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2009 North Carolina Legislation: Juvenile Law

Janet Mason

The 2009 General Assembly enacted legislation that makes significant changes in the North Carolina Juvenile Code—Chapter 7B of the North Carolina General Statutes (hereinafter G.S.). A few of these laws became effective May 27, 2009. Most are effective October 1 or December 1, 2009. The full text of each act can be accessed from the General Assembly's Web page: www.ncga.state.nc.us/Legislation/abbreviations.html.

Abuse, Neglect, Dependency, and Termination of Parental Rights

G.S. 7B-101(1)d. defines *abused juvenile* to include any juvenile whose parent, guardian, custodian, or caretaker commits, permits, or encourages the commission of a violation of specified criminal laws by, with, or upon the juvenile. S.L. 2009-38 (H 1272) amends that definition to specify the additional offenses of rape of a child by an adult offender, as provided in G.S. 14-27.2A, and sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A.

With respect to termination of parental rights proceedings, the act rewrites G.S. 7B-1104 to reiterate that the juvenile is a party to the action. However, it deletes from G.S. 7B-1106 the requirement that the juvenile be named as a respondent and served with a summons when the action is initiated by petition. It rewrites G.S. 7B-1106.1, relating to actions initiated by motion, to delete the requirement that a juvenile who is twelve years of age or older be served with notice. The act also provides that regardless of how the action is initiated, if the court has appointed a guardian ad litem for the juvenile, either the guardian ad litem or the attorney advocate must be served pursuant to G.S. 1A-1, Rule 5.

S.L. 2009-38 was effective May 27, 2009.

Confidentiality

G.S. 7B-302 requires county social services departments to hold in strictest confidence all information they receive in connection with the receipt and assessment of reports of child abuse, neglect, or dependency. S.L. 2009-311 (H 1449), effective October 1, 2009, rewrites the exceptions to that requirement to specifically authorize examination of the information by the juvenile, including a juvenile who has turned eighteen or been emancipated, or the juvenile's guardian ad litem.

Janet Mason is a School of Government faculty member who specializes in juvenile law and social services law. She can be contacted at mason@sog.unc.edu.

The act gives a social services department the right to reasonable notice and an opportunity to be heard before a judge orders the release of confidential social services information in a civil action to which the department is not a party. In addition, it requires the court to determine that the information is relevant, necessary to the trial, and unavailable from any other source before ordering its release. (The act makes clear that these provisions do not affect any other requirements relating to medical, mental health, or HIV information.) S.L. 2009-311 gives social services departments explicit authority to surrender records to the court for in camera review when necessary for the court to make required determinations. In a criminal or delinquency case, the act requires that a judge conduct an in camera review before releasing to the defendant or juvenile any confidential social services records. It rewrites G.S. 7B-2901(b) to make the same changes with respect to records a social services department must maintain for children placed by the court in the department's custody.

Discovery and Information Sharing

S.L. 2009-311 completely rewrites G.S. 7B-700 to address both discovery and the sharing of information in juvenile cases. It authorizes a county department of social services to share with any other party information relevant to a pending action under Subchapter I of the Juvenile Code (i.e., actions involving abuse, neglect, dependency, termination of parental rights, and presumably, actions involving petitions about interference with social services assessments and petitions seeking expunction from the Responsible Individuals List). Information a department is not authorized to share includes (1) the identity of a reporter of abuse, neglect, or dependency; (2) information that would lead to the discovery of the reporter's identity; or (3) the identity of any other person, if the department determines that the disclosure would likely endanger that person's life or safety.

The rewritten section also authorizes chief district court judges to adopt local rules or enter administrative orders addressing information sharing among parties and the use of discovery.

Any party may file a motion for discovery, describing the information sought and stating that the party has been unable to obtain the information through the statutory provisions for information sharing or by local rule or administrative order. A party served with a discovery motion may request that discovery be denied, restricted, or deferred and must submit for in camera inspection any document, information, or materials the party seeks to protect. If the court grants a motion to deny, restrict, or defer discovery, any materials submitted for in camera review must be preserved for appellate review.

Although the act requires disclosure of confidential information, it does not authorize redisclosure that is prohibited by state or federal law. Unless local rules provide otherwise, information obtained by the child's guardian ad litem pursuant to G.S. 7B-601 is not subject to disclosure pursuant to these provisions; however, any reports and records submitted to the court first must be shared with all of the parties.

