

Infant Safe Surrender in North Carolina: Significant Changes in 2023

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CONTENTS

Why Have an Infant Safe Surrender Law? ... 3	What Are the Rights of the Surrendering Parent? ... 13
Defining Safely Surrendered Infants, Surrendering Parents, and Non-Surrendering Parents ... 4	Confidentiality of Identity ... 13
Safely Surrendered Infant ... 4	Immunity ... 13
Surrendering Parent ... 5	Regaining Custody and Opening a Neglect Case ... 14
Non-Surrendering Parent ... 5	Right to Relinquish ... 15
To Whom May an Infant Be Safely Surrendered? ... 6	When Infant Is Placed with Non-Surrendering Parent ... 15
What Is the Responsibility of the Specified Professional Who Accepts the Safely Surrendered Infant? ... 7	What Are the Rights of the Non-Surrendering Parent? ... 16
Mandatory Action ... 7	Constitutional Right to Care, Custody, and Control of the Infant ... 16
Permissive Action ... 7	Contact by and with DSS ... 17
Immunity ... 8	Placement of the Infant ... 18
What Are the Responsibilities of a County Department of Social Services? ... 8	Possible Abuse, Neglect, or Dependency Case ... 18
New Protocols That Are Different from Responding to Abuse, Neglect, or Dependency ... 8	How Is a Termination of Parental Rights Obtained? ... 19
Immediate Response ... 9	TPR Commencement and Grounds ... 19
Notice by Publication ... 10	Preliminary Hearing under G.S. 7B-1105.1 ... 20
Obtaining a Court Order for Custody ... 11	The TPR Hearing ... 22
Maintaining Confidentiality ... 11	Legal Consequences of the TPR for the Parent ... 23
Addressing the Infant's Name ... 12	Conclusion ... 23

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The law on infant safe surrender, sometimes referred to as *infant safe haven*, allows a parent to intentionally and safely abandon their infant without criminal prosecution. If a parent's abandonment of their infant occurs in the way the law proscribes, then it is not a criminal act or neglect. The infant safe surrender law is designed to prevent infant mortality by giving a parent a safe method for abandoning their infant rather than, for example, leaving the infant in a public bathroom or a dumpster, and ensuring that the infant is immediately cared for and protected until a permanent home is found. It is different from a parent's relinquishment of their child for adoption, where a parent executes a formal document under oath that authorizes a child-placing agency to find an adoptive home for the child. By contrast, the act of a parent safely surrendering their infant is informal.

Beginning with Texas in 1999,¹ all fifty states now have an infant safe surrender law.² The laws in each state vary on who is a safely surrendered infant, who can surrender an infant, and the procedures for responding to a safely surrendered infant. North Carolina enacted its safe surrender law in 2001.³ Until now, the law has primarily existed in two statutes, Chapter 7B, Section 500 and Chapter 14, Section 322.3 of the North Carolina General Statutes (hereinafter G.S.). Since the enactment of these provisions, there have been no significant changes to them until the 2023 legislative session of the North Carolina General Assembly. Effective October 1, 2023, North Carolina's infant safe surrender law is rewritten by Session Law 2023-14, Part VI, which creates Article 5A of G.S. Chapter 7B.⁴

The new article amends several existing statutes and enacts new statutes. However, some of the requirements of the old law remain the same. Portions of the new infant safe surrender law mirror provisions of other state's statutes on infant safe surrender. The amendments to North Carolina's infant safe surrender law address

- who is a safely surrendered infant;
- persons to whom an infant can be safely surrendered;
- the responsibilities of a person to whom an infant is surrendered;
- the process a county department of social services (hereinafter DSS) must follow when an infant is safely surrendered;
- confidentiality;
- the rights of surrendering parents;
- the rights of non-surrendering parents;
- the intersection between a safely surrendered infant and an abuse, neglect, or dependency action; and
- the procedures for termination of parental rights for parents of safely surrendered infants.

This bulletin discusses the laws and statutory changes for infants who are safely surrendered on or after October 1, 2023.

1. 1999 Tex. Sess. Law Serv. 1087 (H.B. 3423), *enacting* TEX. FAM. CODE ANN. §§ 262.301 through 262.303 and TEX. PENAL CODE ANN. § 22.041.

2. See Child Welfare Information Gateway, *Infant Safe Haven Laws* (2022), available at <https://www.childwelfare.gov/pubpdfs/safehaven.pdf>.

3. North Carolina Session Law (hereinafter S.L.) 2001-291, *amending* Chapter 7B, Sections 500 (temporary custody) and 1111(a)(7) (abandonment ground for termination of parental rights) of the North Carolina General Statutes (hereinafter G.S.); *adding* G.S. 14-318.2(c) (immunity for criminal prosecution for misdemeanor child abuse) and -318.4(c) (making safe surrender a mitigating factor in sentencing for a conviction of felony child abuse); and *enacting* G.S. 14-322.3 (providing immunity for the crime of abandoning a child to a parent who safely surrenders an infant).

4. G.S. Chapter 7B is often referred to as "the Juvenile Code."

Why Have an Infant Safe Surrender Law?

The new G.S. 7B-520(a) expressly sets out a two-fold purpose of the infant safe surrender law. The first purpose “is to protect newborn infants by providing a safe alternative for a parent who, in a crisis or in desperation, may physically abandon or harm his or her newborn.” This purpose is accomplished by providing a process for a parent who complies with the infant safe surrender law to safely surrender their infant without fear of criminal prosecution.

The exact number of infants who have been safely surrendered in North Carolina is unknown because there has not been a uniformly applied process for reporting safely surrendered infants to the Division of Social Services of the North Carolina Department of Health and Human Services (hereinafter DHHS). The latest figures reported by the Division of Social Services of DHHS reveal that twenty infants were safely surrendered between the beginning of 2007 through the present (October 2023). The reported number of infants safely surrendered in this time frame varied each year, with a high of five in 2020 and zero in 2008, 2011, 2013, 2015, 2016, and 2021. To date, two infants were safely surrendered this year.⁵ Although the total number of reported safely surrendered infants is small, the purpose of the law is great—to prevent infant fatalities.

The second purpose of G.S. 7B-520(a) is “to provide information for the parent regarding the parent’s rights and alternatives.” Under the original infant safe surrender law, there was no such requirement. This second purpose seeks to educate the public, make parents aware of the law, and notify parents who do safely surrender their infant of other options. To fulfill the statute’s second purpose, the Division of Social Services of DHHS is now required to create written user-friendly information that explains infant safe surrender.⁶ The information must be posted on the DHHS website and be in a printable and downloadable format that is accessible to agencies where an individual who can accept a safely surrendered infant is on duty and to any other agency that requests it for dissemination. The information must also be translated into commonly spoken and read languages in North Carolina.

The information created by DHHS must explain the six statutory criteria in G.S. 7B-528(b), including

- who is a safely surrendered infant, surrendering parent, and non-surrendering parent;
- the requirements for how an infant may be safely surrendered;
- the right of the surrendering parent to have their identity remain confidential unless (1) DSS is communicating with (a) the non-surrendering parent, (b) medical providers who are known to have provided treatment to the infant before the surrender, or (c) law enforcement for the purpose of assessing whether the infant is a missing child or (2) a court orders that the surrendering parent’s identity be disclosed;
- the procedures that address the transfer of the infant’s custody to DSS, including
 - the right of the surrendering parent to request their child’s return and the process DSS must employ;
 - the requirement that DSS must identify, locate, contact, and place the infant with the non-surrendering parent if that parent wants custody and there are no concerns that the infant is abused, neglected, or dependent due to circumstances created by the non-surrendering parent;

5. Information provided by the Division of Social Services of the North Carolina Department of Health and Human Services (hereinafter DHHS) to the author on October 6, 2023.

6. G.S. 7B-528.

- the right of either parent to contact DSS about the infant and the process for doing so; and
- when DSS will initiate an action to terminate parental rights;
- that a relevant medical history form⁷ for the infant may assist DSS in obtaining necessary medical services for the infant and facilitate the child’s placement and adoption; and
- an explanation of services that may be available to the surrendering parent and infant with contact information for the DSS in the county where the infant is surrendered.

Defining Safely Surrendered Infants, Surrendering Parents, and Non-Surrendering Parents

Safely Surrendered Infant

In North Carolina, a “safely surrendered infant” is now defined at G.S. 7B-101(19a) as

an infant reasonably believed to be not more than 30 days of age and without signs of abuse or neglect who is voluntarily delivered to an individual in accordance with Article 5A of this Subchapter⁸ by the infant’s parent who does not express an intent to return for the infant. In determining whether there are signs of neglect, the act of surrendering the infant, in and of itself, does not constitute neglect.

