

Fall 2023 Child Welfare Update – District Court Judges Conference



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2023 Child Welfare Legislative Changes

This entry was contributed by Sara DePasquale on October 3, 2023 at 2:57 pm and is filed under Child Welfare Law.



As the 2023 Legislative Session continues, many session laws that amend child welfare statutes, including abuse, neglect, dependency; termination of parental rights (TPR); adoption of a minor; and foster care licensing became effective on various dates. Some of these changes are significant. Some session laws focus on specific statutory changes involving an individual juvenile or family; other session laws make changes to state systems.

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S.L. 2023-14 (S20)

Infants surrendered on or after October 1, 2023



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New G.S. 7B, Article 5A

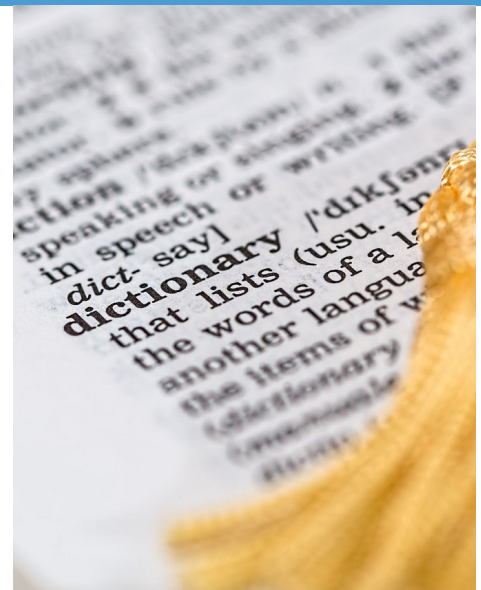
- Infant
 - 30 days
 - No signs of abuse or neglect
 - Otherwise, A/N/D
- Limits who accepts safe surrender
 - First responder

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A/N/D conforming changes

Definitions

- 7B-101(15): abandonment ≠ safe surrender
- Surrendering Parent
- Non-surrendering Parent
- Safely Surrendered Infant
- Serious neglect now (19b)



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Confidentiality of Identity of Surrendering Parent

- Exceptions
 - To DSS
 - DSS
 - To law enforcement
 - To non-surrendering parent
 - By court order
 - If seek regain custody, treat as A/N/D Ax

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Confidentiality of all info by DSS

Exceptions

- When necessary or relevant to case to
 - Medical provider for infant
 - Placement provider
 - Court in adoption proceeding
 - Agency ordered for preplacement assessment or court report
- GAL in TPR (written copies)
- In camera review after notice to DSS: civil, criminal, delinquency

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DSS Response

- Legal and physical custody
- Ensure from health care provider, age and no abuse/neglect
- Inquiry if parent received DHHS information
- Notice law enforcement re: missing person
- Contact/respond to non-surrendering parent when identity known
- If seek custody, genetic testing if uncertainty for parentage
- After 60 days, initiate TPR if no return*

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Non-surrendering parent

Placement; DSS custody terminates

- Legitimation
- Genetic marker testing (97%)
- No cause to suspect A/N/D with that parent
 - If A/N/D – without surrendering parent *unless ordered by court*



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Notice by Publication



Within 14 days

County of surrender and
county where reason to
believe parent(s) residing

Specifics of notice: GS 7B-
526

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Surrendering Parent

Regain custody
prior to TPR filing

Relinquishment

Immunity

Information
created by DHHS
(at time of
surrender)

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TPR

- Preliminary Hearing: 7B-1105.1
 - w/in 10 days
 - Closed (unless surrendering parent asks open)
 - Court inquiry of DSS
 - Affidavit of publisher
 - Mandatory notice contents



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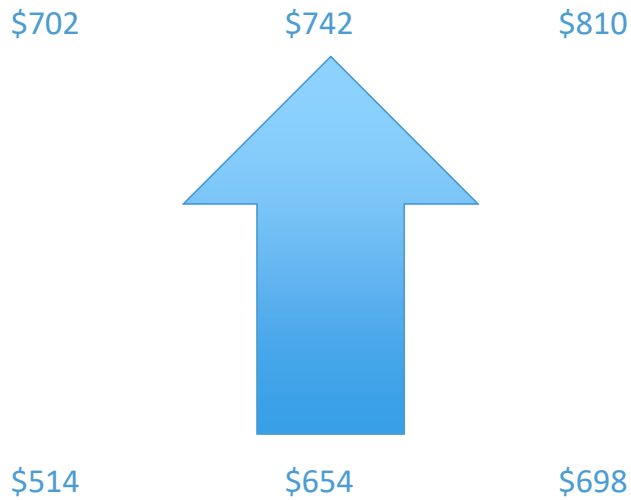
TPR conforming changes