Venue and Coordination between Counties

S.L. 2009-311 addresses, in some detail, issues relating to changes of venue and coordination between counties when more than one county is involved in an abuse, neglect, or dependency case. An amendment to G.S. 7B-302 requires a county social services director, after receiving a report of abuse, neglect, or dependency and determining that the juvenile's legal residence is in another county, to promptly notify the director in the county of the juvenile's residence. The two directors must coordinate efforts to ensure that appropriate actions are taken.

The act amends G.S. 7B-400 to delete the provisions for transferring a case filed in a district other than that of the juvenile's residence. Implicit in this and other changes is a requirement

that adjudication occur in the district in which the petition is filed and that the department that files a petition be responsible for proving the allegations in the petition. An amendment to G.S. 7B-402 requires a department that files a petition in a county other than that of the juvenile's residence to provide a copy of the petition and any notices of hearing to the social services director in the county of the juvenile's residence.

New G.S. 7B-900.1 addresses changes of venue and transfers of custody after adjudication. It allows the court, any time after adjudication, to transfer venue to another county, but only after considering eight factors set out in the statute, making required findings of fact, and contacting a judge in the district to which the case is being transferred if the transfer is to a different district. The following are factors the court must consider:

- The current residences of the child and the parent, guardian, or custodian and the extent to which those residences have been and are likely to be stable
- The reunification or other permanent plan and the likely effect of a change of venue on efforts to achieve permanence
- The nature and location of services and service providers necessary to achieve the plan
- The impact on the child of the potential disruption of an existing therapeutic relationship
- The nature and location of witnesses and evidence likely to be required in future hearings
- The degree to which transfer would cause inconvenience to one or more parties
- Any agreement of the parties as to which forum is most convenient
- The familiarity of the social services departments, the courts, and the local guardian ad litem offices with the juvenile and the juvenile's family

After considering these and any other relevant factors, the court may transfer the case to another county only after finding that

1. the present forum is inconvenient,
2. transfer is in the juvenile's best interest,
3. the parties' rights will not be prejudiced by the change in venue, and
4. the social services directors in the two counties have communicated about the case and either (i) the directors agree with respect to each county's responsibility for providing financial support and services in the case or (ii) the director of the state Division of Social Services or his or her designee has made that determination pursuant to G.S. 153A-257(d).

Whenever a court transfers a case to a different county, the court must join or substitute as a party the social services director of the county to which the case is being transferred and, if the juvenile is in the custody of social services in the county where the action is pending, transfer custody to the department in the county to which the case is being transferred. Such orders may be entered, however, only if the director in the transferee county has been given notice and an opportunity to be heard or has waived the right to notice and a hearing.

Before transferring a case to another district, the court must also communicate with the chief district court judge or a judge presiding in juvenile court in that district and explain the reasons for the proposed transfer. If that judge makes a timely objection to the transfer, either verbally or in writing, the court may order the transfer only after making detailed findings of fact supporting a conclusion that the juvenile's best interests require that the case be transferred.

An order transferring a case must be entered within thirty days after the hearing, and the clerk must transmit to the court in the other county a copy of the complete record of the case

within three business days after entry of a transfer order. The clerk receiving the transferred case must promptly assign a file number, ensure that any necessary appointments of new attorneys or guardians ad litem are made, and calendar and give notice of the next court action required in the case.

Review, Permanency Planning, and Post–Termination of Parental Rights Hearings

S.L. 2009-311 amends G.S. 7B-906(a), 7B-907(a), and 7B-908(b) with respect to review, permanency planning, and post–termination of parental rights hearings to require the county social services department to either (i) provide the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child, for purposes of notice of the hearing, or (ii) file written documentation with the clerk that the child's current care provider was sent notice of the hearing.

With respect to post–termination of parental rights hearings, the act rewrites G.S. 7B-908 to require a social services department, within ten days of receiving a copy of a petition to adopt the child, to file with the court and serve on any guardian ad litem for the juvenile written notice that the petition has been filed. No copy of the adoption petition may be filed in the juvenile file. The guardian ad litem then has ten days from service of the notice to file in the adoption proceeding a motion alleging any abuse of discretion by the social services department or other agency in the adoption selection process. After such a motion, the clerk must transfer the case to district court. The guardian ad litem is required to serve the department of social services with notice of the motion, but the motion may not be filed in the juvenile file. If the juvenile is the subject of an adoption decree before the date of a scheduled review, within ten days of receiving notice that the adoption is final the social services department must file with the court and serve on any guardian ad litem for the juvenile written notice of the entry of the adoption decree. The decree itself may not be filed in the juvenile court file.

