered to someone other than a parent or person with whom the juvenile was residing at the time of removal, at least six months have to have passed since the permanency planning order directed the juvenile's placement with the person to whom custody was ordered.[164]

Under the CIP Law,[165] if the court places custody of the juvenile with a parent or other person, the court must now make the inquiry as to whether jurisdiction over the juvenile proceeding should terminate after entering a civil custody order. Although the inquiry is mandatory, the amendment does not require the court to terminate jurisdiction. That issue is left for the court to decide on a case-by-case basis.

If custody of the juvenile is granted to a parent and the court retains jurisdiction and is relieved of the duty to conduct periodic reviews,[166] the CIP Law[167] clarifies what must happen if a new report of abuse, neglect or dependency is made against that parent. After receiving the report, if the county department of social services determines that court action is necessary, there must be a new adjudication utilizing the procedures established in G.S. 7B-800 through -808.[168]

Termination of Parental Rights

If one component of the juvenile's permanent plan involves termination of parental rights, the department of social services must initiate a termination of parental rights proceeding.[169] The CIP Law[170] added G.S. 7B-1106(a2), which requires that service of the termination of parental rights petition or motion and other pleadings be made upon an attorney who was appointed to represent a respondent parent pursuant to G.S. 7B-602[171] if that attorney had not been relieved of his or her appointment. Service must be made pursuant to G.S. 1A-1, Rule 5.

The court of appeals has held that an attorney who entered his or her appearance in an action may not terminate representation of the client without "(1) justifiable cause, (2) reasonable notice [to the client], and (3) the permission of the court."[172] If a parent is not represented

162. G.S. 7B-201(a).
163. G.S. 7B-911(c)(2)a.
164. G.S. 7B-911(c)(2)b.
165. S.L. 2013-129, sec. 29, which amends G.S. 7B-911(a).
166. G.S. 7B-906.1(k).
167. S.L. 2013-129, sec. 8, which adds a new subsection, (b), to G.S. 7B-401.
168. G.S. 7B-401(b).
169. G.S. 7B-906.1(f), (m).
170. S.L. 2013-129, sec. 33.
171. G.S. 7B-602 establishes an indigent parent's right to court-appointed counsel after a petition for abuse, neglect, or dependency is filed.
172. *In re* D.E.G., ___ N.C. App. ___, 747 S.E.2d 280 (2013), *citing* Smith v. Bryant, 264 N.C. 208, 211 (1965).

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by an attorney at the time a petition or motion for termination of parental rights is filed, the clerk of court is required to appoint "provisional counsel" for that parent.[173] In August 2013, the court of appeals held that an attorney who represented a respondent father in an underlying neglect and dependency proceeding was not "provisional counsel" who could be excused pursuant to G.S. 7B-1101.1(a).[174] Instead, that attorney should have sought permission from the court to withdraw by showing that he had a justifiable basis to withdraw and either notified or made efforts to notify the client of his intent to withdraw.[175] Without a court order of withdrawal, an attorney in these circumstances remains responsible to represent the client in the subsequent termination of parental rights proceeding. As a result, attorneys who appeared in the underlying abuse, neglect, or dependency action and who have not been granted leave to withdraw must be served with the petition or motion for termination of rights.

The CIP Law[176] also amended the grounds for terminating the parental rights of an unwed father by expanding the list of possible actions the putative father must have taken prior to the filing of a termination of parental rights petition in order to not lose his rights. These additional steps, which are set out in G.S. 7B-1111(a)(5), include

- taking action to legitimate a child when the mother was married to another man pursuant to G.S. 14-12.1 or
- establishing paternity through G.S. 49-14 (civil action), G.S. 110-132 (affidavit of parentage), G.S. 130A-101 (birth registration), G.S. 130A-118 (amendment of birth certificate), or some other judicial action.

These legislative changes codify the holding of the court of appeals in *In re J.K.C.*,[177] which found that a birth certificate or amended birth certificate that was issued by the State Registrar in compliance with the applicable statutes and listed the father's name created a rebuttable presumption that paternity was judicially established.

Adoption-Related Provisions

For a juvenile who is not placed with a parent and who had a court find that reunification with either parent was either not in the juvenile's best interests or was unlikely to occur within six months, a permanent plan that considers options other than reunification must be developed.[178] One permanent placement option is adoption. The 2013 General Assembly enacted amendments to several adoptions laws through both the CIP Law and S.L. 2013-236.