Prior to October 1, 2023, North Carolina statutes did not define the term *safely surrendered infant*. However, the statute that allowed for an infant to be safely surrendered limited the age of a covered infant to less than 7 days old.⁹ The new law expands this definition and covers infants who are reasonably believed to be not more than 30 days old. If an infant presented for surrender is reasonably believed to be more than 30 days old, that infant is not a safely surrendered infant under law, and the procedures for a safely surrendered infant do not apply.¹⁰ Instead, the surrendering of an infant older than 30 days should prompt a mandatory neglected and/or dependent juvenile report to a county DSS.¹¹

To be a safely surrendered infant, an infant must not show signs of abuse or neglect. The act of safely surrendering an infant does not in and of itself amount to neglect, and as a result, the definition of a “neglected juvenile” used throughout G.S. Chapter 7B that includes a parent’s

7. G.S. 7B-528(c) requires the Division of Social Services of DHHS to create a printable and downloadable medical history form with instructions on how to complete the form and where to return it. G.S. 7B-528(b)(5) specifies that completing the medical history form is optional.

8. The subchapter referred to is Subchapter I of G.S. Chapter 7B, which governs abuse, neglect, dependency, and termination of parental rights actions.

9. See G.S. 7B-500(b), as enacted by S.L. 2001-291 prior to amendments made effective October 1, 2023, by S.L. 2023-14.

10. G.S. 7B-520(b)(1); 7B-525(b)(1).

11. G.S. 7B-301 requires any person or institution who has cause to suspect that a juvenile is abused, neglected, or dependent to make a report to the county child welfare agency, typically a department of social services, where the juvenile resides or is found. See G.S. 7B-101(9) (definition of “dependent juvenile”) and -101(15) (definition of “neglected juvenile”).

abandonment of their child explicitly excludes a safely surrendered infant.¹² If an infant presented for surrender is reasonably believed to be not more than 30 days old but there are indications that the infant is abused or neglected, that infant is not a safely surrendered infant, and the procedures for a safely surrendered infant do not apply.¹³ Instead, a mandatory report to the county DSS should be made.¹⁴

The authority to safely surrender an infant is limited to the infant's parents. If there is reason to believe that a person attempting to surrender an infant is not the infant's parent, that infant is not a safely surrendered infant, and the procedures for a safely surrendered infant do not apply.¹⁵ This circumstance may require a report to DSS if the parent is not available to receive their infant or to identify an appropriate person who is.

Surrendering Parent

The new infant safe surrender law includes a definition of "surrendering parent" at G.S. 7B-101(21a) that incorporates the actions of a surrendering parent that existed under the prior version of the law. A surrendering parent is "[a] parent who physically surrenders the parent's infant pursuant to Article 5A of this Subchapter." The parent must act voluntarily and must not "express an intent to return for the infant."¹⁶ In other words, the parent is voluntarily abandoning their infant. The North Carolina appellate courts have defined abandonment as conduct by a parent that demonstrates "wil[l]ful neglect and refusal to perform the natural and legal obligations of parental care and support."¹⁷ The parent's conduct "manifests a willful determination to forego all parental duties and relinquish all parental claims to the child."¹⁸ If the parent expresses their intent to return for the infant, the infant is not a safely surrendered infant, and the procedures for a safely surrendered infant do not apply.¹⁹ If a parent decides to surrender their infant but at the same time expresses an intent to return for the infant, a report to a county DSS is required if there is cause to suspect the infant's abuse, neglect, or dependency.²⁰

Non-Surrendering Parent

A "non-surrendering parent" is defined at G.S. 7B-101(15b) as "[a] parent of a safely surrendered infant other than the parent who physically surrenders the parent's infant pursuant to Article 5A of this Subchapter." Non-surrendering parents have rights. The acknowledgment and recognition of a non-surrendering parent and their rights in the infant safe surrender law provides clarity

12. Effective October 1, 2023, S.L. 2023-14, section 6.2(b) amends G.S. 7B-101(15) (definition of "neglected juvenile").

13. G.S. 7B-520(b)(2); 7B-525(b)(1).

14. See statutes cited *supra* note 11. See also G.S. 7B-101(1) (definition of "abused juveniles").

15. G.S. 7B-520(b)(3).

16. See G.S. 7B-101(19a) (definition of "safely surrendered infant"); 7B-521 (referring to a parent who does not express an intent to return for the infant).

17. *Pratt v. Bishop*, 257 N.C. 486, 501 (1962) (quoted by *In re Z.J.W.*, 376 N.C. 760, 779 (2021), *In re K.C.T.*, 375 N.C. 592, 600 (2020), and *In re N.D.A.*, 373 N.C. 71, 81 (2019)).

18. *Z.J.W.*, 376 N.C. at 776 (quoting *In re Young*, 346 N.C. 244, 251 (1997), which quoted *In re Adoption of Searle*, 82 N.C. App. 273, 275 (1986)).

19. G.S. 7B-520(b)(4).

20. See statutes cited *supra* notes 11 and 14.

on how DSS should treat the non-surrendering parent, which is something that is not addressed when one parent executes a formal relinquishment for a child's adoption and the other parent does not.²¹

To Whom May an Infant Be Safely Surrendered?

Prior to October 1, 2023, in addition to specified professionals, “any adult” could receive a safely surrendered infant.²² This is no longer the case. Under the prior and the current version (G.S. 7B-521) of the infant safe surrender law, three categories of persons who may accept a safely surrendered infant are identified:

- a health care provider who is on duty or at a hospital, local or district health department, or nonprofit community health center;²³
- a first responder, including a law enforcement officer, certified emergency medical services worker,²⁴ or firefighter; or
- a DSS worker who is on duty or at a local DSS office.²⁵

Although any person may assist a parent in safely surrendering an infant (e.g., by explaining the law or accompanying the parent when they safely surrender their infant), only a specified professional may accept an infant for a safe surrender. If an infant is delivered to someone other than one of the professionals identified in G.S. 7B-521, they are not a safely surrendered infant, and the procedures for a safely surrendered infant do not apply.

North Carolina's infant safe surrender law has always required and continues to require that an infant be surrendered to a person. The infant cannot be left at a building's front door, in a hallway, or in a parking lot, regardless of the nature of the location where the infant was abandoned (e.g., a hospital or police department). For example, an infant is safely surrendered by a parent when the parent gives the infant to a firefighter at the fire station but is not safely surrendered when the infant is left outside the door of the fire station. A minority of states

21. See *In re E.B.*, 375 N.C. 310 (2020) (discussing non-relinquishing parent's constitutional rights to his child); see also Sara DePasquale, *The Rights of the Parent Who Does Not Execute a Relinquishment*, ON THE CIVIL SIDE: A UNC SCH. OF GOV'T BLOG (Dec. 8, 2022), <https://civil.sog.unc.edu/the-rights-of-the-parent-who-does-not-execute-a-relinquishment/>.

22. See G.S. 7B-500(d), as enacted by S.L. 2001-291 prior to amendments made effective October 1, 2023, by S.L. 2023-14.

23. See G.S. 90-21.11(1) (definition of “health care provider” includes (1) any person who is licensed, registered, or certified to practice in medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, the rendering of assistance to a physician, dental hygiene, psychiatry, or psychology; (2) a hospital, licensed nursing home, or licensed adult care home; or (3) any person who is legally responsible for the negligence of, or who is acting under the direction or supervision of, (a) one of the aforementioned persons or (b) a hospital, licensed nursing home, or licensed adult care home).

24. See G.S. 131E-155 (defining emergency medical services and workers).

25. G.S. 7B-521; see G.S. 7B-500(b), as enacted by S.L. 2001-291 prior to amendments made effective October 1, 2023, by S.L. 2023-14.

have enacted laws that allow for infants to be safely surrendered in climate-controlled and continuously monitored “newborn safety devices” or “baby boxes” that are located at safe-haven sites.²⁶ These are not authorized options for infant safe surrender in North Carolina.

What Is the Responsibility of the Specified Professional Who Accepts the Safely Surrendered Infant?

The duties of an individual authorized to accept a safely surrendered infant under G.S. 7B-521 and who accepts such an infant are explained in the newly enacted G.S. 7B-522 and -524. There are both mandatory and discretionary components to the new law, some of which are the same as in the previous version of the infant safe surrender law.

