Janet Mason
UNC School of Government
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2011 Legislation Enacted: Juvenile Law

Abuse, Neglect, Dependency, and Termination of Parental Rights

1. Consent orders. Section 5 of S.L. 2011-295 (H 382)* adds new G.S. 7B-801(b1), providing that the court may enter a consent adjudication, disposition, review, or permanency planning order in an abuse, neglect, or dependency proceeding when
   - all parties are present or represented by counsel who is present and authorized to consent;
   - the juvenile is represented by counsel; and
   - the court makes sufficient findings of fact.

   Section 8 of the act repeals G.S. 7B-902, the current provision regarding consent orders.

2. Stipulations at adjudication. Section 6 of S.L. 2011-295 (H 382)* rewrites G.S. 7B-807(a) to make clear that stipulations by a party may constitute evidence at adjudication and to require that a record of specific stipulated adjudicatory facts be made by either
   - submitting them to the court in writing, signed by each party who is stipulating; or
   - reading the facts into the record, followed by an oral statement of agreement from each party stipulating to them.

3. Inquiries at disposition hearing. Section 7 of S.L. 2011-295 (H 382)* rewrites G.S. 7B-901 to require the court, at the disposition hearing, to inquire about the identity and location of any missing parent and whether paternity is at issue. The court must make findings about efforts to locate and serve a missing parent and to establish paternity if paternity is in issue. The court may provide in its order for specific efforts aimed at locating, serving, or establishing the paternity of a parent. The court also must inquire about efforts made to identify and notify relatives as potential resources for placement or support.

4. Timely disposition order. Section 9 of S.L. 2011-295 (H 382)* rewrites G.S. 7B-905(a) to require the clerk to schedule a hearing at the first session of juvenile court if a disposition order is not entered within 30 days after completion of the disposition hearing.

5. "Placement responsibility." G.S. 7B-507(a)(4) requires that any order providing for a child to remain or be placed in DSS custody specify that the child's placement and care are DSS's responsibility and that DSS provide or arrange for the placement. Section 3 of S.L. 2011-295 (H 382)* adds a provision that the court, after considering DSS's recommendations, may order a specific placement the court finds to be in the child's best interest.

6. Permanency planning hearing. Section 3 of S.L. 2011-295 (H 382)* rewrites G.S. 7B-507(c) to clarify the scheduling of permanency planning hearings after a court determines that reunification efforts are not required. If the determination to cease reunification efforts is made at a hearing that was properly noticed as a permanency planning hearing, the court may proceed in that hearing to consider the criteria in G.S. 7B-907, make findings of fact, and order a permanent plan for the child. If the determination to cease reunification efforts is made at any other hearing, the court must schedule a subsequent hearing within 30 days to address the permanent plan pursuant to G.S. 7B-907.

*S.L. 2011-295 (H 382) is effective October 1, 2011, and applies to actions filed or pending on or after that date.

7. Termination of guardianship. Section 4 of S.L. 2011-295 (H 382)* amends G.S. 7B-600(b), so that the restrictive criteria for terminating a guardianship when the court has made guardianship the permanent plan apply only if the guardian is a party to the proceeding.

8. Service of motion in termination cases. Section 4.1 of S.L. 2011-332 (S 300) rewrites G.S. 7B-1102 to require that when a motion to terminate parental rights is served on a parent pursuant to G.S. 1A-1, Rule 4, a copy of the motion and notice be sent to the parent's attorney if the parent has an attorney of record. This change applies to motions filed on or after October 1, 2011.

   Change in Rule 5 service. The act also rewrites Rule 5(b) of the Rules of Civil Procedure to require that all papers served pursuant to Rule 5(b) be served on a party's attorney of record and, if ordered by the court, on the party. If a party has no attorney of record, service must be made on the party.

9. Petitioner to send notice of termination hearings. Section 13 of S.L. 2011-295 (H 382)* amends G.S. 7B-1106(b)(5), relating to the contents of the summons in a termination of parental rights case, to provide that the petitioner, not the clerk, will mail notice of the date, time, and place of any pretrial hearing and the hearing on the petition.

10. Extension of time to file answer or response. Section 14 of S.L. 2011-295 (H 382)* amends G.S. 7B-1108(a) to provide that only a district court judge may grant an extension of time to file an answer or response to a termination of parental rights petition or motion.

11. Unknown parent. Section 12 of S.L. 2011-295 (H 382)* rewrites G.S. 7B-1105(b) to
    - provide that the court may order the petitioner in a termination of parental rights case to conduct a diligent search for an unknown parent, and
    - delete the provision authorizing the court to appoint a guardian ad litem to conduct a search for the unknown parent.

