2015 Legislative Changes
Abuse, Neglect, Dependency
Adoptions

S.L. 2015-43 (H82): Execution/Nonsecure Custody Order/Child Abuse. Effective for all nonsecure custody orders issued on or after June 2, 2015. This act amends G.S. 7B-504 to allow the court to authorize law enforcement to enter private property to take physical custody of the child. The court must first find that a less intrusive remedy is not available, which the court may determine on the basis of the verified petition and request for nonsecure custody or the testimony of the DSS director or authorized representative. If the court finds there are exigent circumstances, the court may authorize forcible entry at any hour.

S.L. 2015-136 (H669): Changes to Juvenile Law Pertaining to Abuse, Neglect, Dependency There are two effective dates: Section 3, effective July 2, 2015; all other sections effective for all actions filed or pending on or after October 1, 2015. S.L. 2015-136 makes various changes to
G.S. Chapter 7B, the Juvenile Code, some of which is reformatting and moving existing language and others are substantive changes.

- **Definitions**. Section 1 amends G.S. 7B-101 by repealing (2) "aggravating circumstances;" those factors are now incorporated in the new G.S. 7B-901(c)(1), and adding:
    - (8a) "Department," clarifying department means the county's child welfare agency, including a consolidated human services agency
    - (15a) Nonrelative kin (removing it from the text of G.S. 7B-505(c) and - 506(h(2a)).

- **Parties**. Section 2 creates G.S. 7B-401.1(e1), which states foster parents are not parties to an A/N/D/proceeding and do not have a right to intervene unless they meet the criteria for standing to initiate a termination of parental rights actions pursuant to G.S. 7B-1103.

- **Seeking a Nonsecure Custody Order**. Section 3 (effective July 2, 2015) amends G.S. 7B-502 to explicitly authorize an *ex parte* initial nonsecure custody order. If nonsecure is sought during regular court business hours, the department must first notify by telephone a respondent's attorney (or an employee of the attorney's office if the attorney is unavailable) that the department will be seeking a nonsecure custody order. A respondent is represented by an attorney if: the respondent is represented by

an attorney in another juvenile proceeding for a different child of the respondent's that is in the same county, or the department has been notified in writing that respondent has an attorney for the juvenile matter. Notice need not be provided to a provisional counsel who is appointed to the respondent upon the filing of the petition in that juvenile matter.

- **The Nonsecure Custody Order.** Section 7 rewrites G.S. 7B-507, repealing all subsections but (a). G.S. 7B-507 applies solely to nonsecure custody orders where custody is placed with a department. Language addressing whether reunification efforts are required or shall cease are no longer included in a nonsecure custody order.

- **Relatives: Notice and Placement Preference.** Sections 4, 8, and 9 rewrite G.S. 7B-505(b), (c), -800.1(a)(4), and -901(b) to require the court to inquire about the department's efforts to identify and notify a child's relatives, parents, and persons who have legal custody of the child's siblings that the child has been removed from his or her home so that these relatives may be considered as resources for support and/or placement of the child. G.S. 7B-505(b) is amended to require the court when ordering nonsecure custody to also order the department to make diligent efforts to notify those persons that the child is in nonsecure custody and provide notice of continued nonsecure custody hearings, unless the court finds the notification would be contrary to the child's best interest. Sections 4 and 5 amend G.S. 7B-505(c) and -506(h)(2a) to allow the court to consider placing the child in nonsecure custody with a person who has custody of the child's sibling if the child is not placed with a relative.

- **Consent to Medical Treatment by a Department.** Section 5 creates G.S. 7B-505.1, which addresses obtaining and consenting to treatment for juveniles who are placed in nonsecure custody with the department. Section 11 creates G.S. 7B-903.1(e), which applies G.S. 7B-505.1 to a department who has a child in its custody at disposition (after adjudication). A department may consent to routine and emergency medical care and in exigent circumstances, testing and evaluation of a child in its custody. At initial nonsecure custody, a department may consent to a Child Medical Evaluation (CME) only after the court authorizes it to do so upon making written findings that demonstrate a compelling interest for not waiting until the hearing on continued nonsecure custody. The department must obtain parental consent (or consent from the child's guardian or custodian) for all other treatment for the child unless the court orders after a hearing that the department may consent. In making its order, the court must find by clear and convincing evidence that the care, treatment, or evaluation requested is in the best interests of the child. For any treatment that is provided to the child, the department must make reasonable efforts to notify the parent, guardian, or