Mandatory Action

Under the prior version of the law and under the new G.S. 7B-522, an authorized individual accepting a safely surrendered infant must take any act that is necessary to protect the physical health and well-being of the infant. The individual must also immediately notify the DSS in the county where the infant was surrendered. There is no longer a provision that allows the individual to notify law enforcement.²⁷

Under G.S. 7B-524, the individual accepting the safely surrendered infant must keep the surrendering parent’s identity confidential unless one of two exceptions applies: (1) the parent consents to the release of their identity or (2) the individual receiving the safely surrendering infant notifies DSS of the surrender and informs DSS of any information the individual knows about the infant, the infant’s parents (including their identity), any medical history, and the circumstances of the surrender. These confidentiality provisions are new; they did not exist under prior law. Anecdotally, there have been instances where a child is born at a hospital and is left by their parent as a safely surrendered infant. In that circumstance, under both G.S. 7B-522 and -524(b), the hospital must notify DSS that the infant was safely surrendered and disclose the parents’ identities (if known), the medical history, and the circumstances of the surrender.

Permissive Action

An authorized individual accepting a safely surrendered infant may (but is not required to) inquire about the parents’ identities and marital status, the infant’s date of birth, and any relevant medical history.²⁸ The inquiry about the parents’ identities and medical history was permitted under the prior version of the law. Now, however, DHHS must create a medical history form, with instructions, that may be provided to the parent, who can complete the form at the time of the surrender or later and return it to DSS.²⁹ The individual accepting the safely surrendered infant may also inform the surrendering parent that this information may help to

26. As of 2021, Arkansas, Indiana, Kentucky, Louisiana, Maine, Missouri, Ohio, Oklahoma, and Pennsylvania allowed for a safely surrendered infant to be placed in a newborn safety device for the surrender. See Child Welfare Information Gateway, *supra* note 2.

27. G.S. 7B-500(c), as enacted by S.L. 2001-291 prior to amendments made effective October 1, 2023, by S.L. 2023-14, authorized an individual who took a safely surrendered infant into their temporary custody to immediately notify a department of social services or local law enforcement.

28. G.S. 7B-522.

29. See G.S. 7B-528(c) (creation of medical history form) and the discussion *supra* note 7.

facilitate the infant's adoption. As with the prior version of the law, if the individual requests this information from the parent, they must notify the parent that there is no requirement to provide the information. Finally, the individual who accepts the safely surrendered infant must, if practical, provide the surrendering parent with the written information created by DHHS that explains the safe surrender process, which includes the surrendering parent's rights.³⁰

Obtaining a parent's marital status is relevant because of the implications marital status has on parentage. Under common law, if a mother is married at any time during and including the child's conception through birth, the child is presumed to be the legitimate child of the marriage.³¹ Although legitimation is about the status of the child, a component of legitimation is parentage.³² The marital presumption of the child's legitimation may be rebutted by clear, cogent, and convincing evidence,³³ but until a court concludes that the mother's spouse is not the child's parent, that spouse is legally recognized as a parent. That legal parent is a non-surrendering parent and impacts the response by a county DSS when an infant is safely surrendered.

Immunity

Like its predecessor, the new version of the infant safe surrender law provides immunity to an individual who receives a safely surrendered infant. So long as this individual acts in good faith and does not engage in gross negligence, wanton conduct, or intentional wrongdoing, they are immune from any civil or criminal liability that may result from an omission or action they took under the provisions of the safe surrender law.³⁴

What Are the Responsibilities of a County Department of Social Services?

New Protocols That Are Different from Responding to Abuse, Neglect, or Dependency

Previously, North Carolina's infant safe surrender law did not specify a process that a county DSS was required to take. Instead, protocols for how to address an infant safe surrender were created by DHHS in its *North Carolina Child Welfare Manual* (hereinafter *Child Welfare Manual*).³⁵ Under DHHS policy, a case involving a safely surrendered infant was treated as a report of a dependent juvenile. Because the infant was abandoned, DSS followed the laws that apply to an abandoned juvenile. Those abandonment laws require DSS to immediately initiate an assessment to determine whether the child is abused, neglected, or dependent; assume temporary custody of the child; request that law enforcement investigate whether the juvenile is a missing child; and

30. See the section above entitled "Why Have an Infant Safe Surrender Law?"

31. See, e.g., *Eubanks v. Eubanks*, 273 N.C. 189, 197 (1968); *In re Legitimation of Locklear*, 314 N.C. 412, 419 (1985).

32. See, e.g., *In re Papathanassiou*, 195 N.C. App. 278, 281, *review denied*, 363 N.C. 374 (2009) (the sole question in a legitimation proceeding under G.S. 49-10 and -12.1 is whether the petitioner, who is a putative father, is the biological father of the child).

33. *Id.*; see G.S. 49-12.1 (legitimation proceeding when mother married).

34. G.S. 7B-523. The same immunity provisions existed in the former G.S. 7B-500(e).

35. The Division of Social Services of DHHS is responsible for creating and revising the *North Carolina Child Welfare Manual* (hereinafter *Child Welfare Manual*), which explains the laws that apply in child welfare cases, policy adopted by the Division of Social Services for the county departments to follow, and best practices for social work in these types of cases. The *Child Welfare Manual* is available at <https://policies.ncdhhs.gov/divisional/social-services/child-welfare/policy-manuals/>. Infant safe surrender is discussed in the "Assessment" and "Cross Function" sections of the *Child Welfare Manual*.

take appropriate action based on the results of that assessment.³⁶ DSS was required to conduct the assessment like any other and to make reasonable efforts to locate the parents, prevent placement, and reunify the family.³⁷ Typically, the assessment resulted in DSS filing a petition alleging that the safely surrendered infant was a dependent juvenile. The case would proceed as any other dependency case, including naming the surrendering parent as a respondent party. Under the new infant safe surrender law, a safely surrendered infant is not a dependent juvenile. DSS must proceed under the protocols established in the new law, which protect the surrendering parent's identity.

Immediate Response

An authorized individual who has received a safely surrendered infant must notify the DSS in the county where the infant was surrendered.³⁸ DSS should immediately take physical custody of the infant, although the new law does not address how that is done (e.g., within a certain number of hours). Under the new G.S. 7B-525(a), the director of DSS obtains the surrendering parent's rights to legal and physical custody of the infant by virtue of the infant's surrender. The transfer of custody occurs without a court order since the act of surrendering the infant triggers the transfer of the child's custody to DSS. Eventually, DSS may obtain a court order, but it must first follow new statutory protocols.

Under the new G.S. 7B-525(b), the DSS director, or their authorized representative,³⁹ must act expeditiously to complete the following actions:

- have a health care provider determine with a reasonable degree of medical certainty that the infant is both no more than 30 days old and without signs of abuse or neglect;
- ask the individual who received the safely surrendered infant whether the surrendering parent received the DHHS information about surrendering parent's rights and document the individual's response;
- notify law enforcement about the surrender and provide it with any necessary information it needs to investigate through state and federal resources, including the North Carolina Center for Missing Persons, whether the infant is a missing child;
- contact the non-surrendering parent (if their identity is known) to inform them that their child was safely surrendered;
- respond to any inquiry a non-surrendering parent makes about whether their child was safely surrendered;
- seek genetic-marker testing of a parent who is seeking custody of the infant, regardless of whether the parent is the surrendering or non-surrendering parent, when their parentage is uncertain; and
- initiate a termination of parental rights action after sixty days from the date on which the infant was safely surrendered if neither parent seeks custody of the infant.

36. See G.S. 7B-302(a) (addressing assessment of abandoned juvenile) and (c) and (d) (addressing DSS response to findings made in assessment).

37. Child Welfare Manual 66, "Assessments" (August 2023_2).

38. G.S. 7B-522.

39. See G.S. 7B-101(10) (definition of "director"); 108A-14 (duties of director; authorizes delegation of duties to staff).