Termination of Parental Rights

S.L. 2009-311 rewrites G.S. 7B-1101.1(a) to provide that when a petition to terminate parental rights is filed, the clerk must appoint provisional counsel for each respondent parent unless the parent is already represented. At the first hearing after service on the parent, the court is required to dismiss provisional counsel if the parent

- does not appear at the hearing,
- does not qualify for appointed counsel,
- has retained counsel, or
- waives the right to counsel.

Otherwise the court confirms the appointment. An amendment to G.S. 7B-1101.1(c) specifies that the appointment of a guardian ad litem for a parent in a termination of parental rights proceeding is in accordance with G.S. 1A-1, Rule 17.

The act also amends G.S. 7B-1106(b) to require that the summons in a termination of parental rights proceeding include notice that if the parent is represented by counsel appointed previously in an abuse, neglect, or dependency case, that attorney will continue to represent the parent unless the court orders otherwise. Other changes to the summons conform to the provisional counsel provisions and the pretrial hearings requirements (described below).

S.L. 2009-311 deletes the "special hearing" requirement in G.S. 7B-1108(b) and adds a new G.S. 7B-1108.1, requiring the court to conduct a pretrial hearing in every termination of parental rights case. However, it permits the court to combine the pretrial and adjudicatory hearings.

At a pretrial hearing, the court must consider retention or release of provisional counsel; whether a guardian ad litem should be appointed for the child if not previously appointed; whether summons, service of process, and notice requirements have been met; any pretrial motions; any issues raised by any responsive pleading; and any other issue properly addressed as a preliminary matter.

Delinquent and Undisciplined Juveniles in Social Services Custody

Without any adjudication of abuse, neglect, or dependency, the court may place a juvenile in the custody of a county social services department in an undisciplined juvenile or delinquency proceeding. The placement may be pursuant to a nonsecure custody order before adjudication or as a disposition following adjudication. S.L. 2009-311 rewrites G.S. 7B-1904 to require an official executing an order for nonsecure custody of a juvenile alleged to be delinquent or undisciplined to give a copy of the petition and order to the person or agency with whom the juvenile is being placed. The act rewrites G.S. 7B-2503(1)c. and G.S. 7B-2506(1)c. to permit the court at disposition to place an undisciplined or delinquent juvenile in the custody of a county department of social services only if the social services director has received notice and an opportunity to be heard. New G.S. 7B-1700.1 repeats the duty to make a report to a county department of social services any time a person has cause to suspect that a juvenile is abused, neglected, or dependent, as stated in G.S. 7B-301, with specific reference to juvenile court counselors having that duty.

Related Provisions

S.L. 2009-544 (S 464), effective January 1, 2010, adds new G.S. 15A-401(g), providing that when a law enforcement officer arrests an adult who is supervising a minor child who is present, the child must be placed with a responsible adult approved by the child's parent or guardian. If this is not possible, the officer must contact the county department of social services.

Adoption

S.L. 2009-185 (H 1106) rewrites G.S. 48-1-109, regarding agencies that may prepare assessments for and reports to the court in adoption proceedings to address circumstances in which the adoptive parent lives in or moves to another state. An order for a report to the court, for example, may be sent to a person or entity authorized to prepare home assessments for the purpose of adoption under laws of the petitioner's state of residence. (Since the North Carolina order would not be binding on a person or entity in another state, it seems likely that procedures under the Interstate Compact on the Placement of Children, or similar procedures, would be used in seeking the required report or information.)

The act amends both G.S. 48-2-205 and G.S. 48-2-401 to provide that any readoption of a child adopted by a husband and wife in a foreign country must be done jointly by the man and woman who adopted the child, even if they divorced between the time of the adoption and the readoption. A parent who does not join in a readoption petition filed by the other parent must be joined as a necessary party pursuant to G.S. 1A-1, Rule 19.

The adoption law, G.S. Chapter 48, includes specific notice requirements for adoption proceedings but no mention of a summons. The act adds new G.S. 48-2-401(g), which states that issuance of a summons is not required in order to commence an adoption proceeding.