For all actions that were filed or pending on or after October 1, 2013, the county department of social services must consider a juvenile's current placement provider as a prospective adoptive parent if that provider wants to adopt the juvenile.[179] In addition, foster parents must receive notice of a department of social services' selection of adoptive parents for a juvenile, along with

173. G.S. 7B-1101.1(a).
174. *D.E.G.*, ___ N.C. App. ___, 747 S.E.2d 280.
175. *D.E.G.*, ___ N.C. App. at ___, 747 S.E.2d at 284–86.
176. S.L. 2013-129, sec. 35.
177. ___ N.C. App. ___, 721 S.E.2d 264 (2012).
178. G.S. 7B-906.1(e).
179. S.L. 2013-129, sec. 36, which amended G.S. 7B-1112.1.

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a form motion for judicial review.[180] If a foster parent who wants to adopt the juvenile disagrees with the department's selection, he or she has ten days to file a motion for a judicial review hearing, where the court must consider the best interests of the juvenile.[181] The CIP Law amendment on this point explicitly states that the department's notification to the foster parent does not make the foster parent a party to the juvenile proceeding.[182]

Effective July 3, 2013, S.L. 2013-236[183] amended G.S. 7B-909[184] and several adoption laws found in G.S. Chapter 48. The amendments to G.S. 7B-909 require the county department of social services to request a review hearing if a juvenile is not adopted within six months of a parent's or guardian's relinquishment of the juvenile for adoption. In addition, the new legislation[185] allows a court to void a relinquishment signed by a parent when it is both in the juvenile's best interests and when a consent or relinquishment has not been received by the other parent and no action is being taken to terminate that other parent's rights. The department must provide the parent who provided the relinquishment with a minimum of fifteen days' notice that his or her rights are to be restored. That parent has a right to be heard on whether the relinquishment should be voided and what the parent's plan of care for the juvenile will be if the relinquishment is voided. If the relinquishment is in fact voided, periodic judicial reviews are not required.[186] These amendments to G.S. 7B-909 are incorporated into amendments made to G.S. 48-3-707(a) through the addition of subsection (4).

The procedures governing parental relinquishments were also amended by S.L. 2013-236.[187] The new legislation amends G.S. 48-3-702 by requiring a person who administers the oath or acknowledgement of the relinquishment to certify in writing that to the best of his or her belief, the person executing the relinquishment

(1) read, or had read to him or her, and understood the relinquishment,
(2) voluntarily signed the relinquishment,
(3) received the original or a copy of the signed relinquishment, and
(4) was advised that counseling services are available through the agency to which the relinquishment was given.

These are the same requirements for a valid execution of a consent to adoption found at G.S. 7B-3-605(c).

Adoption by a step-parent was also addressed by the new legislation[188] when it amended G.S. 48-2-204(b). If a step-parent dies before an adoption is final, the court may complete the adoption in the petitioner's name if the court provides notice to the individual who consented to the adoption that the petitioner has died and that the individual has fifteen days to request a hearing after receiving the notice.

180. *Id.*
181. *Id.*
182. *Id.*
183. *See* S.L. 2013-236, sec. 1.
184. S.L. 2013-129, sec. 28, also made amendments to G.S. 7B-909; however, S.L. 2013-410, sec. 27, repealed S.L. 2013-129, sec. 28, as a technical correction.
185. G.S. 7B-909(b1).
186. G.S. 7B-909(c).
187. *See* S.L. 2013-236, sec. 10.
188. *Id.* § 2.

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Under the new legislation,[189] a petition for adoption must include the following two documents:

(1) A certificate of service of the placement assessment to the person who placed the juvenile for adoption[190] if that person executed his or her consent to the adoption prior to receiving a copy of the pre-placement assessment
(2) A certified copy of any criminal conviction for rape,[191] rape of a child by an adult offender,[192] or second-degree rape[193] for which the crime resulted in the juvenile's conception,[194] each of which shows that the convicted individual's consent to adoption is not required

Finally, the new legislation amended G.S. 48-2-305 to allow required documents that are not available at the time the petition is filed to be filed as they become available to the petitioner.