7B-1111(a)(9): Prior TPR and no safe home
NOT include TPR for safe surrender infant



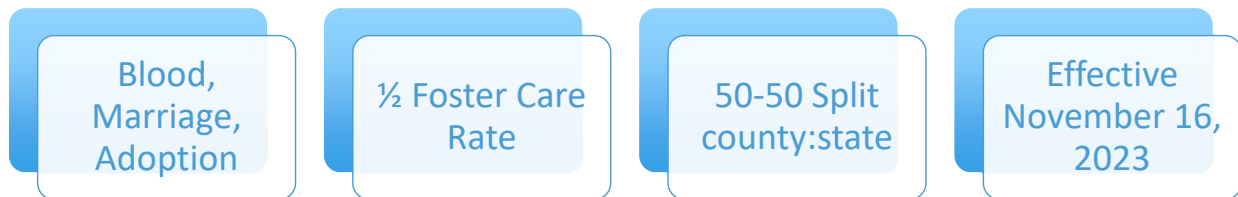
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Foster Care/Adoption Rates



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Unlicensed Family Foster Home



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Federal Regulation

State may adopt lower standards for licensing of relatives



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2023 Appropriations Act



SECTION 9J.13 – New G.S. 7B-905.2

- Transportation of high-risk juveniles in DSS custody
 - Abused/neglected with serious emotional, mental, behavioral disturbances; harm to self or others; resides outside residential placement bc of disturbance
- Law enforcement, DJJ, DAC
- Written request – not demand or transportation agreement
- Costs to DSS

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Medicaid

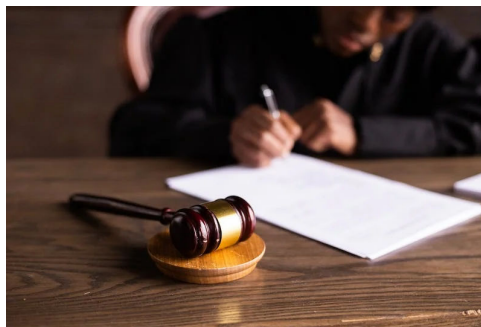
- Changes Coming!
 - Address gaps
 - Child and Family Program



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Section 16.21.(d)

No appeal of right when dissent



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S.L. 2023-65 – DHHS Revisions

Authorizes opioid treatment program facilities to establish and operate opioid treatment program medication units and mobile units



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S.L. 2023-106: Parents' Rights, Who Is a Parent, and Juvenile Abuse, Neglect, and Dependency Cases



This entry was contributed by Sara DePasquale on September 5, 2023 at 10:44 am and is filed under Child Welfare Law.



This blog was updated on October 3, 2023 to incorporate amendments made by the 2023 Appropriations Act (S.L. 2023-134). The changes are in italics.



On August 16th, the legislature used an override of the Governor's veto to pass [S.L. 2023-106 \(S49\)](#), a law enumerating the rights of parents regarding their children's education, health care, and mental health needs. But in addressing a parent's rights, the law contains some exceptions when the child is alleged to be abused, neglected, or dependent. Notably, the new law defines "parent" as "any person with legal custody of a child, including a natural or adoptive parent or legal guardian." In cases where a department of social services (DSS) has filed a petition alleging a juvenile is abused, neglected, or dependent, DSS may obtain custody of the juvenile, or the court may ultimately award legal custody or guardianship to a person who is not the juvenile's parent. As a result, the new law impacts abuse, neglect, and dependency cases. This post discusses the new law as it relates to abuse, neglect, and dependency cases only and is not a comprehensive discussion of the new law generally.

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G.S. Chapter 114A

- “Parent” = person with legal custody, including parent, adoptive parent, legal guardian
- Exceptions due to 7B assessment
 - Access and review all medical records
 - Prohibit video or voice recording w/o written consent
 - Promptly notified if State employee suspects criminal offense against child (impede assessment)
 - Abuse/Neglect child

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Parents’ Bill of Rights

- 115C: Rights re: education
 - Legal custody = parent
- No access to education/health records by school if disclosure would result in abuse/neglect
- New G.S. 90-21.10A: Parental Consent for Treatment

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S.L. 2023-129

NC Health & Human Services Workforce Act

- Changes definition of “court officer” in G.S. 14-16.10(1)
- Makes assault on a social worker, attorney, or anyone employed or contracted by a DSS or CHSA a Class I felony (G.S. 14-16.6)



