

SESSION LAW 2013-129 (HOUSE BILL 350)

COURT IMPROVEMENT PROJECT

JUVENILE CODE LAW CHANGES BILL SUMMARY BY SECTION

DEANA K. FLEMING, ASSOCIATE COUNSEL, GUARDIAN AD LITEM, AOC

§ 1. Amend Definitions for Clarification and Delete Obsolete Definitions

This section amends G.S. 7B-101. It repeals definitions that are holdovers from delinquency cases, clarifies the definition of dependent juvenile, makes conforming changes to proposed revisions, and enacts new definitions to clarify that the terms “return home” and “reunification” apply to either parent, or a guardian or custodian from whom a child was removed.

§ 2. Clarification of Jurisdiction over Parties

This section amends G.S. 7B-200(b) to specify that the court has jurisdiction over a parent, guardian, custodian or caretaker if (1) there is proper service of the summons; (2) waived service of process; or (3) automatically becomes a party under G.S. 401.1 (see § 9).

§ 3 – 6. Repeal Responsible Individual List in Juvenile Abuse, Neglect, Dependency Proceedings and Amend Judicial Review of Responsible Individual for Procedural Clarity

A number of issues have arisen with the current statutory scheme that allows the department of social services to combine the adjudication hearing with judicial review of an individual identified as responsible for abuse or serious neglect.

§ 3 amends G.S. 7B-311(b)(2) to only permit judicial review of placement on the responsible individual list as an independent proceeding already set forth in Article 3A of Chapter 7B.

§ 4 amends G.S. 7B-320(b) to require diligent efforts by the agency to notice the individual. It amends (d) to specify the director shall provide a form, but not instructions on how to file and serve the petition because of concerns regarding unauthorized practice of law. The intent is for AOC to develop a form for this purpose.

§ 5 amends G.S. 7B-323 to enact new (a1) that provides if the DSS director cannot show the individual received actual notice, the director cannot place the individual’s name on the RIL without an ex parte hearing where the court found the director made diligent efforts to serve the individual, and a finding that the individual is evading service is relevant. (b) is amended to schedule the hearing for judicial review at 45 days instead of 15.

§ 6 amends G.S. 7B-324 to repeal the ineligibility of judicial review by a respondent named in a juvenile petition under (a)(2) since this procedure is eliminated in the juvenile adjudication proceeding. (b) is amended to provide a stay to the judicial review proceeding if the individual is a defendant in criminal court and repeals the procedure related to the juvenile adjudication proceeding.

§ 7. Clarify Venue of Juvenile Petition

In the previous legislative session, the issue of post-adjudication venue change was addressed with the enactment of G.S. 7B-900.1. Amendments to G.S. 7B-400 clarify venue for filing the juvenile petition when a juvenile is placed in a different county under a protection plan, or when a department of social services has a conflict and another agency is conducting the assessment of allegations of abuse or neglect. It allows for the court to grant a motion to change venue pre-adjudication for good cause, but does not change the petitioner.

§ 8. Provide for Adjudicatory Hearing Procedures When Parent Granted Custody and Juvenile Court Retains Jurisdiction

This section amends G.S. 7B-401. Where the juvenile court retains jurisdiction, any party can file a motion for review. New subsection (b) specifies that the adjudication hearing procedures of Article 8 of Chapter 7B apply when DSS investigates a new report of abuse, neglect, or dependency on a parent, and then seeks court action by motion instead of filing a new petition. This reference provides for a clear and convincing burden of proof and that the Rules of Evidence apply. The purpose is to provide the same due process protections to parents whether the new allegations of abuse, neglect, or dependency are filed by petition or motion.

§ 9 – 12. Enact New Section to Specify Parties to Juvenile Proceeding and Limit Intervention. Amend Jurisdiction, Summons, and Service Requirements to Conform to New Statute

§ 9 enacts a new G.S. 7B-401.1 which specifically identifies the parties to juvenile abuse, neglect, and dependency proceedings. It also gives the court discretion in releasing a guardian, custodian, or caretaker from being a party if no legal rights are affected and it is not necessary to meet the juvenile’s needs. This section limits the ability of a non-party to intervene in a juvenile proceeding. A non-party may still file a civil custody action and move to consolidate the proceedings; and, all dispositional hearings permit the court to hear from non-parties where it will aid the court’s decision to determine the juvenile’s best interest.