custodian, give frequent status reports, and upon request, make available results or records unless

disclosure is prohibited by G.S. 122C-53(d). Disclosure of the results of a CME is governed by G.S. 7B-700 (information sharing and discovery). A department may share confidential information with a health care provider unless disclosure is prohibited by federal law. A health care provider must disclose confidential information to a department with custody of a child and the child's parent, guardian, or custodian, unless the disclosure is prohibited by federal law or a court order.

- **Initial Disposition.** Section 9 amends G.S. 7B-901 to specifically apply to the first dispositional hearing (post adjudication) and creates subsections to G.S. 7B-901. Subsection (c) requires the court order that reunification efforts are not required when the court makes written findings of any of the enumerated criteria set forth in G.S. 7B-901(c)(1) – (3). This is the same criteria found at G.S. 7B-507(b), which has been repealed by Section 7. New criteria to determine reunification efforts are not required include: chronic emotional abuse and chronic or toxic exposure to alcohol or controlled substances that causes the child to be impaired or addicted. Section 9 also repeals the requirement that when considering if the court will close the initial dispositional hearing, it must keep the hearing open to the public if the juvenile requests that it be an open hearing. However, this language remains in G.S. 7B-801(a) and (b), and applies to any hearing authorized by Subchapter I.

- **Dispositional Alternatives.** Section 10 reformats G.S. 7B-903 and removes the language regarding medical care. It adds the appointment of a G.S. 7B-600 guardian for the child as a dispositional option. It requires the court when ordering a child in out-of-home care to make findings that continuing or returning to the child's home is contrary to the child's health and safety and whether the department has made reasonable efforts to prevent the need for the child's placement.

- **Decision-Making for a Child in Department Custody**. Section 11 creates G.S. 7B-903.1. When a child is in the department's custody, the department may make decisions that are generally made by a child's custodian. The court may delegate any part of the department's authority to make decisions to the child's parent, foster parent, or other person. Unless the court determines it is not in the child's best interests and orders otherwise, the child's placement provider may give or withhold permission for a child to participate in "normal childhood activities" without first seeking approval from the court or department.

- **Reunification, Reasonable Efforts, Concurrent Permanency Planning.** Sections 7 and 10 rewrite G.S. 7B-507 and -901 to repeal the language regarding reunification efforts from G.S. 7B-507 and add language regarding reunification efforts to G.S. 7B-901. Findings regarding reunification and reasonable efforts start at disposition. Reunification efforts are not required if the court makes findings of any factor set forth in the amended G.S. 7B-901(c)(1)-(3). Section 14 creates G.S. 7B-906.2, which requires the court to adopt one or more concurrent permanent plans that are in the best interests of the child. Although "one or more" is stated in subsection (a), G.S. 7B-906.2(b) and (c) require the court to identify a primary and secondary permanent plan (at least two plans). One of those plans must be reunification unless the court finds reunification was never required (see G.S. 7B-901(c)) or makes written findings that reunification efforts clearly would be unsuccessful or inconsistent with the child's health and safety. Section 16 amends G.S. 7B-1001(a)(5) to allow an appeal of an order that eliminates reunification as a permanent plan. G.S. 7B-906.2 requires the court to order the department to make efforts toward finalizing the concurrent permanency plans and may specify efforts that are reasonable. The court must make several different findings required by G.S. 7B-906.2, including whether the reunification efforts made by the department for each of the concurrent plans were reasonable to timely achieve permanence for the child, whether the parent is participating in and cooperating with the plan, making adequate progress within a reasonable period of time, and making him/herself available to the court, department, and child's GAL, and if the child is 14 or older, findings required by G.S. 7B-912. Section 13 adds to G.S. 7B-906.1(g) that at the conclusion of each permanency planning hearing, "the judge" must inform the parent, guardian, or custodian that failure or refusal to cooperate with the plan may result in an order that reunification efforts may cease.

