

Legislative Update Social Services Attorneys

July 8, 2021



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Agenda

Kristi

- Legislation related to state-level changes; confidentiality and information sharing

Sara

- Legislation impacting child welfare; Raise the Age; infant safe surrender

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Where Are We Now?

Keep in mind...many bills are still pending!



Proposed, but didn't gain traction....

- H212 – Social Services Reform
- S90 – Social Services Reform/CWBTC Recs.
- S89 – Regional Supervision/Reforms/CWBTC Recs.

PENDING - H295 – DSS Review of Procedures/OAH

Requires the N.C. Division of Social Services, through the Social Services Commission, to submit a comprehensive report of all its policies, guidelines, and other interpretive statements to the OAH by May 31, 2022.

Must explain why DSS believes the policy, guideline, or other interpretive statement not adopted as a rule is not subject to the rulemaking provisions of Chapter 150B and not in violation of G.S. 150B-18.



PENDING - H295 – DSS Review of Procedures/OAH

The Commission must jointly review the report with the OAH to identify any policies, guidelines, and other interpretive statements that are in violation of G.S. 150B-18.




If OAH and the Commission disagree, the OAH refers the disagreement to the Rules Review Commission to make a determination as to whether the policy, guideline, or interpretive statement is in violation of G.S. 150B-18.



If the Commission disagrees with a determination by the RRC, the Commission may file an action for declaratory judgment in Wake County Superior Court.

Any policies, guidelines, or other interpretive statements identified as being in violation of G.S. 150B-18, will be deemed interim rules if they don't conflict with the N.C.G.S.

Interim rules will become void July 1, 2023, if the Commission has failed to adopt an interim rule as a permanent rule.



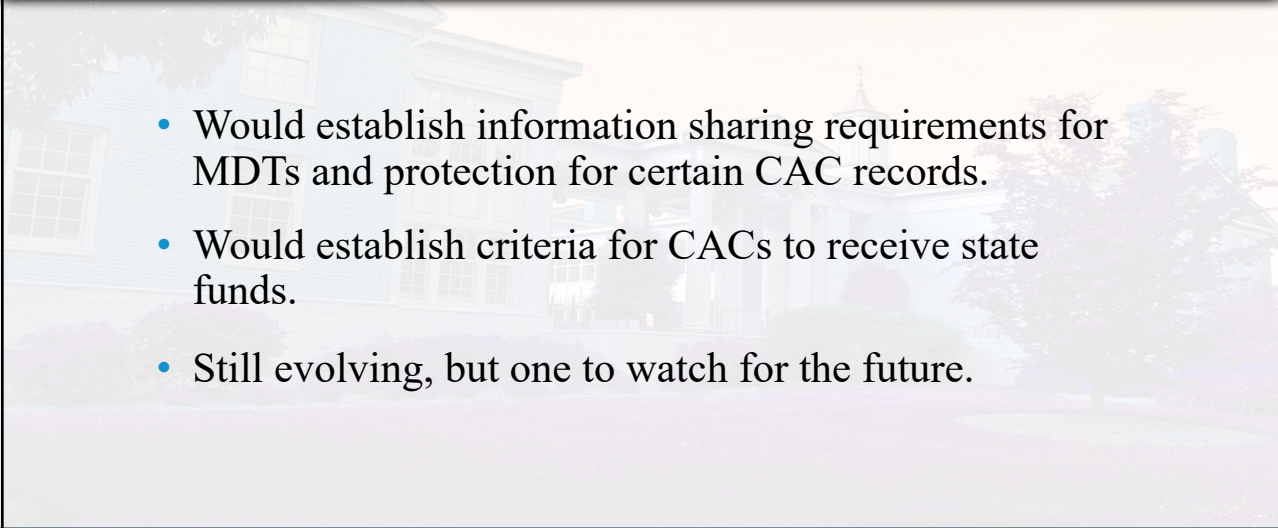
PENDING

H64 –
Government
Transparency
Act of 2021


- Amends many statutes related to disclosure of personnel records, including G.S. 153A-98 (which applies to county agencies).
- Would require county agencies to provide more information in response to public records requests about their employees.
 - General description of the reasons for multiple types of personnel actions:
 - Promotion
 - Demotion
 - Transfer
 - Suspension
 - Separation

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PENDING – H823 – Child Advocacy Centers/Share Information



- Would establish information sharing requirements for MDTs and protection for certain CAC records.
- Would establish criteria for CACs to receive state funds.
- Still evolving, but one to watch for the future.