The Responsible Individuals List

North Carolina law requires the Department of Health and Human Services to maintain a list of "responsible individuals,"[195] who are parents, guardians, custodians, or caretakers who have abused or seriously neglected[196] a juvenile.[197] It is called the Responsible Individuals List (RIL).[198] Unlike an adjudication that determines the status of a child as abused, neglected, and/or dependent, the RIL determines the status of the adult—someone who has been identified as abusing or seriously neglecting a juvenile. The purpose of the RIL is to enable child care institutions, child placing agencies, group homes, and other providers of foster care, child care, or adoption services to determine the fitness of individuals to care for or adopt children.[199] Only authorized persons or agencies may receive information from the RIL,[200] and unauthorized disclosure of or access or attempted access to information contained in the RIL is a Class 3 misdemeanor.[201]

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189. *Id.* § 5, amending G.S. 48-2-305.
190. *See* G.S. 48-3-307 for a listing of necessary documents.
191. G.S. 14-27.2.
192. G.S. 14-27.2A.
193. G.S. 14-27.3.
194. *See* G.S. 48-3-603(a)(9).
195. *See* G.S. 7B-101(18a).
196. Pursuant to G.S. 7B-101(19a), "serious neglect" involves conduct, behavior, or inaction that evidences a disregard of consequences of such a magnitude as to constitute an unequivocal danger to a juvenile's health, welfare, or safety. It is not abuse. This definition differs from the definition of neglect found at G.S. 7B-101(15).
197. G.S. 7B-311(b).
198. *See* N.C. Dep't of Health & Human Servs., Family Support and Child Welfare Manual, Vol. 1, Ch. VIII ("Protective Services"), Sec. 1427 ("Responsible Individuals List") (reflecting changes through June 2013), www.info.dhhs.state.nc.us/olm/manuals/dss/csm-60/man/pdf docs/cs1427.pdf.
199. G.S. 7B-311(b).
200. Information from the RIL can be requested by authorized persons using form DSS-5268, which is available from the N.C. Division of Social Services at http://info.dhhs.state.nc.us/olm/forms/dss/dss-5268-ia.pdf.
201. G.S. 7B-311(c).

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Because placement on the RIL may result in a deprivation of an individual's liberty interest, any person who faces such placement has a right to notice and an opportunity to be heard under the due process clause of the North Carolina Constitution[202] and under North Carolina law[203] prior to placement on the RIL. The statutory due process provisions[204] were amended by the CIP Law.[205]

Notice

North Carolina law requires the director of the county department of social services to personally deliver written notice of a determination to place an individual on the RIL; this notice must be delivered within five working days after the determination is made.[206] The CIP Law amends the notice provisions found at G.S. 7B-320(b) and -323 to address situations where the department's director is unable to complete personal service on the individual after the director has made "diligent efforts" to locate the individual. If service is not made on the individual within fifteen days of the determination to place him or her on the RIL, the CIP Law allows the director, who has made the requisite diligent efforts to locate the individual, to send notice to the individual at his or her last known address, by registered or certified mail, return receipt requested.[207] Restricted delivery is no longer required. In addition, a department of social services' director who cannot show that an individual has received actual notice may request an ex parte hearing before the district court for a determination that the director made diligent efforts to find the individual.[208] If diligence on the part of the director is found, the individual may be placed on the RIL.[209] The question of whether the individual is evading service is directly relevant to the court's diligent efforts determination.[210]

Right to Be Heard

An individual's opportunity to be heard involves a review by the district court.[211] The CIP Law[212] amends the various statutes[213] that allowed a judicial review to occur from either (1) the individual's petition for judicial review or (2) a juvenile petition initiated by a county department of social services seeking a determination that the individual is a responsible person, in addition to the adjudication of a child as abused, neglected, or dependent. The new amendments allow for a judicial review *only* upon the petition of the individual.[214] A hearing shall be scheduled by the clerk, and the CIP Law increases the time a clerk must schedule the judicial review hearing

202. N.C. Const. art. I, § 19. *See also In re* W.B.M., 202 N.C. App. 606 (2010).
203. *See* G.S. 7B-323.
204. G.S. 7B-311(b)(2), -320, -323, and -324.
205. S.L. 2013-129, secs. 4, 5, 6.
206. G.S. 7B-320(a).
207. G.S. 7B-320(b).
208. G.S. 7B-323(a1).
209. *Id.*
210. *Id.*
211. G.S. 7B-323.
212. S.L. 2013-129, secs. 3, 6.
213. G.S. 7B-311(b)(2), -324,- 805, -807(a1).
214. An individual can request a petition for judicial review by using form AOC-J-131, which is available from the N.C. Administrative Office of the Courts at www.nccourts.org/Forms/Documents/951.pdf.