12. Evidence at tpr adjudication. Section 15 of S.L. 2011-295 (H 382)* adds to G.S. 7B-1109(f) a statement that the Rules of Evidence in civil cases apply at the adjudicatory hearing in a termination of parental rights proceeding.

13. Evidence and findings at tpr disposition. Section 16 of S.L. 2011-295 (H 382)* rewrites G.S. 7B-1110(a) to authorize the court at disposition in a termination proceeding to consider any evidence, including hearsay, the court finds to be relevant, reliable, and necessary to determine the child's best interests. It also requires the court, in addition to considering statutory criteria that are relevant, to make written findings about those criteria.

14. Post-termination authority. Section 10 of S.L. 2011-295 (H 382)* rewrites G.S. 7B-908 relating to post-termination of parental rights review hearings, to
    - require the court to make findings about relevant factors the court is required to consider under G.S. 7B-908(c);

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- add a requirement that the court consider whether the current placement is in the child's best interest; and
- authorize the court to order a different placement or plan if the child is not placed with prospective adoptive parents and the court has considered DSS's recommendations.

15. Selection of adoptive parents. Section 10 of S.L. 2011-295 (H 382)* deletes G.S. 7B-908(f), relating to the selection of adoptive parents, and section 18 adds new G.S. 7B-1112.1 addressing that subject. It requires DSS to notify the child's guardian ad litem of the selection of prospective adoptive parents within ten days of the selection and before an adoption petition is filed. A guardian ad litem who disagrees with the selection then has ten days to file a motion for a hearing in juvenile court. DSS may not change the child's placement to that of the prospective adoptive parents unless the time for the guardian ad litem to file a motion has passed without a motion's being filed. After a hearing and consideration of DSS's and the guardian ad litem's recommendations, the court must determine whether the proposed adoptive placement is in the child's best interest.

16. Reinstatement of parental rights. Section 18 of S.L. 2011-295 (H 382)* adds new G.S. 7B-1114 establishing for the first time a juvenile court proceeding in which the parental rights of a parent whose rights have been terminated may be reinstated. Previously, the only means of regaining parental rights was for the parent to adopt the child. Circumstances in which the procedure will be available, beginning October 1, 2011, are narrow.
    - A motion to reinstate parental rights may be filed only by the guardian ad litem attorney or a DSS that has custody of the child.
    - The child must be at least 12 years old or, if the child is younger than 12, the motion must allege extraordinary circumstances requiring consideration of the motion.
    - The juvenile must not have a legal parent, must not be in an adoptive placement, and must not be likely to be adopted within a reasonable time.
    - The order terminating parental rights must have been entered at least three years before the motion is filed, unless the juvenile's attorney advocate and the DSS with custody stipulate that the child's permanent plan is no longer adoption.

    If a motion could be filed and a parent contacts DSS or the child's guardian ad litem about reinstatement of the parent's rights, DSS or the guardian ad litem must notify the child that the child has a right to file a motion for reinstatement of parental rights. If the child does not have a guardian ad litem when a motion is filed, the court must appoint one.

    The party filing the motion must serve it on each of the following that is not the movant: the child, the child's guardian ad litem or guardian ad litem attorney, the DSS with custody of the child, and the former parent whose rights the motion seeks to have reinstated. Although the former parent must be served, the former parent is not a party and is not entitled to appointed counsel if indigent.

    The party filing the motion must ask the clerk to calendar it for a preliminary hearing within 60 days of the filing and must give at least 15 days notice to those who were required to be served and to the child's placement provider (who is not made a party by virtue of receiving notice). At least seven days before the preliminary hearing, DSS and the child's guardian ad

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litem must provide the court, the other parties, and the former parent with reports that address a list of factors specified in the new statute. At the preliminary hearing the court must consider those criteria and make findings about those that are relevant. At the conclusion of the hearing, the court must either dismiss the motion or order that the child's permanent plan become reinstatement of parental rights.

If the motion is not dismissed at the preliminary hearing, the court must conduct hearings at least every six months until the petition is granted or dismissed, which must occur within12 months from the date the motion was filed unless the court makes written findings about why that cannot occur and specifies a time frame for entering a final order. At any hearing under the new section the court may enter an order for visitation under G.S. 7B-905(c) or order that the child be placed in the former parent's home and supervised by DSS. If the court orders placement in the former parent's home, the child's placement and care remain the responsibility of the DSS with custody.

After an order reinstating parental rights, the court is not required to conduct further reviews. A parent whose rights are reinstated is not liable for child support or the cost of services provided to the child after the termination order and before the reinstatement order.