- **Children 14 and older.** Section 15 creates G.S. 7B-912, which addresses children 14 and older. At every permanency planning hearing where the child is 14 or older and in a department's custody, the court must inquire about and make findings for each of the three statutory criteria that addresses a teen's transition to adulthood. At least 90 days before a teen turns 18, the court must inquire as to whether that teen received copies of certain documents (i.e, birth certificate, social security and health insurance cards, medical records, etc.) and identify an individual to assist the teen in obtaining those documents before the teen turns 18 if the documents have not been provided.

- **Another Planned Permanent Living Arrangement (APPLA)**. Section 15 creates G.S. 7B-912, and subsections (c) and (d) address APPLA for a teen who is 16 or 17 years old.

APPLA may become a 16 or 17 year old's primary permanent plan if the court finds each of the factors enumerated at G.S. 7B-912(c)(1)-(4): the teen's age, that the department made diligent efforts to place the teen permanently with a parent or in a guardianship or adoptive placement, compelling reasons exist that it is not in the teen's best interest to be placed permanently with a parent or in a guardianship or adoptive placement, and APPLA is the best permanent plan. The court must also question the teen and make written findings of the teen's desired permanent outcome.

S.L. 2015-135 (S423): Foster Care Family Act. Parts II and IV become effective on October 1, 2015 and are made to comply with changes to federal law made by the "Preventing Sex Trafficking and Strengthening Families Act" (P.L. 113-183)

- **Reasonable and Prudent Parenting Standard**. Part II, Section 2.1 creates G.S. 131D-10.2A, which creates the "reasonable and prudent parent standard" to be used for foster children. Section 2.5 creates G.S. 7B-903.1, which applies the reasonable and prudent parental standard when deciding if a child will participate in "normal childhood activities" to G.S. Chapter 7B. The standard considers the child's health, safety, best interest, and emotional and developmental growth, when deciding if a child will participate in extracurricular, enrichment, or social activities. It must be used by the department, foster parent, and/or child caring institution. Unless there is a court order to the contrary, a foster child's caregiver may allow a child to engage in "normal
childhood activities," such as a sleepover outside of the caregiver's residence for periods of 24 to 72 hours, without first obtaining court or department approval. A caregiver is not liable for a child's injuries that result from the caregiver deciding in accordance with the standard unless those injuries were caused by gross negligence, intentional wrongdoing, willful and wonton misconduct, or operation of a motor vehicle. A caregiver may be liable for an act or omission of the child if the caregiver failed to act in accordance with this standard.

- **Liability Insurance for Foster Parents.** Effective July 2 ,2015, Part III adds G.S. 58-36-44, which requires the Rate Bureau to develop an optional liability insurance policy for licensed foster parents for acts or omissions of the foster parent to be filed with the Commission for approval no later than May 1, 2016.

- **Driving Privileges.** Part IV, Section 4.2 amends G.S. 20-a(i) to allow a teen in the legal custody of a department to have an application for a driver's permit or license be signed by the teen and the teen's GAL, county department director or

designee, or the court. Section 4.1 creates G.S. 48A-4, which allows a 16 or 17 year old who is in the legal custody of a county department to contract for his or her own car insurance, with the consent of the court. The teen is responsible for payment of the premium and any damages caused by the teen's negligent operation of the vehicle. Section 4.3 adds subsection (a2) to G.S. 20-309, which allows a foster parent to exclude from endorsement of his or her insurance a foster child residing the household upon proof of the foster youth's own insurance.

- **Notice to Relatives** (also included in S.L. 2015-136). Part II, Sections 2.2, 2.3, and 2.4 amend G.S. 7B-505(b), -800.1(a)(4), and -901 requiring the court to inquire and order the department to make diligent efforts to notify the child's relatives and other persons with legal custody of the child's siblings that the child is in nonsecure custody and to determine if these persons are a resource for placement and/or support of the child.