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S.L. 2023-103: AOC Changes

Changes to Rule 5

- Attorney service through the court’s e-filing or case management system at an email address of record with the court
- Party service through the court’s e-filing system or case management system at an email address of record with the court
 - party consents *and* a copy of the consent is filed w/ the court
- Must be sent by 5 PM ET on a regular business day

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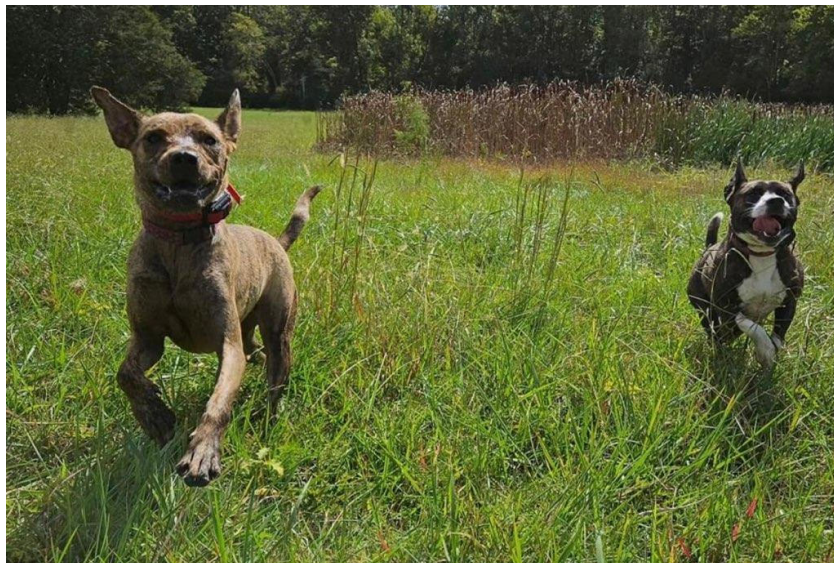
Rule 5

Service can also be made by mailing a copy to the attorney's "mailing address of record" with the court



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Cases



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UCCJEA: Subject Matter Jurisdiction

In re N.B. (p.21)




UCCJEA: Transitioning from Temporary Emergency Jurisdiction to Home State Jurisdiction in A/N/D Cases

This entry was contributed by Sara DePasquale on July 20, 2023 at 12:35 pm and is filed under Child Welfare Law.




The Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) governs a state's subject matter jurisdiction to hear child custody cases, including abuse, neglect, dependency (A/N/D), and termination of parent rights (TPR). See G.S. 50A-102(4); 50A-106. Without following the jurisdictional requirements of the UCCJEA, the court lacks subject matter jurisdiction. Any orders entered when a court lacks subject matter jurisdiction are void ab initio. In re T.R.P., 360 N.C. 588 (2006). I receive numerous inquiries about the UCCJEA in A/N/D cases. A common question involves North Carolina's use of temporary emergency jurisdiction and whether it ever becomes initial custody jurisdiction when North Carolina becomes the juvenile's "home state" after the A/N/D petition has been filed in district court. Earlier this month, the court of appeals answered this question when it published In re N.B., ___ N.C. App. ___ (July 5, 2023). This blog serves as a follow up to my [previous blog post](#) about temporary emergency jurisdiction under the UCCJEA.

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Oct. - child moves
Jan. - DSS petition
March - Adj. Hrg.
July - Order entered



**6 months =
home state**

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Adjudication: Evidence

(In re A.J., p.2)

-
- Child's statements
 - Residual Hearsay Exception
 - Admission of a party opponent



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Court Observation Irrelevant (p.4)

-
- Interaction between mother and child
 - Adjudication: conditions alleged in petition



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No Visitation

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In re A.J.L.H.
(p.7)

COA
(on remand)

- Factors:
 - DSS history
 - Other children removed – is it related to this child's removal
 - Failed/minimally participate in case plan
 - Not consistently attend visits
 - Relinquishment
- Constitutional Rights - **NEW**
- *Each Child*

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In re P.L.E.
(p.8)

- No findings in G.S. 7B-906.1
NEW

- (d)(2): visitation that occurred, need to create, modify, or enforce
- (e): whether possible for juvenile to be placed with parent in next 6 months

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Electronic Visits = No Visits

In re K.B. (p. 9)