Not Enacted but Still Eligible for Consideration

- Confidentiality of abuse/neglect reporter's identity. H 387 would add new G.S. 7B-302(a1)(1a) to provide that DSS must disclose confidential information about the identity of a reporter to any federal, state, or local government entity or its agent with a court order and may do so without a court order only if the entity or its agent demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.

Delinquency

17. Custodial interrogation. S.L. 2011-329 (S 241) rewrites G.S. 15A-211, which addresses the required electronic recording of interrogations in certain criminal cases. In addition to expanding the categories of criminal cases in which custodial interrogations must be recorded, the act makes the recording requirements applicable to "all custodial interrogations of juveniles in criminal investigations conducted at any place of detention." The act does not define the term "juvenile." It is possible that the intent was to make the section applicable to all custodial interrogations, not just those in cases involving specified offenses, when a criminal defendant is under the age of 18. However, statutes in Chapter 15A of the General Statutes generally do not use the term "juvenile," and instead refer a defendant's age or an age range, when referring to someone in the criminal system who is younger than 18. The use of the term "juvenile" suggests that it is possible, if not likely, that the intent was to make the recording of custodial interrogations mandatory when an investigation involves an offense committed before a juvenile reaches age 16 – that is, to delinquency cases, not criminal cases involving young people. The act is effective December 1, 2011.

18. Juvenile records. In some criminal cases, G.S. 7B-3000(e) permits the defendant's juvenile record of an adjudication for a felony or a Class A1 misdemeanor to be used by law enforcement, the magistrate, the court, and the prosecutor for decisions about pretrial release, plea negotiating, and plea acceptance. As rewritten by S.L. 2011-277 (S 135), those uses of the juvenile record are available only if
    - the criminal case involves a felony or a Class A1 misdemeanor committed before the defendant's 21st birthday, and
    - the delinquency adjudication for a felony or a Class A1 misdemeanor occurred after the defendant reached age 13 (previously, within 18 months before the defendant reached age 16 or after the defendant reached age 16).

    The act is effective December 1, 2011, and applies to pretrial release, plea negotiating decisions, and plea acceptance decisions on or after that date.

    S.L. 2011-278 adds new G.S. 15A-145.4, setting out conditions and procedures for the expunction of criminal convictions for nonviolent felonies committed before age 18. It requires the court, in considering a petition for expunction of a nonviolent felony conviction, to review the petitioner's juvenile record and to ensure that it remains separate from adult records and is withheld from public inspection. The act is effective December 1, 2011.

19. Principal's duty to report to law enforcement. G.S. 115C-288(g) requires a school principal to make a report to law enforcement if the principal has personal knowledge or actual notice from school personnel that one of the offenses listed in the statute has occurred on school property. S.L. 2011-248 (S 394) rewrites that subsection to
    - expand the duty to include instances in which a principal has "a reasonable belief" that such an act has occurred;
    - delete the provision that made violation of the duty a Class 3 misdemeanor;
    - provide that a principal who willfully fails to make a required report to law enforcement may be subject to demotion or dismissal pursuant to G.S. 115C-325;

- prohibit the State Board of Education from requiring that principals report to law enforcement acts in addition to those listed in the subsection; and
- state that nothing in the subsection shall be interpreted to interfere with school employees' due process rights or students' privacy rights.

The act applies beginning with the 2011-2012 school year.

20. Department consolidation. Section 19.1 of S.L. 2011-145 (H 200) creates a new Department of Public Safety by consolidating the existing Department of Correction, Department of Crime Control and Public Safety, and Department of Juvenile Justice and Delinquency Prevention. New Article 5A of G.S. Chapter 143B establishes the new department effective January 1, 2012. Numerous other statutes are amended or recodified to conform to the change.

21. Community college tuition waiver. Section 8.12(a) of S.L. 2011-145 (H 200) rewrites G.S. 115D-5(b) to delete the authority of the State Board of Community Colleges to provide for the waiver of tuition and registration fees for juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention (DJJDP).

22. Alternatives to detention. Section 17.6 of S.L. 2011-145 (H 200)* expresses the General Assembly's intent to increase the use of community-based alternatives whenever possible and reduce reliance on detention and youth development center commitments. It directs DJJDP and the Department of Correction to work together to increase the use of in-home monitoring as an alternative to detention for juveniles. The departments must assess monitoring needs in both the adult and juvenile systems and report their findings and recommendations by September 1, 2011.

Not Enacted but Still Eligible for Consideration

- Intake procedures in delinquency/undisciplined cases. H 853 would delete from G.S. 7B-1803(a) the requirement that each chief district court judge issue an administrative order establishing procedures for receiving delinquency and undisciplined complaints and drawing petitions.