Notice by Publication

In safe surrender cases, rather than file a petition alleging that the infant is a dependent juvenile, DSS must now follow the procedures of the new G.S. 7B-526. Under that law, within fourteen days of the surrender, DSS must provide notice by publication that it has received a safely surrendered infant who is now in its custody. The notice must be published in a newspaper that is qualified for legal advertising⁴⁰ and is in the county where the infant was surrendered. If DSS has reason to believe that the surrendering or non-surrendering parent resides in a different county, notice by publication must also be made in a qualifying newspaper in the other county or counties. The notice must be published once a week for three consecutive weeks. After the notice by publication is complete, an employee of the newspaper executes an affidavit under oath that the paper is a qualified newspaper and that the notice was published.⁴¹

The notice by publication must include the following information specified in G.S. 7B-526(b) that addresses not only the infant but the rights of the surrendering and non-surrendering parent:

1. a statement that the infant was surrendered by the mother or father, who did not express an intent to return for the infant, and a listing of the profession of the person accepting the safely surrendered infant, the name and location of the facility where the surrender occurred, and the date of the surrender;
2. a description of the infant's physical characteristics at the time of the surrender;
3. a statement that the infant is in the legal and physical custody of the county DSS where the infant was surrendered;
4. an explanation (1) that the surrendering parent has the right to request their child's return to their custody by contacting the DSS before it initiates a termination of parental rights action and (2) (a) that such a request will result in DSS treating the infant as a child who has been reported as neglected, (b) that DSS will conduct an assessment, and (c) that the parent will not have a right to keep their identity confidential;
5. a statement that DSS is making efforts to identify, locate, and contact the non-surrendering parent; the non-surrendering parent may contact DSS; that DSS may place the infant with the non-surrendering parent when there is no cause to suspect that the infant is abused, neglected, or dependent because of circumstances created by the non-surrendering parent; and that, upon placement with the non-surrendering parent, DSS will no longer have legal and physical custody of the child;
6. a notification that each parent may contact the DSS in the county where the surrender occurred;
7. an explanation that if, within sixty days of the surrender, neither parent seeks custody of their child from, or executes a relinquishment for adoption to, DSS, DSS will initiate a termination of parental rights action, which will be noticed in the same newspaper as "*In re* Baby Doe"; and
8. information about how to contact DSS about the infant and the parents' rights.

40. See G.S. 1-597 (regulations for newspaper publication of legal notices), which has been incorporated into G.S. 7B-526(b).

41. See G.S. 1-598 (affidavit of publication), which has been incorporated into G.S. 7B-526(b).

These notice requirements are intended to protect the rights of the county DSS, the surrendering parent, and the non-surrendering parent, all of which differ. The requirements also identify the procedures DSS must follow depending upon whether a parent seeks custody of the infant or executes a formal relinquishment for the infant's adoption to the county DSS.

Obtaining a Court Order for Custody

After notice by publication has been completed, DSS may apply *ex parte* to the district court for an order finding that the infant has been safely surrendered and that DSS has legal custody of the infant "for purposes of obtaining a certified copy of the child's birth certificate, a social security number, or federal and State benefits for the minor."⁴² DSS should be prepared to present evidence that the infant was safely surrendered. The order itself does not address the physical custody of the minor but instead is limited to legal custody for the statutory purposes that are identified. Although DSS has the legal and physical custodial rights of the surrendering parent by operation of law under G.S. 7B-525(a), a transfer of the non-surrendering parent's custodial rights does not occur. This may be why the court order is limited.

Maintaining Confidentiality

Unlike the prior laws which did not address confidentiality, the new G.S. 7B-524 requires DSS to keep information about the parent's identity, the circumstances of the infant's safe surrender, and the infant's condition at the time of the surrender confidential, absent a statutory exception. Under state policy when the prior safe surrender law applied, DSS treated a safely surrendered infant as a dependent juvenile and was required to contact the surrendering parent, if their identity was known, to either inquire as to whether the parent was willing to execute a formal relinquishment for the infant's adoption, to work with the parent to prevent placement, or to serve the parent with the dependency petition when it was filed in district court.⁴³ Although information about the dependency case was confidential under the laws that apply to dependency cases,⁴⁴ the surrendering parent's identity was not protected from contact initiated by a county DSS, and the parent was named as a party to the court action. There is now clarity under the new infant safe surrender law about both the surrendering parent's right to the confidentiality of their identity and their involvement in any resulting abuse, neglect, or dependency case.

The new G.S. 7B-524 requires DSS to keep all information concerning the circumstances of an infant's safe surrender and the infant's condition in "strictest confidence." The term "strictest confidence" in this context has the same meaning as it does under the law mandating confidentiality in abuse, neglect, and dependency cases.⁴⁵ There are four statutory exceptions to the confidentiality provisions of G.S. 7B-524.

First, if the infant is not safely surrendered or is the victim of a crime, the confidentiality provisions of G.S. 7B-524 do not apply.⁴⁶ Second, DSS may consult with and share information its director determines is relevant or necessary with (1) a health care provider who has treated the infant before, at the time of, or after the safe surrender; (2) any placement provider for the

42. G.S. 7B-525(a).

43. See Child Welfare Manual 66, "Assessments" (August 2023_2).

44. G.S. 7B-302(a1) (confidentiality of DSS information in an abuse, neglect, or dependency case); 7B-2901(b) (confidentiality of the DSS case record). See G.S. 7B-2901(a) (court records in abuse, neglect, or dependency cases are withheld from public inspection).

45. See G.S. 7B-302(a1).

46. G.S. 7B-524(e).

infant; (3) a court exercising jurisdiction in an adoption proceeding for the infant; and (4) any agency that is required by a court hearing the adoption proceeding for the infant to conduct a preplacement assessment, a report to the court, or its equivalent.⁴⁷ Third, if a termination of parental rights action is initiated, the guardian ad litem that is appointed for the safely surrendered infant may examine and obtain written copies of the DSS record for the infant.⁴⁸ Fourth, a district or superior court judge in North Carolina who is presiding over a civil, criminal, or delinquency action where DSS is not party may order DSS to release the confidential information.⁴⁹ Before such an order is entered, DSS must receive reasonable notice and have an opportunity to be heard on whether the information is relevant and necessary for the trial and is not available from any other source.⁵⁰ If DSS is ordered to release its records on the safe surrender of an infant, the court must conduct an in-camera review of those records prior to their release.⁵¹ This last exception is similar to the requirements for the release of confidential information maintained by a county DSS for an abuse, neglect, or dependency case; however, there are differences. For records related to safe surrender, (1) DSS must receive notice and have an opportunity to be heard before an order is entered mandating the disclosure of the records and (2) the court must conduct an in-camera review of the DSS records, regardless of the type of court action in which the request is made.⁵²

Addressing the Infant's Name

The infant safe surrender law does not address the infant's name or how to refer to the infant. In some cases, the child may have a name, either on their birth certificate or as provided by the surrendering parent at the time of the surrender or, if applicable, when the surrendering parent initiates contact with DSS. In other cases, when DSS has contact with the non-surrendering parent, that parent may name the child. In those situations, the child's name will be known. But there will be cases where the child is without a name and there is no contact with either parent. Ultimately in such circumstances, when the child is adopted, their name will be their adoptive name and a birth certificate with the names of the adoptive parent(s) and child will be issued.⁵³ But in cases where the child has not been given a name, there will be a period where the child will not have a legal name. Questions about the protocol for referring to the child and for obtaining a birth certificate are not answered in the new law. The new law only references a "name" in the publication for a termination of parental rights action, stating that the caption is "*In re* Baby Doe."⁵⁴ Under the old law, the policy in the *Child Welfare Manual* states that DSS should "complete a birth certificate with the name 'Safe County Name Surrender.'"⁵⁵ The legal basis for requiring that particular "name" is unclear. When a safely surrendered infant does not

47. G.S. 7B-524(d)(1).

48. G.S. 7B-524(d)(2). *See* G.S. 7B-601(c) (authority of a guardian ad litem to obtain information); 7B-1108(b) (appointment of a guardian ad litem in a termination of parental rights case; referencing duties in G.S. 7B-601).

49. G.S. 7B-524(d)(3).

50. *Id.*

51. *Id.*

52. *Compare* G.S. 7B-524(d)(3) *with* 7B-302(a1)(3)–(4).

53. G.S. 48-1-105; 48-9-107(a).

54. *See* G.S. 7B-1105.1(e)(3) (requiring caption of termination of parental rights action to be "*In re* Baby Doe").

55. Child Welfare Manual 66, "Assessments" (August 2023_2).

have a birth certificate, DSS may need to obtain a certificate of identification for purposes of securing state or federal benefits for the infant. In that circumstance, DSS may initiate a special proceeding before the clerk of superior court to establish the infant's facts of birth.⁵⁶

What Are the Rights of the Surrendering Parent?