- **Children 14 and older** (also included in S.L. 2015-136). Part II, Section 2.6 creates G.S. 7B-912, which addresses children 14 and older. At every permanency planning hearing where the child is 14 or older and in a department's custody, the court must inquire about and make findings for each of the three statutory criteria that addresses a teen's transition to adulthood. At least 90 days before a teen turns 18, the court must inquire as to whether that teen received copies of certain documents (i.e, birth certificate, social security and health insurance cards, medical records, etc.) and identify an individual to assist the teen in obtaining those documents before the teen turns 18 if the documents have not been provided. If a teen is 16 or 17 years old, Another Planned Permanent Living Arrangement (APPLA) may be ordered if the court finds each of the criteria set forth at G.S. 7B-912(c)(1)-(4) and (d). The court is required to question the teen and include written findings of the teen's desired permanent outcome.

S.L. 2015-241 (H97): Appropriations Act of 2015. Subpart XII Part C addresses the Department of Health and Human Services Division of Social Services.

- **Extends Foster Care to Age 21**. Effective January 1, 2017, Sections 12.C.9.(a), (c), (d), (e), (f), (g), & (h), found at pages 153-156 of the pdf version, amend various statutes to extend foster care for a youth up to age 21 (from 18). G.S. 108A-48 is amended to authorize foster care services and benefits to continue for a youth up to age 21 if the young adult meets one of five designated criteria: 1) completing high school or its equivalent, 2) enrolled in a postsecondary or vocational program, 3) participating in a program or activity designed to promote employment, 4) works at least 80 hours a

month, or 5) has a medical condition or disability that prevents him or her from completing the educational or employment requirements. The young adult may live in a collage dormitory or other semi-supervised housing arranged for by the county department. The young adult will receive monthly supervision. G.S. 131D-10.2B is created to allow a youth who ages out of foster care at 18 years old to opt in for foster care services until age 21, even if the youth initially opted out of extended foster care services. G.S. 7B-910.1 is added to require the court to review the voluntary placement agreement entered into by the young adult and county department within 90 days of the execution of the agreement. Additional hearings may be requested by the young adult or county department. The young adult will not be represented by a GAL. G.S. 7B-401.1 is amended to add subsection (i), a young adult in foster care, in the list of parties to an abuse, neglect, and dependency proceeding. G.S. 108A-49.1 is amended to reflect foster care payments may extend up to age 21.

- **Adoption Assistance Payments Extended to Age 21**. Effective January 1, 2017, Section 12.C.9.(b), found at page 154 of the pdf version, amends G.S. 180A-49 by adding subsection (e), which authorizes adoption assistance payments up to age 21 if the teen was adopted at 16 or 17 years old.

- **Guardianship Assistance Payments (GAP) Extended to Age 21**. Section 12C.4, found at page 150 of the pdf version, allows the Division of Social Services to provide for GAP payments up to young adult's 21st birthday if the young adult opted in to extended foster care. The Social Services Board must adopt Rules to implement this program, including defining "legal guardian" for a young adult in foster care.

- **Development of Plan to Extend Foster Care.** Sections 12.C.9.(i), found at page 156 of the pdf version, requires the Department of Health and Human Services to develop a plan to expand foster care services for youth choosing to continue to receive such services until their 21st birthday. The plan must be reported to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division by March 1, 2016 and on the plan's implementation by March 1, 2017.

S.L. 2015-181 (H383): Clarify Statutory Scheme for Sex Offenses. Effective December 1, 2015 for criminal offenses committed on or after that date, this law renumbers and renames rape and sexual offense statutes. There are six statutory sexual offenses: G.S. 14-27.23 (statutory rape of a child by an adult), 14-27.24 (first-degree statutory rape), 14-27.25 (statutory rape of person who is 15 years of age or younger), 14.2-7.28 (statutory sexual offense with a child by an adult), 14-27.29 (first-degree statutory sexual offense), and 14-27.30 (statutory sexual offense with a person who is 15 years of age or younger). The new statutory names and numbers are reflected in amendments to various statutes that references these crimes, including but not limited to: G.S. 7B-101(1) definition of abuse and G.S. 7B-401.1(b)(3), 7B-

1103(c), 48-3-609(a)(9), 50-13.1(a) impact on rights of parents convicted of certain crimes when crime resulted in child's conception.