Conforming changes amend procedural statutes related to petition and summons:

§ 10 amends G.S. 7B-402 related to the juvenile petition by specifying the parties identified in G.S. 7B-401.1.

§ 11 amends G.S. 7B-406 related to the issuance of the summons. (a) is amended to reference the parties named are issued a summons. (b) is amended to specify a parent has a right to seek counsel prior to the hearing if provisional counsel is not identified, and repeals (2a) related to the RIL.

§ 12 amends G.S. 7B-407 related to service of the summons to conform to Rule 4(j) where service is by publication, and also repeals language about issuing a show cause for failure to bring a juvenile to court as this is a holdover delinquency-related provision.

§ 13 - 14. Specify Placement with Non-Relative Kin, Notice to State Recognized Tribe, and Any Party May Schedule a Hearing on Placement

§ 13 amends G.S. 7B-505 on the placement of children while in nonsecure custody. It provides subsections (a)-(d) for better reference, and enacts new (c) to expand the types of placements available for a child in nonsecure custody by identifying individuals who may not be relatives, but have a substantial relationship with the child. These individuals are defined as “nonrelative kin.” It also gives additional placement options for Indian children who are members of a state recognized tribe by defining non-relative kin to include members of state or federally recognized tribes regardless of the relationship with the child. The purpose of this change is to permit state recognized tribes priority for placement after relatives since state tribes are not protected by the federal Indian Child Welfare Act, but also to make this placement at the onset of the case so it does not impact the federal Multi-Ethnic Placement Act which prohibits moving a child based on ethnicity. (Note: members of the Court Improvement Project Juvenile Code Revisions worked with the Commission on Indian Affairs Standing Committee on the Welfare of Indian Children to develop this language.) The court may order that the juvenile’s state recognized tribe be notified for purposes of placement.

§ 14 amends G.S. 7B-506 on the hearing to determine the need for continued nonsecure custody by enacting subsection (g) to specify that any party may schedule a hearing on placement. Subsection (h) is amended to require the court to inquire about efforts DSS has made to identify relatives and provides the same language as in § 13 related to non-relative kin, including notification to state recognized tribes where the child is a member.

§ 15. Delete obsolete reference.

This section amends G.S. 7B-507 related to reasonable efforts by repealing reference to G.S. 7B-907 and inserting G.S. 7B-906.1 set forth in § 26 of the bill.

§ 16. Clarify Guardianship a Party and Conforming Changes

This section amends G.S. 7B-600 to clarify that a guardian appointed as the permanent plan for a juvenile is a party to the juvenile court proceeding, and makes conforming changes related to motions for review set forth in § 26 of the bill.

§ 17. Specify Procedure for Waiver of Counsel and Limit Appointment of Rule 17 Guardian ad Litem for Parent in Juvenile Abuse, Neglect, or Dependency Proceeding

Amends G.S. 7B-602 related to a parent’s right to counsel and guardian ad litem. New (a1) provides for a procedure for parents to waive court-appointed counsel after the court examines the parent, and finds the parent’s waiver of counsel is knowing and voluntary, and recorded.

Amends (c) and (d) and amends (e) to clarify and limit the appointment of Rule 17 guardians ad litem (GAL) for incompetent parents. There has been longstanding confusion of the role of a GAL appointed to a parent in a juvenile proceeding. A recent appellate case, In re P.D.R., COA10-1519-2

(12/18/12), held that there are two types of guardians ad litem for parents in abuse, neglect, and dependency or termination of parental rights proceedings. The first type of guardian ad litem is the well-established Rule 17 GAL who is appointed in a role of substitution for an incompetent parent. The second is the statutorily created guardian ad litem who acts in an “assistive” capacity for a parent with diminished capacity. The role of this “assistive” GAL has been problematic for a number of years. Amendment to (c) eliminates the “assistive” GAL and clarifies that the court appoints a guardian ad litem for a parent who is incompetent in accordance with Rule 17 of the Rules of Civil Procedure. This change will bring clarity to the appointment and role of a guardian ad litem for a parent, and limit the appointment to circumstances where a parent is incompetent. (d) specifies that the guardian ad litem and parent attorney cannot act in the same capacity.