The new G.S. 7B-527 sets forth specific rights granted to the surrendering parents in infant safe surrender cases. Some of those rights, if exercised, impact the response by DSS.

Confidentiality of Identity

A surrendering parent's identity must be kept confidential unless certain statutory exceptions apply. Confidentiality is explicitly addressed in the new G.S. 7B-524. An authorized individual who received a safely surrendered infant and any facility that cared for the infant at the time the infant was taken into temporary custody must keep the surrendering parent's identity confidential (1) unless the surrendering parent consents to the release of their identity or (2) when the individual who received the infant notifies DSS of the safe surrender.

DSS must keep the identity of the surrendering parent in an infant safe surrender case confidential except when (1) it provides notice to local law enforcement so that law enforcement may investigate whether the infant is a missing child,⁵⁷ (2) it has any contact with the non-surrendering parent, or (3) a court in North Carolina orders the disclosure. If DSS determines that an infant is not a safely surrendered infant, which occurs when (1) the infant is more than 30 days old, has signs of abuse or neglect, or is surrendered by someone who is not the infant's parent or (2) during surrender, the parent expressed their intent to return for the infant, confidentiality does not apply. Further, if DSS determines that the infant is a victim of a crime, confidentiality does not apply.

Immunity

Like under prior law, the new infant safe surrender law makes a parent who safely surrenders their infant immune from civil liability and criminal prosecution for (1) abandoning a child and (2) the unlawful surrender of a child so long as the parent has acted in good faith.⁵⁸ However, if a surrendering parent engages in gross negligence, wanton conduct, or intentional wrongdoing, the immunity provisions do not apply.⁵⁹

56. See G.S. 130A-107 (governing proceedings to establish facts of birth and resulting certificate of identification). DSS would initiate the proceeding in the name of the infant/petitioner and seek to be appointed as the infant's G.S. 1A-1, Rule 17 guardian ad litem. For more information, see Meredith Smith, "Proceedings to Establish Facts of Birth," *Special Proceedings: Family* ch. 4, NORTH CAROLINA CLERK OF SUPERIOR COURT MANUAL SERIES (Meredith Smith & Jan S. Simmons eds., UNC School of Government, 2022).

57. See G.S. 7B-525(b)(3) (requiring law enforcement to investigate whether an infant is a missing child).

58. G.S. 7B-527(c); 14-322.3 (immunity from crimes of abandoning a child under G.S. 14-322 and -322.1 and unlawful sale, surrender, or purchase of a minor under G.S. 14-43.14). Note that G.S. 14-322.3, as amended by S.L. 2023-14, is effective for offenses committed on or after December 1, 2023; however, the new G.S. 7B-527(c) is effective for infants surrendered on or after October 1, 2023.

59. G.S. 7B-527(c).

Some crimes, however, involve a parent's conduct but are not concerned with abandonment, meaning the immunity provisions of the new law may or may not apply. Consider, for example, the misdemeanor and felony child abuse statutes, neither of which were amended by the new infant safe surrender law. The misdemeanor child abuse statute provides immunity for a parent who safely surrenders an infant.⁶⁰ The statute on felony child abuse, on the other hand, does not contain an immunity provision but instead refers to an infant safe surrender as a mitigating factor at sentencing.⁶¹ Additionally, both criminal child abuse statutes refer to both a parent who safely surrenders an infant under 7 days of age and to G.S. 14-322.3, the statute providing immunity from criminal prosecution of abandonment for a parent who safely surrenders an infant. Because G.S. 14-322.3, which provides immunity for a safely surrendered infant who is no more than 30 days of age, is incorporated into these two criminal statutes, the immunity provisions for the surrender of an infant no more than 30 days old should apply. Note that felony child abuse requires the infant to have suffered serious bodily injury, serious physical injury, or sexual abuse⁶²—none of which exists with a safely surrendered infant. As such, the act of safely surrendering an infant is not felony child abuse.

Regaining Custody and Opening a Neglect Case

A surrendering parent has the right to contact the county DSS where their infant was surrendered and request that the infant be returned to their custody and care. The request must be made before DSS files a petition to terminate parental rights, which can occur as soon as sixty-one days from the infant's surrender.⁶³ If there is any question of parentage, DSS must arrange for genetic-marker testing of the surrendering parent.⁶⁴

When a surrendering parent seeks to regain custody of their child, DSS is required to treat the case as one in which a report of neglect was made.⁶⁵ The surrendering parent's identity is no longer confidential; however, the confidentiality statute that protects information DSS receives in an abuse, neglect, or dependency case applies.⁶⁶

DSS must follow the procedures for an assessment under G.S. 7B-302. The North Carolina Administrative Code governs DSS assessments, which have the purpose of assessing (1) whether the child's environment meets the child's care and protection needs; (2) the facts of whether abuse, neglect, or dependency exists; (3) the nature or extent of any injury or condition that resulted from the child's abuse, neglect, or dependency; and (4) the risk of harm and need for protection for the child.⁶⁷ As part of its assessment, DSS must conduct a face-to-face interview with the parent and visit the place where the child resides.⁶⁸ DSS may ultimately determine that (1) there is no abuse, neglect, or dependency, in which case the infant should be returned to the surrendering parent's custody, or (2) there is abuse, neglect, or dependency and decide whether

60. G.S. 14-318.2(c).

61. G.S. 14-318.4(c).

62. G.S. 14-318.4.

63. G.S. 7B-527(a) (right to regain custody); 7B-525(b)(7) (refers to termination of parental rights); 7B-1111(a)(7) (ground to terminate parental rights based on infant safe surrender).

64. G.S. 7B-525(b)(6).

65. G.S. 7B-527(a); 7B-525(e).

66. See the section above entitled "Maintaining Confidentiality."

67. Title 10A, Chapter 70, Section .0106(a) of the North Carolina Administrative Code (hereinafter N.C.A.C.).

68. 10A N.C.A.C. 70, §§ .0106(d), (e), (f).

the case should be referred to in-home protective services or whether a petition alleging abuse, neglect, or dependency must be filed in district court.⁶⁹ If a petition is filed in district court, the action will proceed as any other abuse, neglect, or dependency action. The surrendering parent will be named as a respondent in that action.⁷⁰

Right to Relinquish⁷¹

A relinquishment is “the voluntary surrender of a minor to an agency for the purpose of adoption.”⁷² An agency is a public or private entity that is licensed or authorized by law to place minors for adoption and includes a DSS.⁷³ A relinquishment transfers physical and legal custody of a child to an agency that accepts the relinquishment so that it may place the child for adoption.⁷⁴ A relinquishment is signed by a parent and acknowledged under oath by a person with authority to administer oaths or take acknowledgments.⁷⁵ A relinquishment is effective when it is accepted by the agency to whom the child is relinquished.⁷⁶ When a parent executes a relinquishment, they are not entitled to notice of any adoption proceeding for their child and are not a party to the adoption action.⁷⁷ Parental rights are not terminated by a relinquishment.⁷⁸ By executing a relinquishment, the parent is consenting to the child’s adoption, and as a result, a termination of parental rights action involving the relinquishing parent’s rights is unnecessary. The parent’s rights will terminate when there is a final decree of adoption.⁷⁹

A surrendering parent is not precluded from executing a relinquishment to the county DSS that received their infant.⁸⁰ If a surrendering parent contacts the DSS where the infant was surrendered, they may be informed about infant safe surrender information created by DHHS, including their right to execute a relinquishment and avoid the need for an action to terminate their parental rights.⁸¹

When Infant Is Placed with Non-Surrendering Parent

DSS must identify, locate, and contact the non-surrendering parent in infant safe surrender cases. Under certain circumstances, an infant may be placed by DSS with the non-surrendering parent if that parent is identified and located.⁸² Placement with the non-surrendering parent

69. G.S. 7B-302(a), (c), (d) (assessment and response); 10A N.C.A.C. 70, § .0108 (no finding of abuse, neglect, or dependency); 10A N.C.A.C. 70, § .0107(d) (finding of abuse, neglect, or dependency).

70. G.S. 7B-401.1(b), *as amended by* S.L. 2023-14.

71. For information about relinquishments, see Sara DePasquale, *A Guide to Relinquishments and Post-Relinquishment Review Hearings*, ON THE CIVIL SIDE: A UNC SCH. OF GOV’T BLOG (July 22, 2022), <https://civil.sog.unc.edu/a-guide-to-relinquishments-and-post-relinquishment-review-hearings/>.