G.S. 48-2-501(d) provides an exception to the requirement for a report to the court in certain stepparent adoptions. S.L. 2009-185 rewrites the subsection to provide a similar exception for grandparents. In the adoption of a child by a grandparent with whom the child has lived for at least two consecutive years immediately before the filing of the adoption petition, the court may order a report, but is required to do so only if

- the child's consent is being waived,
- the child has revoked a consent, or
- the child is eligible for adoption assistance pursuant to G.S. 108A-49.

The act also rewrites G.S. 48-3-608(a) and G.S. 48-3-706(a), relating to revocation of a consent or relinquishment for adoption, to address circumstances in which the final day of the revocation period falls on a Saturday, Sunday, or legal holiday when North Carolina courthouses are closed. (Previously these subsections referred to "a weekend or a North Carolina or federal holiday.")

S.L. 2009-185 was effective June 26, 2009.

Delinquency

Chief Court Counselor Authority

S.L. 2009-320 (H 1347), effective July 17, 2009, amends G.S. 143B-535 to authorize chief juvenile court counselors to

1. delegate to a court counselor or supervisor the authority to carry out specified responsibilities to facilitate effective operation of the district and
2. designate a court counselor to serve as acting chief during the absence or disability of the chief.

Access to Delinquency Records

S.L. 2009-545 (S 984) rewrites the definition of *prosecutor* in G.S. 7B-1501(23) to include the district attorney or "an assistant district attorney." By deleting the reference to "the assistant district attorney assigned to juvenile proceedings," the act clarifies that under G.S. 7B-3000(b) any prosecutor may examine and obtain copies of the written parts of a juvenile's delinquency record. An amendment to G.S. 7B-3000(b) allows prosecutors to share information from a juvenile's record with magistrates but does not allow a magistrate to photocopy any part of the record—the same provision that already exists with respect to law enforcement officers. The information must remain confidential and may not be placed in any public record.

When someone is charged as an adult with a Class A1 misdemeanor or a felony committed before the defendant reached the age of twenty-one (and on or after December 1, 2009), G.S. 7B-3000(e), as rewritten, allows law enforcement, the magistrate, the courts, and the prosecutor to use some information from the defendant's juvenile record for pretrial release, plea

negotiating decisions, and plea acceptance decisions. An adjudication may be used for these purposes only if it

1. was for an A1 misdemeanor or a felony and
2. occurred within eighteen months before the defendant reached age sixteeen or any time after the juvenile reached age sixteen.

To facilitate implementation of these provisions, the act rewrites G.S. 7B-2411 to require that every written adjudication order in a delinquency case include the date of the adjudicated offense, the misdemeanor or felony classification of the offense, and the date of the adjudication.

S.L. 2009-545 is effective December 1, 2009.

S.L. 2009-372 (S 920), also effective December 1, 2009, further rewrites G.S. 7B-3000(b) and adds a new subsection (e1) to allow probation officers in the Division of Community Corrections, in the Department of Correction, to examine and obtain copies of the written parts of a juvenile's record in specified circumstances. A probation officer may access juvenile records of a person he or she is assigned to supervise, for the purpose of assessing risk related to supervision, if the person being supervised was placed on adult probation (under Article 82 of G.S. Chapter 15A) for an offense committed

- on or after December 1, 2009, and
- before the person reached age twenty-five.

Access is limited to records of adjudications of delinquency for offenses that would be felonies if committed by an adult, but extends to all such adjudications regardless of when the delinquent act occurred.

The district manager in the Division of Community Corrections must designate a staff person in each county to obtain juvenile records requested by a probation officer and must notify each clerk of the designation in writing.

Copies of juvenile records obtained by a probation officer must be withheld from public inspection and may not be made part of any public record in a criminal case. The copies must be destroyed within thirty days after the period of probation ends. All information in the records of the Division of Community Corrections relating to a person's juvenile record must remain confidential and be maintained or destroyed in accordance with guidelines of the Department of Cultural Resources.

New G.S. 7B-3001(d) authorizes the Department of Juvenile Justice and Delinquency Prevention, at the request of the Division of Community Corrections when a probation officer is authorized to obtain copies of a juvenile's records, to notify the Division that there is a record of a felony adjudication of delinquency and of the county or counties in which the adjudication(s) occurred. An amendment to G.S. 15A-1341 specifically authorizes a probation officer to examine and copy a defendant's juvenile record pursuant to these Juvenile Code provisions.

S.L. 2009-372 also rewrites G.S. 7B-3100(a) to add the Division of Community Corrections to the agencies that may be designated as "agencies authorized to share information" under rules promulgated by the Department of Juvenile Justice and Delinquency Prevention.