(Note: See Section 32 for the same changes to Article 11 related to waiver of counsel and appointment of a guardian ad litem for a parent in a termination of parental rights proceeding.)

§ 18. Provide for Preadjudication Hearing

This section enacts G.S. 7B-800.1 to provide for a pre-adjudication. Increasingly, DSS files petitions alleging abuse, neglect, or dependency, but does not request nonsecure custody. Many judicial districts are finding that adjudication hearings in these cases are being delayed because it is the first time parties come to court, and preliminary issues have not been addressed. The preadjudication hearing to address the following issues under (a): appointment of counsel, identification of parties, paternity, missing parents, relatives, and procedural requirements. (b) allows the preadjudication hearing to be combined with nonsecure custody, pretrial, or other hearing as determined by local rules. (c) specifies parties can enter stipulations or a consent order to simplify or obviate the need for an adjudication hearing.

§ 19. Disfavor Continuance of Adjudication to Resolve Criminal Charges

This section amends G.S. 7B-803 continuances and specifies that resolution of a criminal charge out of the same transaction or occurrence as the juvenile petition is the sole extraordinary circumstance for granting a continuance. Resolution of criminal charges can take months or years, and if the juvenile proceeding is on hold, the child is in legal limbo with no permanency or case plan for reunification. The court may still consider the resolution of criminal charges as a factor in granting a continuance. Parents who are charged criminally may still invoke the protections of the Fifth Amendment in the juvenile proceeding, and have the protection of court-appointed counsel, if indigent, in both the criminal and juvenile proceeding.

§ 20 -21. Conforming Changes related to RIL

§ 20 amends G.S. 7B-805 to repeal reference to the burden of proof for placement on the RIL since review will only be a separate proceeding. § 21 amends G.S. 7B-807 to repeal (a1) reference to the placement on the RIL as a result of a determination in the juvenile proceeding.

§ 22. Specify at Disposition that the Court May Take Evidence from Non-Parties

This section amends G.S. 7B-901 to specify that the court can consider testimony and evidence at disposition from non-parties that is relevant, reliable, and necessary to determine the needs of the juvenile and most appropriate disposition. This addition is related to the limitation of intervention of non-parties in § 9, G.S. 7B-401.1. Even though an individual does not have party status in the case, the court may consider information from the non-party individual in the child’s best interest.

§ 23. Conforming Changes to Dispositional Order

This section amends G.S. 7B-905 to reference new G.S. 7B-906.1 instead of repealed G.S. 7B-906 per § 26. It repeals reference to a visitation plan in (c) which is addressed in § 24 with new G.S. 7B-905.1.

§ 24. Provide for Specific Visitation Provisions and Allow for Use of Custody Mediation in Certain Juvenile Cases

This section enacts new G.S. 7B-905.1, to provide a specific statute on visitation in juvenile proceedings. Many juvenile orders that are appealed have been remanded on the issue of visitation and this statute will provide specific guidance to judges.

- (a) When custody of a juvenile is removed, visitation is provided in the child’s best interest, health and safety. The court can specify conditions to suspend visitation.
- (b) If the department of social services has custody, the agency must provide a visitation plan for court approval with minimum parameters of visitation indicated. The statute specifies notice provisions in the event that the visitation schedule must be altered.
- (c) When the court grants custody or guardianship, a specific visitation plan must be ordered with specific parameters for the visitation schedule.
- (d) If the court retains jurisdiction, parties are notified of the right to file a motion for review of the visitation plan. If a party files a motion for review on visitation, the court may order the department of social services and guardian ad litem to investigate and make written recommendations. The court may also order the parents, guardian, or custodian to participate in custody mediation where a program is already established. The ability to refer parties to custody mediation will save court time and allow the parents, custodians, or guardians to attempt agreement in modifying a custody schedule. In making the mediation referral, the court specifies the issues for mediation and does not permit the parties to agree to a change in custody. A copy of any mediated agreements is provided to the parties, attorneys, and the court. The court must approve the mediated agreement. The provisions of mediator bias and confidentiality set forth in G.S. 50-13.1(d)-(f) also apply to this section.