72. G.S. 48-1-101(15).

73. G.S. 48-1-101(4).

74. G.S. 48-3-705(b).

75. G.S. 48-3-702(a).

76. *See* G.S. 48-3-702(c) (referring to agency’s willingness to accept relinquishment).

77. *See* G.S. 48-1-101(11) (definition of “party”); 48-2-401 (notice of adoption proceeding); 48-3-603(a)(4) (consent not required).

78. G.S. 48-3-705(d).

79. G.S. 48-1-106(c).

80. G.S. 7B-527(b).

81. *See* G.S. 7B-528(b)(4) (referring to G.S. 7B-526(b)(7)). *See also* the section above entitled “Why Have an Infant Safe Surrender Law?”

82. *See* G.S. 7B-525(c).

voids the transfer of the surrendering parent’s custodial rights to DSS.⁸³ Presumably, the surrendering parent’s custodial rights that transferred to DSS revert to the surrendering parent upon placement with the non-surrendering parent. This is because the surrender does not constitute a termination of parental rights. To formally address the custodial rights of each parent, a civil custody action pursuant to G.S. Chapter 50 may need to be commenced.

If the non-surrendering parent seeks to obtain placement and custody of their child and DSS suspects the infant may be abused, neglected, or dependent due to circumstances created by the non-surrendering parent, DSS must treat the case as if a report for abuse, neglect, or dependency was received.⁸⁴ If DSS conducts an assessment of the non-surrendering parent, the surrendering parent is not part of that assessment and will not be included in it.⁸⁵ If DSS substantiates abuse, neglect, or dependency and files a petition alleging such in district court, the surrendering parent will not be a party to the action unless that parent has sought to regain custody or the court has ordered that the surrendering parent be a party to the action.⁸⁶

What Are the Rights of the Non-Surrendering Parent?

The new infant safe surrender law explicitly recognizes the existence of a non-surrendering parent and addresses their rights.

Constitutional Right to Care, Custody, and Control of the Infant

It is well established that parents—and only parents⁸⁷—have a constitutional liberty interest in the care, custody, and control of their children.⁸⁸ As a result, a parent’s constitutional right to care, custody, and control of their child is paramount to the rights of a third-party non-parent (e.g., a relative) who is seeking to assert rights to the child.⁸⁹ However, a parent’s constitutional right is not absolute; the state may intervene when a parent is unfit, has neglected their child, or has acted inconsistently with their paramount constitutional right.⁹⁰

Under North Carolina law, a non-surrendering parent—that is, the person who, in infant safe surrender cases, did not surrender the child to a person authorized to receive the child—may be the mother or the father of the infant.⁹¹ The non-surrendering parent has a paramount constitutional right to care, custody, and control of their child—a right that is superior to the

83. G.S. 7B-525(a), (c). Note that the statute states that the custodial rights of DSS “terminate.” To avoid confusion with a termination of parental rights action, this bulletin uses the terms “void” or “voids.”

84. G.S. 7B-525(d).

85. *Id.*

86. *Id.*; G.S. 7B-401.1(b), *as amended by S.L. 2023-14*.

87. *See Graham v. Jones*, 270 N.C. App. 674 (2020) (holding that grandparents are third parties to the parent-child relationship and do not have rights that are constitutionally protected); *Eakett v. Eakett*, 157 N.C. App. 550, 554 (2003) (stating, in grandparent visitation case, “[t]he grandparent is a third party to the parent-child relationship. Accordingly, the grandparent’s rights to the care, custody and control of the child are not constitutionally protected while the parent’s rights are protected”).

88. *See, e.g., Troxel v. Granville*, 530 U.S. 57 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982); *Price v. Howard*, 346 N.C. 68 (1997); *Petersen v. Rogers*, 337 N.C. 397 (1994).

89. *See, e.g., Troxel*, 530 U.S. 57; *Graham*, 270 N.C. App. 674; *Eakett*, 157 N.C. App. 550.

90. *See, e.g., Troxel*, 530 U.S. 57; *Price*, 346 N.C. 68; *Petersen*, 337 N.C. 397; *In re B.R.W.*, 381 N.C. 61 (2022).

91. *See G.S. 7B-101(15b)* (definition of “non-surrendering parent”).

rights of a county DSS that has received the safely surrendered infant and has the legal and physical custody rights of the surrendering parent only.⁹² However, the non-surrendering parent must assert their rights by not acting inconsistently with their paramount constitutional right, being unfit, or neglecting their child. For a putative father, this means that he must grasp the opportunity to develop a relationship with his child and accept parental responsibilities to assert his constitutional rights to his child.⁹³ In North Carolina, a putative father must also grasp the opportunity to be on notice of the mother's pregnancy when the opportunity to do so exists.⁹⁴

Contact by and with DSS

In recognition of non-surrendering parents' constitutional rights, the new infant safe surrender law requires DSS to contact a known non-surrendering parent in each safe surrender case.⁹⁵ This obligates DSS to make efforts to locate a non-surrendering parent.⁹⁶ Alternatively, if the non-surrendering parent is the one who initiates contact with DSS, DSS must respond to any inquiry about whether the non-surrendering parent's child was safely surrendered.⁹⁷ An inquiry by a non-surrendering parent may be prompted by the notice by publication that DSS is required to complete under G.S. 7B-526. The non-surrendering parent must act quickly and contact DSS before a petition to terminate parental rights is filed with the district court.⁹⁸ Similarly, DSS should not delay in attempting to locate and identify a surrendering parent.⁹⁹ Regardless of whether DSS or the non-surrendering parent initiates contact, DSS may disclose the surrendering parent's identity to the non-surrendering parent.¹⁰⁰

The non-surrendering parent has a right to assert their constitutional rights, including their custodial rights to their child. Alternatively, the non-surrendering parent may execute a relinquishment to DSS for their child's adoption should they decide to do so.¹⁰¹

92. See G.S. 7B-525(a) (referring to surrendering parent's rights); see also *In re E.B.*, 375 N.C. 310, 315 (2020) (stating "[w]e begin by noting that DSS's and the trial court's actions repeatedly infringed upon respondent's constitutional parental rights" in case involving the failure to allow father to have custody of his child after child's mother executed a relinquishment).

93. *Lehr v. Robertson*, 463 U.S. 248 (1983); *Adams v. Tessener*, 354 N.C. 57 (2001).

94. *In re S.D.W.*, 367 N.C. 386 (2014) (holding that a putative father did not fall in the class of fathers who may claim a liberty interest in developing a relationship with a child; concluding that even though the mother hid the child's birth from the father, he was passive in discovering whether she may have become pregnant with his child despite ample evidence that it was possible).

95. G.S. 7B-525(b)(4), (c).

96. See G.S. 7B-525(c); 7B-526(b)(5).

97. G.S. 7B-525(b)(5).

98. G.S. 7B-526(b)(4) and (7); see G.S. 7B-1111(a)(7) (ground to terminate parental rights based on an infant safe surrender).

99. See G.S. 7B-526(b)(5) (at time of publication, DSS is making efforts to identify, locate, and contact non-surrendering parent).

100. G.S. 7B-524(c).

101. G.S. 7B-526(b)(7).

Placement of the Infant

When a non-surrendering parent asserts their rights to their child, DSS must place the safely surrendered infant with the non-surrendering parent when certain statutory criteria exist (discussed below).¹⁰² When the infant is placed with the non-surrendering parent, the custodial rights DSS obtained from the surrendering parent by virtue of the safe surrender become void.¹⁰³

Before an infant can be placed with a non-surrendering parent, three criteria must exist. First, DSS must ensure that the non-surrendering parent is, in fact, the safely surrendered infant's parent. This may require genetic-marker testing.¹⁰⁴ There is a rebuttable presumption of parentage when (1) a child is legitimated through a non-surrendering parent's marriage to a surrendering parent or (2) results of genetic-marker testing arranged by DSS show that the probability of parentage is at least 97 percent (97%).¹⁰⁵ Second, the non-surrendering parent must assert their rights to their child.¹⁰⁶ Third, DSS must not have cause to suspect that, due to circumstances created by the non-surrendering parent, the infant is abused, neglected, or dependent.¹⁰⁷ When all three criteria are satisfied, DSS should not delay in placing the child with the non-surrendering parent. When it makes this placement, DSS does not initiate court action to address custody of the child.¹⁰⁸