UNC
SCHOOL OF GOVERNMENT

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PENDING - S693 – Expedite Child Safety and Permanency

STATEWIDE CPS HOTLINE

- Directs DHHS to develop an operational plan to create and implement a **statewide** CPS hotline.
- Directs DHHS to establish a planning and evaluation team consisting of three child welfare staff representing at least three county departments of social services.
- Plan must be submitted to the Joint Legislative Oversight Committee on Health and Human Services by September 1, 2022.



PENDING -S693 – Expedite Child Safety and Permanency

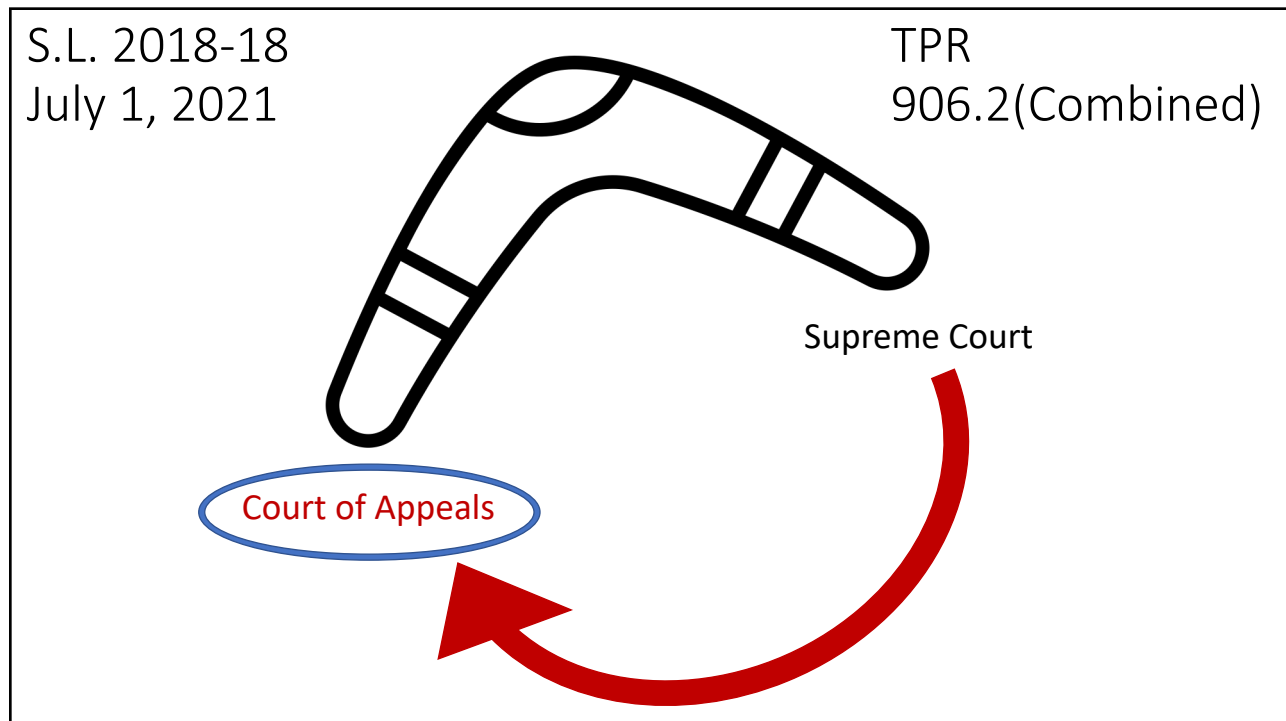
INFORMATION SHARING WITH THE GENERAL ASSEMBLY

Would amend G.S. 7B-302 34 (a3):

“Except where prohibited by federal law and notwithstanding other applicable State law, any of the following may request access to confidential information and records maintained pursuant to this Article by the Department or a county department of social services:

- (1) An individual member of the North Carolina General Assembly.
- (2) A joint legislative oversight committee of the North Carolina General Assembly.

- Requests can be made to DHHS or to the director of a county department of social services.
- Request must be limited to “purposes necessary for oversight of programs related to child protective services.” Records shared must be the minimum necessary.
- No redisclosure, no photographs, or electronic images permitted.
- Does not apply to (1) the identity of a reporter, or (2) juvenile court records as set forth in Article 29.