§ 25. Repeals G.S. 7B-906 on Review Hearings and G.S. 7B-907 on Permanency Planning Hearings, and Combines them in § 26, G.S. 7B-906.1

§ 26. Combine Review and Permanency Planning Hearings for Clarity and Specify that When a Child Is Placed with a Parent, Permanency Planning Findings and Review Hearings Not Required

This section repeals G.S. 7B-906, Review of Custody Order, and G.S. 7B-907, Permanency Planning Hearing. It combines and streamlines the provisions of each section into G.S. 7B-906.1, Review and Permanency Planning Hearings. The section clarifies that after the first permanency planning hearing is held, subsequent hearings are designated permanency planning hearings. An additional statutory provision not already specified in G.S. 7B-906 or G.S. 7B-907 includes where custody is placed with either parent, reviews hearings are waived.

Conforming changes are made to G.S. 7B-507, G.S. 7B-1000, G.S. 7B-1203, G.S. 7B-2503, and G.S. 7B-2506 where these statutes reference either G.S. 7B-906 or G.S. 7B-907.

§ 27. Clarify Notice to Placement Provider in Post Termination of Parental Rights Review Hearings and Add Statutory Reference to Identify Prospective Adoptive Parents

This section clarifies that notice of post termination of parental rights hearings pursuant to G.S. 7B-908 are sent to the person providing care for the child. (d) references G.S. 7B-1112.1 to specify that the term “prospective adoptive parents” refers to the adoptive parents selected by the department of social services and not simply foster parents who may wish to adopt.

§ 28. Clarify Agency’s Placement Plan after Relinquishment, Review Plan Until Adoption Decree Entered, and Specify Procedure for Court Review

Amends G.S. 7B-909 to clarify that in cases where a parent has relinquished a child for adoption, the case is scheduled for hearing on the plan proposed by the department of social services or adoption agency unless and until the juvenile is subject of an adoption decree. It also clarifies the procedure for court review is by petition if the juvenile court is not exercising jurisdiction over the juvenile, or by motion for review if the juvenile court already has jurisdiction.

§ 29. Court to Determine Whether to Transfer Jurisdiction from Juvenile Court When Custody Granted

In cases where custody is placed with a parent or other appropriate person, amendments to G.S. 7B-911 require the court to determine whether jurisdiction should remain with the juvenile court or be transferred to civil custody court. This section also codifies case law which has interpreted this section to allow for one order that both terminates juvenile court jurisdiction and supports entry of a custody order under Chapter 50.

§ 30. Conforming change to G.S. 7B-1000 by deleting reference to repealed G.S. 7B-907.

§ 31. Technical Clarification for Notification of Appeal

This section amends G.S. 7B-1001 to clarify that there are two types of appellate notices: Notice to Preserve the Right to Appeal and a Notice of Appeal. (c) codifies Rule 3.1 of the Rules of Appellate Procedure that requires both the appealing party and counsel, if represented, to sign the notices of appeal.

§ 32. Specify Procedure for Waiver of Counsel and Limit Appointment of Rule 17 Guardian ad Litem for Parent In Termination of Parental Rights Proceedings (see § 17 for same amendments to G.S. 7B-602)

(Note: See Section IX above for the same changes to Article 6 related to waiver of counsel and appointment of a guardian ad litem for a parent in an abuse, neglect, or dependency proceeding.)

Amends G.S. 7B-1101.1 (a1) provides for a procedure for parents to waive court-appointed counsel in termination of parental rights proceedings after the court examines the parent, and finds the parent’s waiver of counsel is knowing and voluntary. Note that this procedure is repealed in G.S. 7B-1109 and enacted in G.S. 7B-1101.1 for consistency with G.S. 7B-602.