When a non-surrendering parent obtains custody of their child, the infant safe surrender law does not contemplate custody between the surrendering and non-surrendering parent. The non-surrendering parent with placement of their child may seek a civil custody order pursuant to G.S. Chapter 50 to address the custodial rights of the parents. The non-surrendering parent of the infant may also seek to terminate the parental rights of the surrendering parent if grounds exist to do so.¹⁰⁹

Possible Abuse, Neglect, or Dependency Case

When DSS has cause to suspect that a safely surrendered infant has been abused, neglected, or dependent because of circumstances created by the known non-surrendering parent, DSS must follow the procedures that apply when a report of abuse, neglect, or dependency is made.¹¹⁰ DSS should not treat every case of a non-surrendering parent seeking to assert their paramount constitutional rights to their child as an abused, neglected, or dependent juvenile case. This is because DSS's unfamiliarity with a parent is not included in the definitions for an abused, neglected, or dependent juvenile.¹¹¹

If DSS determines that (1) there is no abuse, neglect, or dependency or (2) there is abuse, neglect, or dependency but court action is not needed, the infant should be immediately placed with the non-surrendering parent.¹¹² If DSS finds that there is abuse, neglect, or dependency and a petition is

102. G.S. 7B-525(c); 7B-526(b)(5).

103. G.S. 7B-525(c); 7B-526(b)(5); *see* G.S. 7B-525(a) (transfer of surrendering parent's custodial rights).

104. G.S. 7B-525(b)(6).

105. G.S. 7B-525(c)(1); *see* G.S. 7B-525(b)(6) (referring to genetic-marker testing).

106. G.S. 7B-525(c)(2).

107. G.S. 7B-525(c)(3); 7B-526(b)(5).

108. *See In re E.B.*, 375 N.C. 310 (2020) (discussing non-relinquishing parent's constitutional rights to his child and court and DSS interference with that parent's constitutional rights).

109. *See* G.S. 7B-1103(a)(1) (standing to initiate termination of parental rights (TPR) action); 7B-1111(a) (grounds for TPR).

110. G.S. 7B-525(d).

111. *See* G.S. 7B-101(1) (definition of "abused juveniles"), (9) (definition of "dependent juvenile"), and (15) (definition of "neglected juvenile").

112. *See In re E.B.*

filed in district court, the non-surrendering parent is the only named respondent parent, unless the court orders that the surrendering parent be made a party or the surrendering parent seeks to regain custody of the safely surrendered infant.¹¹³ Other than the exclusion of the surrendering parent from the court action, the case will proceed as any other abuse, neglect, or dependency action.

How Is a Termination of Parental Rights Obtained?

When a surrendering parent in an infant safe surrender case is not seeking to regain custody of the infant and the infant is not being placed with the non-surrendering parent, DSS will treat the case as an adoption case. Before a final decree of adoption can be entered when DSS has placed a child in an adoptive home, the biological parents must have either consented to the adoption, executed a relinquishment to DSS, or had their parental rights terminated by court order.¹¹⁴ A termination of parental rights (TPR) completely and permanently severs the parent-child relationship, such that the parent no longer has rights to the child.¹¹⁵

TPR Commencement and Grounds

In infant safe surrender cases, DSS has the surrendering parent's rights to legal and physical custody of the infant and, as result, has standing to initiate a termination of parental rights action.¹¹⁶ The title of the action is "*In re Baby Doe*."¹¹⁷ Under both the prior and the current version of the law, the legal grounds for terminating parental rights specifically address a safely surrendered infant.

Under G.S. 7B-1111(a)(7), the parent's rights may be terminated when ". . . the parent has voluntarily abandoned an infant as a safely surrendered infant pursuant to Article 5A of this Subchapter for at least 60 consecutive days immediately preceding the filing of the [TPR] petition or motion."¹¹⁸ Note that while the TPR ground of abandonment under this provision requires a finding of willfulness on the part of parents whose children were not safely surrendered, there is no reference to "willfulness" as applied to parents of safely surrendered infants. The language "voluntarily abandoned" that applies to a safely surrendered infant is the same language that existed prior to the enactment of the new infant safe surrender law. There is no distinction made between, nor reference made to, a surrendering or a non-surrendering parent in G.S. 7B-1111(a)(7); the statute refers to a "parent." For this ground to be proven, a parent must have "voluntarily abandoned" their infant. The word "voluntary" equates to an act of free will or choice,¹¹⁹ which the surrendering parent engages in when they surrender their infant and do not

113. G.S. 7B-525(d); 7B-401.1(b), *as amended by S.L. 2023-14*.

114. *See* G.S. 48-2-207(c); 48-2-402(c); 48-2-603(a)(4).

115. G.S. 7B-1112. Note that the child continues to have inheritance rights from their parents until a final decree of adoption is issued.

116. *See* G.S. 7B-525(a) (transfer of custody); 7B-1103(a)(4) (standing to initiate a termination of parental rights).

117. G.S. 7B-1105.1(e)(3).

118. G.S. 7B-1111(a)(7) was amended by S.L. 2023-14 to refer to the new statutory provisions for a safely surrendered infant; the statute does not distinguish between a surrendering and a non-surrendering parent but instead refers to "the parent"; *see* G.S. 7B-1105.1 (referring to the TPR for "a surrendering or non-surrendering parent").

119. *Voluntary*, MERRIAM-WEBSTER DICTIONARY (online version), <https://www.merriam-webster.com/dictionary/voluntary>.

seek to regain custody. As applied to a non-surrendering parent, a court must determine whether the non-surrendering parent's inaction constitutes voluntary abandonment. In interpreting this TPR ground, a court should consider the purpose of the infant safe surrender law, read the law holistically, and give meaning to the statutory language so that it is not "rendered useless."¹²⁰

Based on the criteria in G.S. 7B-1111(a)(7), DSS must wait sixty days from the date on which the infant was surrendered before initiating a TPR. The period before DSS files a TPR petition impacts the parents' rights. The surrendering parent must seek to regain custody prior to the filing of the TPR petition.¹²¹ The non-surrendering parent must assert their constitutional right to care, custody, and control of the infant. Although the abandonment of a safely surrendered infant is included as a ground to terminate parental rights, DSS may determine that other grounds are applicable and allege those grounds as well.¹²² However, the neglect ground under G.S. 7B-1111(a)(1) is not available if it is based solely on the infant's safe surrender because the amended definition of "neglected juvenile" explicitly excludes the abandonment of an infant who has been safely surrendered.¹²³ This exclusion is consistent with the desire of the legislature to provide a method for the safe surrender of infants and seems designed to not discourage parents from safely surrendering where appropriate for fear of repercussions, including a court action for a neglected juvenile.

The statutory provisions that address subject matter jurisdiction and the contents of petitions apply to the filing of TPR petitions involving safely surrendered infants. Regarding subject matter jurisdiction, the TPR petition must be filed in the county where the DSS with custody of the infant is located or the county where the infant is found or resides at the time the TPR petition is filed.¹²⁴ The court ruling on the petition must have subject matter jurisdiction under the Uniform Child-Custody Jurisdiction Enforcement Act.¹²⁵ The contents of what must be included in a TPR petition are specified in G.S. 7B-1104. One procedural difference explicitly stated in the new law is that a summons does not issue unless service under Rule 4 of the North Carolina Rules of Civil Procedure is ordered to be completed on either parent at the preliminary hearing conducted under the new G.S. 7B-1105.1.¹²⁶

Preliminary Hearing under G.S. 7B-1105.1

A TPR for a safely surrendered infant requires a preliminary hearing, which is a new procedure governed by G.S. 7B-1105.1. The preliminary hearing for a safely surrendered infant appears to be modeled on the preliminary hearing for an unknown parent under G.S. 7B-1105. The purpose of the preliminary hearing is for the court (1) to ascertain the circumstances of the infant's safe surrender to determine any efforts that must be made to identify and locate either respondent parent and (2) to ensure that appropriate notice for the TPR proceeding is made. The preliminary hearing must be held within ten days of when the TPR petition is filed. If there is no court scheduled in the county during this ten-day period, the preliminary hearing must be conducted at the next term of court in that county. The hearing must be closed to the public unless the

120. *In re B.L.H.*, 376 N.C. 118, 122 (2020); see *In re B.O.A.*, 372 N.C. 372 (2019) (discussing statutory interpretation).