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2021-47
G.S. 7A-49.6 Proceedings conducted by audio & video
June 18, 2021

- May conduct proceedings of all types
- See and hear each other
- Safeguard constitutional protections and preserve integrity of judicial process
- Confidential attorney communication
- Good cause to object
- Comply with state & federal law re: confidential information
- Open proceedings; facilitate access as practicable
- Comply with recording provisions
- Not limit authority for remote testimony under other laws
- AOC videoconferencing

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ALL THE REST ARE
PENDING
(and Have Traction)

May or May Not Pass
May Have Amendments

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H132: Juvenile Code Rev's/CIP Recs. Oct. 1 (if passes)

- Defines Relative: blood, marriage, adoption (also in S693)
- Clerk provide copy of petition/summons or notice to provisional counsel
- Juvenile/GAL access to records: provide written/electronic copies
- Visits, PP waived, inform parties of right to file motion to review
- At PPH, cease reunification efforts = eliminate reunification

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SIBLINGS

- Reasonable efforts to place together
- Unless document contrary to safety/well-being of any of the siblings
- If unable, reasonable efforts to provide frequent visitation and ongoing interaction
- Nonsecure: 7B-505(a1)
- Disposition: 7B-903.1(c1)
- NOTE: 42 USC 671(a)(31)

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Recognizes & Defines M.A.T.

7B-904(c1)

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Post TPR Hearings 7B-908

No PPH anymore; replaced
by post-TPR
(7B-906.1(o))

Clarified when: Both parents'
rights terminated

Court Remedies

- Affirm DSS/agency plan (non-A/N/D case)
- Order different plan under GS 7B-906.2

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Aging Out 7B-912

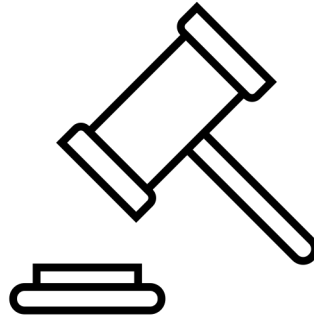
- First PPH after 17 and every one after, documents include information about Foster Care 18-21
- DSS report
 - Efforts to identify/secure viable placement options for when 18
 - Adults who can be resources
 - Contact info for Foster Care 18-21 contact
 - How to maintain contact with family
 - Contact for Medicaid & mental health services
 - Info about educational or vocational plans

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Foster Care 18-21 7B-910.1

Termination of agreement

DSS must go to court if
young adult objects



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“Modification” Hearing 7B-1000

Issues not
covered by
G.S. 7B-906.1

Reappoint
GAL

Reappoint
provisional
counsel

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S693

(Oct. 1 if passes, unless says otherwise)

Placement Issues

- 7B-505(b): due diligence to notify relatives/legal custody of sibling w/in 30 days; file with the court the attempts
- 7B-903(a4): may consider nonrelative kin/legal custody of sibling

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7B-903.1 (Rylan's Law)

Observe visits before unsupervised or trial placement, whichever occurs 1st

w/in 30 days of hearing where recommendation being made

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Visitation and substance use

- Positive drug screen alone insufficient to deny visits
- Unsupervised visits, + drug screen, DSS file motion for review w/in 30 days
- May temporarily impose supervision
- Visits may be cancelled if parent is under influence and exhibits behavior that may create unsafe environment or appears to be actively impaired

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Two Different Tracks



Continue in home

Review only

Never PPH



Removed from Home

PPH only

Never Review

WITHIN 90 DAYS of Initial Dispositional Hearing

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Purpose of Review Hearing

Progress	Progress with court-ordered services by parent, guardian, custodian
Complete	Complete within 12 months from petition filing and demonstrate circumstances warranting DSS involvement resolved and safe home for juvenile
Terminate	Terminate jurisdiction absent extraordinary circumstances

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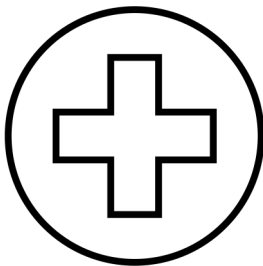
Removal from Home

Only if written findings of either

- 7B-503(a)(1)-(4) factor and substantial risk of or actual physical or emotional harm
- Since completion of initial dispositional hearing, 7B-901(c) factor
- Consent by parent/guardian/custodian

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Mental Health Treatment at Hospital (effective if/when passes)