Amends (c) and (d) and amends (e) to clarify and limit the appointment of Rule 17 guardians ad litem (GAL) for incompetent parents. There has been longstanding confusion of the role of a GAL appointed to a parent in a juvenile proceeding. A recent appellate case, In re P.D.R., COA10-1519-2 (12/18/12), held that there are two types of guardians ad litem for parents in abuse, neglect, and dependency or termination of parental rights proceedings. The first type of guardian ad litem is the well-established Rule 17 GAL who is appointed in a role of substitution for an incompetent parent. The second is the statutorily created guardian ad litem who acts in an “assistive” capacity for a parent with diminished capacity. The role of this “assistive” GAL has been problematic for a number of years. Amendment to (c) eliminates the “assistive” GAL and clarifies that the court appoints a guardian ad litem for a parent who is incompetent in accordance with Rule 17 of the Rules of Civil Procedure. This change will bring clarity to the appointment and role of a guardian ad litem for a parent, and limit the appointment to circumstances where a parent is incompetent. (d) specifies that the guardian ad litem and parent attorney cannot act in the same capacity.

§ 33. Specify Rule 5 Service of Termination of Parental Rights Petition on Parent’s Attorney

This section amends G.S. 7B-1106 with (a2) to provide that copies of the termination of parental rights pleadings are served on the parent attorney of record under Rule 5 of the Rules of Civil Procedure. This proposal is in response to reports that some counties do not provide the parent’s attorney with a copy of the termination of parental rights petition served on a parent via Rule 4 personal service.

§ 34. Repeal Reference to Waive of Counsel in TPR in G.S. 7B-1109(b) to Conform with § 32.

§ 35. Amend Termination of Parental Rights Ground for Establishing Paternity

This section amends G.S. 7B-1111(a)(5), the termination of parental rights ground related to the establishment of paternity. Amendment codifies case law. A recent appellate decision, In re J.K.C., COA 11-783 (1/17/2012), held that a man’s name on the birth certificate of a child born to an unmarried woman created a presumption that paternity of the child had been established. The opinion explained that the respondent father could not have been listed as the “father” on the birth certificate unless his name was placed on the certificate in accordance with either G.S. 130A-101(f) (by affidavit of paternity) or G.S. 130A-118(b) (by amendment based upon a judicial determination of parentage). Under (e) specifies the statutes under which a putative father may establish paternity.

§ 36. Specify that the Department of Social Services Shall Consider the Current Placement Provider in Selecting Adoptive Parents; Provide Notice to Foster Parents of Adoptive Parent Selection and Allow Procedure for Court Review

This section amends G.S. 7B-1112.1 to require DSS to consider the current placement providers as potential adoptive parents if the current placement provider wants to adopt. This section also provides for specific notice provisions to foster parents of the selection of prospective adoptive parents, and a procedure by which the foster parents can seek judicial review of the department’s decision if the foster parents wanted to adopt, but were not selected. Upon motion, the court determines whether the proposed adoptive placement is in the juvenile’s best interest. Rationale behind the amendments is to provide foster parents some procedural due process if not selected as adoptive parents.

§ 37. Allow for Reinstatement of Parental Rights for Relinquishment or When Parental Rights Terminated in Another Jurisdiction

This section amends G.S. 7B-1114 to allow for reinstatement of parental rights where a juvenile was relinquished for adoption, or if rights were terminated by another jurisdiction. The current reference to Article 11 of Chapter 7B limits this use of this section to only cases where the parental rights were terminated by court order in North Carolina. Makes conforming change in (i) to refer to visitation statute G.S. 7B-905.1.

§ 38 – 40. Conforming Changes to Juvenile Code Statutes that Reference Repealed G.S. 7B-906

References to G.S. 7B-906 are amended to G.S. 7B-906.1.

§ 41. Enactment Date.

Act applies to petitions pending or filed on or after October 1, 2013.