121. G.S. 7B-525(b)(7); 7B-526(b)(4); 7B-527(a).

122. See, e.g., 7B-1111(a)(5) (failure to legitimate or acknowledge paternity of the child).

123. Effective October 1, 2023, S.L. 2023-14, section 6.2(b) amends G.S. 7B-101(15) (definition of "neglected juvenile").

124. G.S. 7B-1101.

125. *Id.* See G.S. Ch. 50A (Uniform Child-Custody Jurisdiction Enforcement Act).

126. See G.S. 7B-1105.1(c), (d), (g).

surrendering parent appears and requests that the hearing be open. The court must enter the order from the preliminary hearing within thirty days of the hearing unless it determines that more time is required for an investigation regarding the identities or location of the parents.

At the hearing, the court must make inquiries to DSS about each of the five statutory factors in G.S. 7B-1105.1(b), which are

- the circumstances of the infant’s safe surrender;
- whether the surrendering parent was provided with information created by DHHS about their rights at the time of the surrender;¹²⁷
- whether DSS made the notice by publication of the infant’s safe surrender (note that the publisher’s affidavit must be filed with the court at this hearing),¹²⁸
- whether either parent made efforts to contact DSS and, if so, the nature of those contacts; and
- whether DSS knows the identities and locations of both parents.

The court must consider the surrendering parent’s rights to confidentiality and to due process and determine whether DSS is required to make diligent efforts to identify or locate the surrendering parent. If the court determines that diligent efforts must be made, the court may specify the types of actions DSS must take. The statute does not specify types of diligent efforts, leaving this to the discretion of the court. Further, the court must determine whether the surrendering parent must be served by Rule 4 of the North Carolina Rules of Civil Procedure or by publication as specified in G.S. 7B-1105.1(e). If the court determines that Rule 4 service is required, it may specify the type of service. Unlike Rule 4 service, service by publication under G.S. 7B-1105.1(e) preserves the confidentiality of the surrendering parent’s identity. The court may consider the purpose of the infant safe surrender law—to allow a parent to abandon their infant without criminal or civil sanctions and to have their identity be confidential—when making its decision about the type of service it is ordering DSS to complete.¹²⁹

At the preliminary hearing, the court also considers service on the non-surrendering parent. A non-surrendering parent does not have a right to the confidentiality of their identity. When DSS knows the identity of the non-surrendering parent, the court must order Rule 4 service on that parent. When the non-surrendering parent’s identity is unknown, service on that parent is made by publication under G.S. 7B-1105.1(e).

When the respondent parents’ identities are unknown or the confidentiality of the surrendering parent’s identity is preserved, service on the parents occurs by publication under G.S. 7B-1105.1(e). The court orders the place(s) of publication and the contents of the publication that would most likely identify the surrendered infant to both parents without identifying the surrendering parent. According to G.S. 7B-1105.1(e), the TPR hearing notice must

- include the court where the TPR action is pending;
- be directed to the mother/father of a male/female infant born on or about a specific date and, if known, the facility, county, city, and state where the infant was born;
- include the docket number and the case title “*In re Baby Doe*”;

127. See the section above entitled “Why Have an Infant Safe Surrender Law?”

128. G.S. 7B-526(c).

129. See, e.g., *In re R.R.N.*, 368 N.C. 167 (2015) (court should consider purpose of Juvenile Code); *In re B.L.H.*, 376 N.C. 118 (2020) (looking at purpose of Juvenile Code; discussing need to read statutes as a whole and construed in *pari materia*).

- state (1) that the infant was surrendered by the mother/father, who did not express an intent to return for their child, and (2) the profession of the person to whom the infant was surrendered, the facility where the surrender occurred, and the date of the surrender;
- describe the infant's physical characteristics at the time of the surrender;
- state that a petition to terminate the respondent's parental rights has been filed and explain the purpose of a TPR hearing;
- provide notice that if a parent is indigent, they are entitled to court-appointed counsel and may contact the court clerk immediately to request that an attorney be appointed for them;
- state the date and time of the pretrial hearing¹³⁰ and inform the respondent parent that they may attend that hearing;
- direct the respondent to file a written answer with the clerk within thirty days from the date stated in the notice; and
- state that if the parent does not timely file an answer and the court determines that TPR grounds exist and the TPR is in the child's best interests, the respondent parent's rights will be terminated.

The TPR hearing notice must (1) be published in a newspaper that is qualified for legal advertising in the counties in which the court ordered publication and (2) be made once a week for three consecutive weeks.¹³¹ The counties in which the notice is to be published include the county where the DSS that received the infant is located and, if known, the county or counties where the surrendering and non-surrendering parents reside. When service is complete, DSS must file with the court an affidavit of the publisher. No summons is issued for a parent served by publication.¹³²

The TPR Hearing

Other than the additional requirements of the preliminary hearing, a TPR action involving a safely surrendered infant follows the same procedures as any other TPR action. The court must hold a pretrial hearing under G.S. 7B-1108.1, which is separate and distinct from the preliminary hearing. A guardian ad litem (GAL) must be appointed for the infant if an answer is filed that denies a material allegation, and a GAL may be appointed in the court's discretion if an answer is not filed.¹³³ DSS, as the petitioner, has the burden to prove that the ground(s) alleged exists by clear and convincing evidence.¹³⁴ The court must determine whether the TPR is in the child's best interests if any alleged ground is proved.¹³⁵ At the adjudicatory hearing, the court must inquire as to whether the parent is present and if they are represented by counsel. If they are present without counsel but desire counsel and are indigent, the court must appoint counsel and continue the hearing for a reasonable period so that appointed counsel can prepare a defense.¹³⁶

130. G.S. 7B-1108.1 requires a pretrial hearing in any TPR action.

131. See G.S. 1-597 (regulations for newspaper publication of legal notices) and -598 (affidavit of publication), which are incorporated into G.S. 7B-1105.1(e).

132. G.S. 7B-1105.1(g).

133. G.S. 7B-1108(b), (c).

134. G.S. 7B-1109(f).

135. G.S. 7B-1110(a)-(c).

136. G.S. 7B-1109(b).

Legal Consequences of the TPR for the Parent

A TPR has collateral legal consequences for a parent whose rights are terminated by court order.¹³⁷ Under G.S. 7B-1111(a)(9), the termination of a parent's rights to one child may be a ground for termination of that parent's rights to another child if that parent lacks the ability or willingness to establish a safe home for the other child. The new infant safe surrender law amends G.S. 7B-1111(a)(9) to protect a parent of a safely surrendered infant by stating that "[t]his ground shall not apply to a parent whose parental rights were terminated as a result of the other child being a safely surrendered infant." This amendment does not reference the TPR being granted solely on the ground of the abandonment of a safely surrendered infant, G.S. 7B-1111(a)(7), which leaves room for interpretation as to whether any ground to terminate a parent's rights to a safely surrendered infant (e.g., failure to legitimate or acknowledge paternity of the child under G.S. 7B-1111(a)(5)) can be used in the future on the basis that the parent's rights to another child were involuntarily terminated by a court order.

Another collateral legal consequence for a parent whose rights were involuntarily terminated occurs when the parent has another child that has been adjudicated abused, neglected, or dependent and is in DSS custody. The order terminating the parent's rights to the child who is not the subject of the abuse, neglect, or dependency action may be a basis for the court at initial disposition to order DSS relieved of making reasonable efforts to reunify the parent with the child who is the subject of the abuse, neglect, or dependency action.¹³⁸ The infant safe surrender law does not address whether a parent of a safely surrendered infant whose rights to that infant were terminated is protected from this possibility. However, a court at initial disposition may find that compelling circumstances warranting continued reasonable efforts for reunification exist such that DSS must continue to provide reasonable efforts to that parent.¹³⁹ Considering the purpose of the infant safe surrender law, a court may find that compelling circumstances exist to continue reunification efforts when the parent's rights were terminated for a safely surrendered infant.

Conclusion

North Carolina's infant safe surrender law has been significantly amended for all infants who are safely surrendered on or after October 1, 2023. The new law provides clarification about the procedures that must be followed in infant safe surrender cases and protects the confidentiality of a surrendering parent's identity. More guidance on how to implement this law may be provided in the *North Carolina Child Welfare Manual*. Be sure to check that publication for any updates.

137. See *In re Baby Boy*, 238 N.C. App. 316 (2014) (because of the potential collateral consequences, appeal of order terminating respondent mother's rights was not moot even though child's adoption had been finalized by time appellate court considered mother's appeal of TPR order).

138. G.S. 7B-901(c)(2).

139. G.S. 7B-901(c).