- In DSS custody and presents at hospital for MH treatment
- DSS contact LME/MCO
- LME/MCO provide care coordination and arrange for assessment w/in 5 business days
 - If recommend foster care or Level I group home, DSS provide w/in 5 business days
 - If recommend care requiring prior authorization, LME/MCO authorize and identify w/in 5 business days and assign care coordinator; DSS place w/in 5 business days and transport
 - If unable, DSS contact Rapid Response Team at DHHS to coordinate response to address immediate needs of juvenile

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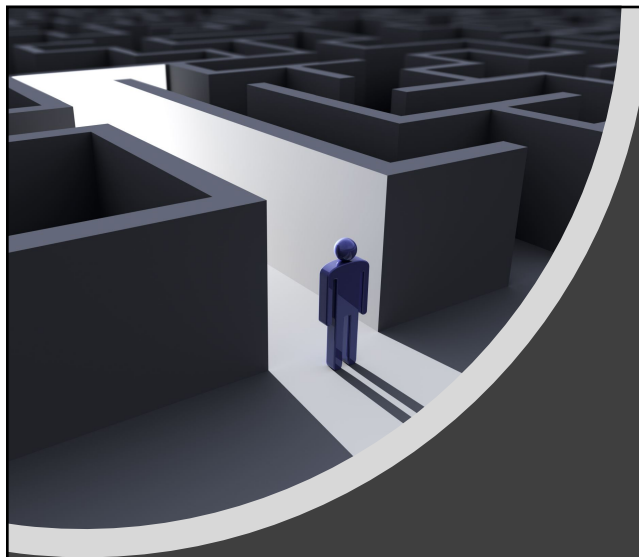
Emergency Motion in A/N/D action (effective Jan. 1, 2022 if passes)



If provisions not met

- Any party, DHHS, hospital, LME/MCO standing to file re: continued stay at hospital
- Burden on petitioner, clear and convincing evidence provisions not met
- Heard w/in 5 business days
- May order
 - responsible party to act
 - Placement per recommendations of assessment
 - Completion of assessment and placement per recommendations
 - Any appropriate relief
- Reviews every 30 days until no longer at hospital

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TPR: Standing

Person the juvenile has
been continuously residing
with for 18 months

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RIL: Human Trafficking

- Not a parent, guardian, custodian, or caretaker
- Cooperate with law enforcement and DA to determine safest way if possible to give notice
 - Mental/physical harm or danger to juvenile
 - Undermine criminal investigation
 - Jeopardize state's ability to prosecute
- Document if not possible, no further action

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H769: Foster Parents Bill of Rights

(effective if & when it becomes law)

No Private Cause of Action

Treat with dignity, respect, trust

Receive information about responsibilities and access to services

Valued member of child's team and participate in court

Reasonable notice re: removal of child and referral to resources re: loss of child when reunify

Request change in licensing workers

Reasonable and prudent parent standard

Clear expectations and boundaries re: shared parenting agreement

And a lot more

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Infant Safe Surrender: New Article 5A (H473) (effective Oct. 1 if passes)

- Limits surrender to health care providers, first responder, DSS worker
- Confidentiality provisions re: parent's identity
- DHHS create information for dissemination
- Not an A/N/D case!

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DSS

Obtains custody w/o court order

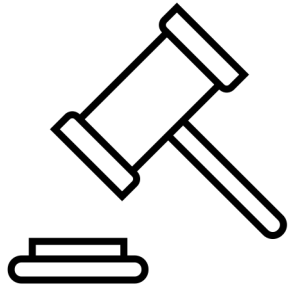
- May obtain an ex parte order
- Custody to non-surrendering parent if known and no cause to suspect A/N/D

Response

- Medical provider: 7 days, no signs of abuse or neglect
- Notify law enforcement
- Non-surrendering parent
- Genetic marker testing if necessary
- Initiate TPR after 60 days

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Required Court Action



- Notice by publication w/in 14 days of surrender
- If TPR, preliminary hearing on safely surrendered infant
- If surrendering parent seeks to regain custody, neglect – regular case
- If non-surrendering parent cause to suspect, A/N/D – regular case w/o surrendering parent involvement

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S207: Juvenile Delinquency Minimum Age Dec. 1 (if passes)

- 6-9 y.o.
- Child consultation services to juvenile and parent, guardian, custodian by juvenile court counselor
 - Parent must attend and may be directed to parenting classes
 - Referrals for evaluations and treatment
 - Assist with funding
 - Work collaboratively with DSS = Child and Family Team
- Max of 6 months (approval by chief court counselor for 3 more)
- Cause to suspect A/N/D = DSS report
- Parent refuse and risk of A/N/D = DSS report

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Stay Updated on
What Passes!