- Forfeited rights
- Inappropriate under the circumstances

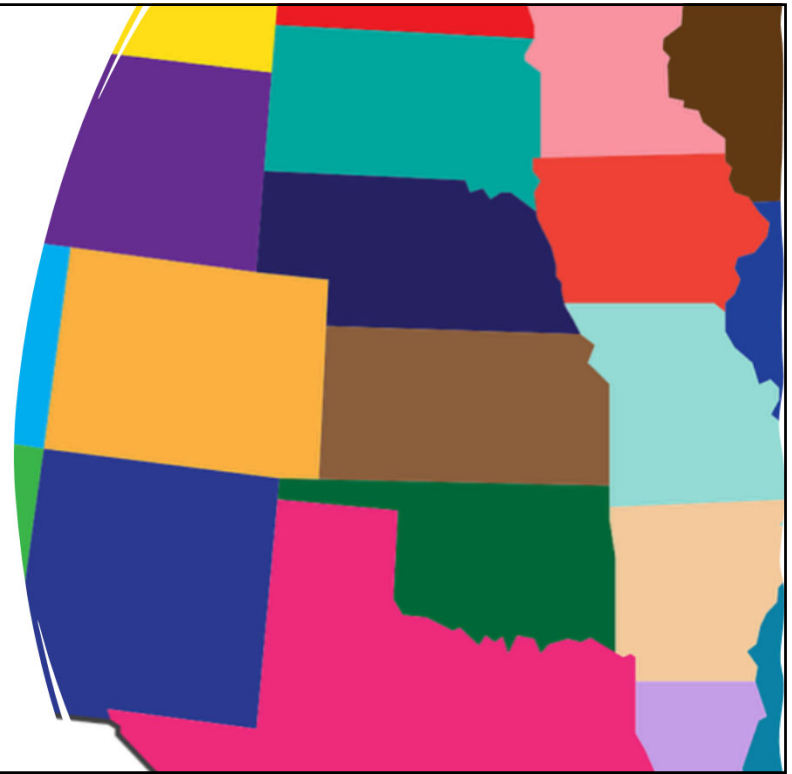
- NOT distance alone

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ICPC

In re K.B. (p. 12)

- Home Study not required before rule out relative
- ICPC compliance when actually place
- DISSENT: 3 years



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Unexplained
Injuries

Eliminate
Reunification

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In re J.M.

(p. 10)

- 2019: nonaccidental life threatening injuries; unexplained
- Parents separate
- Progress on Case Plan
- COA reversed
 - Not required to admit fault
 - No reasonable efforts

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Reversed COA

- PPH, not collateral attack on adjudication
- Unwillingness to acknowledge supports G.S. 7B-906.2(b) findings
- Warning: Case specific
 - 2 dissents

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Verification of Guardians In re P.L.E. (p. 14)



Financial Affidavit



Legal significance



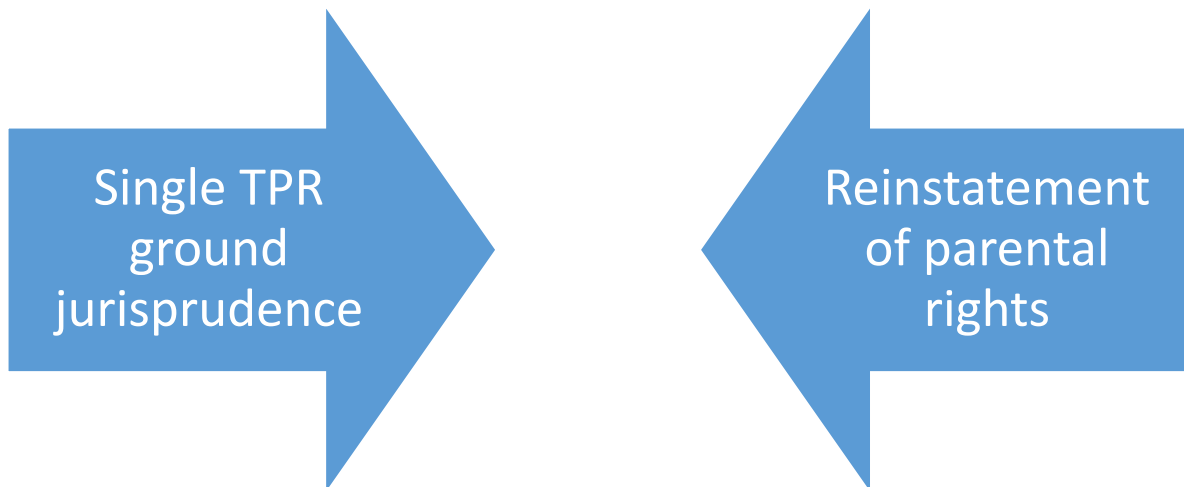
Testimony of one



Unsigned/not
initialed

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Opens the Door: In re E.Q.B. (p. 21)



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Thank you: Puppy Update