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to forty-five days—from fifteen days—after receipt of the individual's petition.[215] However, the court may stay a judicial review if the individual is named as a respondent in the juvenile court case or is a defendant in a criminal court case that stems from the same incident for which placement on the RIL is sought.[216]

Finally, the CIP Law repeals the language that allows a court to consolidate the judicial review proceeding with the juvenile court case.[217] This may eliminate ethical issues that can arise for a court-appointed attorney who represents an indigent parent in a juvenile court proceeding that seeks an adjudication of abuse, neglect, or dependency of a child,[218] yet is not appointed by the court to represent that same client regarding the same incident in the RIL judicial review hearing. An individual seeking judicial review has the right to be represented by an attorney, but unlike indigent parents in an adjudication proceeding, the costs of an attorney in the judicial review hearing regarding placement on the RIL are at the individual's expense.[219]

Appeal

Appeals of juvenile proceedings are made directly to the North Carolina Court of Appeals and are governed by G.S. 7B-1001. Parties may file notices of appeal, and in the case of a cease reunification order, the parent or affected person must first file a notice to preserve the right to appeal that order[220] to be heard, together with an appeal of a subsequent termination of parental rights order.[221] Effective for all actions pending or filed on or after October 1, 2013, the CIP Law amends G.S. 7B-1001(b) to require that the notice to preserve the right to appeal be given in writing within thirty days after entry and service of the cease reunification order.

The CIP Law also requires that both the appealing party and his or her attorney, if he or she is represented, sign the notice of appeal.[222] It is no longer sufficient for only the attorney to sign the notice of appeal. With this change, G.S. 7B-1001 follows Rule 3.1(a) of the North Carolina Rules of Appellate Procedure. The Ethics Committee of the North Carolina Bar has formally stated that a court-appointed attorney in an abuse, neglect, dependency, or termination of parental rights proceeding does not violate Rule 3.1 of the Rules of Professional Conduct by signing a notice of appeal, even if the lawyer does not believe the appeal has merit, reasoning that the attorney's signature preserves the client's right to appeal, furthering the state's public policy and interest in ensuring due process for parents in those proceedings.[223] It is important to note that for respondent parents who have a Rule 17 guardian ad litem (GAL) of substitution due to incompetence or "infancy," the guardian ad litem signs the pleadings;[224] however, best practice

215. S.L. 2013-129, sec. 5, amending G.S. 7B-323(b).
216. Id. § 6, amending G.S. 7B-324(b).
217. *Id.*
218. G.S. 7B-602(a).
219. G.S. 7B-323(c)(2).
220. *See* G.S. 7B-507(c) and -1001(a)(5).
221. G.S. 7B-1001(a)(5).
222. S.L. 2013-129, sec. 32, amending G.S. 7B-1001(c).
223. N.C. State Bar Ethics Comm., Formal Op. 17 (approved Jan. 23, 2009).
224. G.S. 1A-1, Rule 17(e), states that "[a]ny guardian ad litem appointed for any party pursuant to any of the provisions of this rule shall file and serve such pleadings as may be required within the times specified by these rules. . . ."

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may be for both the client and the GAL of substitution to sign the notice of appeal, along with the attorney for the respondent parent. The same is also true for a juvenile who is the subject of the juvenile proceeding who seeks to file an appeal.[225]

Related Legislation Not Discussed Here

The 2013 General Assembly was very active in creating, repealing, and amending numerous statutes in North Carolina. This bulletin highlights important changes to laws affecting abuse, neglect, dependency, and termination of parental rights. However, it does not address every Session Law that resulted in a change to those substantive legal areas. Other laws created by the 2013 General Assembly but not discussed here include S.L. 2013-111, which creates a foster care ombudsman pilot program in Gaston County, effective from June 13, 2013, until July 1, 2015; S.L. 2013-326, which creates a Foster Care Children's Bill of Rights;[226] S.L. 2013-360, Subpart XII-C, which addresses Intensive Family Preservation Services (Sections 12C.2.(a)–(c)), postsecondary support for foster youth who are aging out of the system (Sections 12C.5.(a)–(d)), an Adoption Promotion Fund (Section 12C.10.(c)), and a Permanency Innovation Initiative Oversight Committee and accompanying demonstration project (Section 12C.10.(e)); and S.L. 2013-35, which amends various criminal statutes to increase the penalties for different child abuse offenses and also requires that the judgment of conviction indicate that the case involved child abuse.

225. G.S. 7B-1001(c).

226. Effective July 23, 2013, this law contains an aspirational list of eleven factors in the provision of foster care that is now codified at G.S. 131D-10.1(a)(1)–(11). It does not create a private cause of action for individuals.

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