Child Witness Testimony

S.L. 2009-356 (H 192) adds new G.S. 15A-1225.1 to the Criminal Procedure Act to provide procedures for allowing a child witness to testify remotely. The section defines *criminal proceeding* to include delinquency proceedings for purposes of those procedures. The statute allows a witness under the age of sixteen to testify remotely—outside the physical presence of the juvenile alleged

to be delinquent—if the witness has been found competent to testify and the court determines that

1. the child witness would suffer "serious emotional distress" by testifying in the juvenile's presence (not as a result of the open court forum in general) and
2. the child witness's ability to communicate with the judge would be impaired.

On motion of a party or the court's own motion, and for good cause, the court must hold an evidentiary hearing on the record to determine whether to allow remote testimony. The child witness's presence is required only if the court orders that the child be present. After the hearing the court must make findings of fact and conclusions of law supporting its decision. If the court allows the use of remote testimony, the court's order must

- specify the method by which the child is to testify;
- list any person or category of people allowed to be in, or required to be excluded from, the child's presence during the testimony;
- state any special conditions necessary to facilitate cross-examination of the child;
- state any condition or limitation on the participation of individuals in the child's presence during the testimony; and
- state any other condition necessary for taking or presenting the testimony.

Any method of remote testimony must allow the judge and the juvenile to observe the child's demeanor as the child testifies, in a manner similar to an open forum. The court must assure that the juvenile's attorney is physically present where the child testifies, has a full and fair opportunity to cross-examine the child, and has the ability to communicate privately with the juvenile during the child's remote testimony.

The statutory procedure is not exclusive and it does not affect any standards for allowing remote testimony in non-criminal and non-delinquency proceedings.

S.L. 2009-356 is effective December 1, 2009.

Testimony by Persons with Developmental Disabilities or Mental Retardation

S.L. 2009-514 (H 775), effective December 1, 2009, adds new G.S. 15A-1225.2 to the Criminal Procedure Act, establishing procedures for allowing remote testimony by a person with developmental disabilities or mental retardation. The procedures are almost identical to those described above for child witnesses, and they apply in delinquency as well as criminal cases.

House Arrest

S.L. 2009-547 (S 726) rewrites the definition of *house arrest* in G.S. 7B-1501(12) to specify that house arrest requires a juvenile to remain at his or her residence unless the court or the juvenile court counselor authorizes the juvenile to leave for school, counseling, work, or similar specific purposes. When leaving home for an authorized purpose the juvenile must be accompanied in transit by a parent, guardian, or other person approved by the juvenile court counselor. The act is effective December 1, 2009.

Studies Authorized

The Studies Act of 2009 is effective September 10, 2009.

Drug Use by Children

Sections 35.1 and 35.2 of The Studies Act of 2009, S.L. 2009-574 (H 945), authorize the North Carolina Child Fatality Task Force to study how to recognize and care for children who are using drugs for purposes other than legitimate health issues and whose parents appear to be providing the drugs to their children. The task force may report its findings and recommendations to the General Assembly by May 1, 2010.

Youth in Foster Care

Section 2.4 of S.L. 2009-574 authorizes the Legislative Research Commission to study the needs of youth transitioning out of the foster care system. The commission may report its findings and any recommended legislation to the 2010 regular session of the 2009 General Assembly when it convenes.

Indian Children

Section 2.12 of S.L. 2009-574 authorizes the Legislative Research Commission to study issues or matters that would impact the preservation of the customs and culture of Indian children who are not covered by the federal Indian Child Welfare Act and who are the subject of legal proceedings in state courts, including adoption, custody, and visitation actions. The commission may report its findings and any recommended legislation to the 2010 regular session of the 2009 General Assembly when it convenes.

Parenting Education

Section 2.9 of S.L. 2009-574 authorizes the Legislative Research Commission to study current practices relating to the provision of parenting education in the state designed to enhance parents' and parenting partners' competence and confidence and to improve child-rearing knowledge and skills. The commission may report its findings and any recommended legislation to the 2010 regular session of the 2009 General Assembly when it convenes.

Sexual Abuse

Section 2.14 of S.L. 2009-574 authorizes the Legislative Research Commission to study issues related to sexual abuse and violence. The commission may report its findings and any recommended legislation to the 2010 regular session of the 2009 General Assembly when it convenes.

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