S.L. 2015-123 (578): Transition Abuse and Neglect Investigations in Child Care Facilities to Department of Health and Human Services. Effective January 1, 2016, this law removes investigations of suspected child abuse and neglect that is believed to have occurred in a child care institution from a county department of social services and to the Division of Child Development and Early Education at the NC Department of Health and Human Services (DHHS) and makes changes to both G.S. Chapters 7B and 110. Sections 1 through 5 repeal any language that references child care facilities in G.S. Chapter 7B, including removing from the definition of "caretaker" any person who has responsibility for the care of a child in a child care facility.

- **Reporting Suspected Abuse or Neglect of a Child in Child Care Facility**. Section 8 creates G.S. 110-105.4, which requires any person who has cause to suspect a child has been maltreated or has died in a child care facility to make a report to the NC DHHS (and not the county department). The report should include the name and address of the child care facility, the name and age of the child, the names of the child's parents, guardians, or caretakers, the child's present whereabouts, and the nature and extent of the child's injuries or conditions caused by the maltreatment. The report may be anonymous. If sexual abuse is alleged or discovered during the assessment, NC DHHS must notify the State Bureau of Investigations (SBI). NC DHHS must make a report to the county department if it determines a report is required by G.S. 7B-301.

- **Assessment**. Section 8 creates G.S. 110-105.3, which authorizes investigations of child maltreatment in child care facilities to NC DHHS but requires cooperation with local departments of social services, local law enforcement, and medical personnel to ensure reports are properly investigated. NC DHHS must contact local law enforcement to investigate reports meeting the criteria for misdemeanor or felony child abuse. During an investigation, NC DHHS may issue a protection plan and/or immediate corrective action and seek additional administrative remedies. Confidentiality provisions apply with enumerated exceptions. The new G.S. 110-105.6 establishes penalties for child maltreatment.

- **Child Maltreatment Registry**. Section 8 creates G.S. 110-105.5, which requires NC DHHS to establish and maintain a Child Maltreatment Registry (CMR). The CMR will contain the names of caregivers confirmed by NC DHHS to have maltreated a child in the child care facility, after the individual has a right to challenge his or her placement on the registry through an administrative hearing. A licensed or religious-sponsored child care

facility may access the CMR to screen potential applicants. No individual on the CMR may be a caregiver in a licensed or religious-sponsored child care facility. NC DHHS may provide information from the CMR to child placing agencies, foster care providers, and adoption service providers when determining an individual's fitness to care for or adopt a child.

S.L.2015-54 (H293). Various Changes to the Adoption Laws, Effective June 4, 2015.

- **Hague Intercountry Adoption Convention**. Section 1 creates G.S. 48-1-108A, which states that if an adoptee is subject to the Hague Adoption Convention, the Convention controls the adoption.

- **Interstate Jurisdiction Issues**: Section 3 amends G.S. 48-2-100(c) to allow the NC court to assume jurisdiction of an adoption action when another state that was exercising jurisdiction in substantial conformity with the UCCJEA dismisses its action or relinquishes jurisdiction to NC prior to the adoption decree being granted.

- **Pre-Birth Determination of Right to Consent.** Section 4 changes the time periods found at G.S. 48-2-206. A mother may file a special proceeding at any time after approximately 3 months from time of conception (it had been 6 months) to determine if a biological father's consent is required. The father's time to respond is increased to 30 days (from 15) after service.

- **Service by Publication**. Sections 5 and 8 amend G.S. 48-2-401(f) and 48-3-603(a)(7) to require an individual to file a response to a notice of adoption within 40 days from when the notice is first published.

- **Minor Parent**. Section 9 amends G.S. 48-3-605(b) to address how a minor parent who consents to his or her child's adoption may prove his or her identity.

S119, **Technical Corrections.** Ratified September 30, 2015 but not yet signed by the Governor. Section 44 amends G.S. 48-3-605 to add subsection (g), which gives the clerk of superior court, the superior court, and district court jurisdiction to accept voluntary consents for adoption under the Indian Child Welfare Act (ICWA) or the laws of other states, and to determine whether good cause exists to deviate from adoptive placement preferences under ICWA. The new subsection is referenced in G.S. 48-3-702(b) regarding relinquishments.