

**2013 Legislative Changes:  
Abuse, Neglect, Dependency, Termination of Parental Rights, Adoption**

**Criminal Laws Affecting Child Welfare**

**S.L. 2013-35 (H 75): Increase punishments for felony child abuse; enter child abuse finding on judgment.**

**S.L. 2013-52 (H 149): Duty to report a child's disappearance.** Known as "Caylee's Law," a new criminal law (G.S. 14-318.5) creates a duty to report to law enforcement the disappearance of a child under the age of sixteen.

**Penalty for failing to report child abuse, neglect, dependency, or death due to maltreatment.** Every state has a law that requires the reporting of child abuse and other forms of child maltreatment. North Carolina's reporting law imposes that duty on anyone who has cause to suspect that a child is abused, neglected, or dependent, or that a child has died as the result of maltreatment. The reports must be made to county departments of social services. North Carolina has been one of only three states and Puerto Rico that provides no statutory sanction for violating this duty to report.

S.L. 2013-52 rewrites the reporting law, G.S. 7B-301, to make it is a Class 1 misdemeanor for any person to knowingly or wantonly fail to make a report, or knowingly or wantonly prevent another person from making a report, when a report is required. It also makes it a Class 1 misdemeanor for a county social services director to knowingly fail to notify the State Bureau of Investigation when the director receives a report of sexual abuse of a child in a child care facility.

**Abuse, Neglect, Dependency, Termination of Parental Rights**

**S.L. 2013-111 (H 68): Gaston County Foster Care Ombudsman Pilot.** This act, which is effective June 13, 2013, and expires July 1, 2015, applies only to Gaston County. It requires the board of county commissioners in that county to establish qualifications for and select a foster care ombudsman. This person must have experience in child welfare and state laws and policies governing children in foster care, and must remain objective and impartial in carrying out his or her duties. The ombudsman is

to serve at the discretion and under the direction and supervision of the board of commissioners.

The act specifies the duties of the ombudsman, which include

- participate as a party on behalf of the foster parents in review and permanency planning hearings;
- determine the facts, the juvenile's needs, and available resources;
- when appropriate, facilitate the settlement of disputed issues;
- explore options with the court at the dispositional hearing;
- report to the court when the juvenile's needs are not being met;
- protect and promote the juvenile's best interests as seen by the foster family;
- refer to the social services director and law enforcement any cause to suspect that any juvenile is abused, neglected, or dependent;
- be a resource and advocate for foster parents;
- make periodic reports to the social services director about foster care placements in the county, and make recommendations about a placement or future placements;
- compile data for the board of commissioners;
- provide information about the role, duties, and functions of foster parents and the ombudsman, and the rights of children in foster care; and
- carry out any other duties deemed appropriate by the board of commissioners.

The act authorizes the ombudsman to obtain any information or reports, even if confidential, that he or she believes are relevant to the case.

**[S.L. 2013-129](#) (H350): Court Improvement Project (CIP) Bill - Changes to Juvenile Code.** Effective for all actions filed or pending on or after October 1, 2013, S.L. 2013-129 makes various changes to G.S. Chapter 7B, the Juvenile Code.

- **Parties.** Section 9 of the act adds new G.S. 7B-401.1, which specifically identifies the parties in abuse, neglect, and dependency proceedings as the petitioner (the social services director or authorized representative); the parents, unless a specific exception applies; the child's legal guardian, if serving as guardian when the petition is filed; the child's custodian, if custodian when the petition is filed; the child's caretaker, if the petition includes allegations relating to the caretaker, the caretaker has assumed the status and obligations of a parent, or the court orders that the caretaker be a party; and the juvenile. Section 1 of the act amends G.S. 7B-101(8) to limit the definition of custodian to a person or agency with legal custody of a juvenile. If custody is the permanent plan for the child, a

custodian appointed by the court automatically becomes a party. Section 16 of the act rewrites G.S. 7B-600 to provide that when guardianship is the permanent plan, a guardian appointed by the court becomes a party. The court may order that a guardian, custodian, or caretaker be removed as a party if the court finds that person's legal rights will not be affected by the action and that his or her continuation as a party is not necessary to meet the juvenile's needs. The court may allow intervention by a person who is not the juvenile's parent, guardian, custodian, or caretaker only when intervention is sought by someone with standing to file a motion for termination of parental rights under G.S. 7B-1103(b) or by another social services department with an interest in the proceeding. However, the court may consolidate a juvenile proceeding and a civil action or claim for custody, as provided by G.S. 7B-200.

- **Pre-Adjudication Hearing.** Section 18 of the act, in new G.S. 7B-800.1, requires the court to conduct a "pre-adjudication hearing," which can address issues involving the appointment of counsel, identification of parties, paternity, missing parents, procedural requirements or deficiencies, stipulations, and any other issue that can be addressed as a preliminary matter. The hearing may be combined with another pre-adjudication hearing or conducted pursuant to local rules.
- **Visitation.** Section 24 of the act creates G.S. 7B-905.1, which replaces and expands on provisions in G.S. 7B-905(c) that address visitation procedures and requirements when an order removes custody of a juvenile from a parent, guardian, or custodian or places the child outside of the home. Visitation must be in the best interests of the juvenile and consistent with the juvenile's health and safety, and the court may specify conditions under which visitation will be suspended. A visitation plan must specify minimum frequency and length of visits and whether the visits must be supervised. Unless the court orders otherwise, the director of the department of social services has discretion to determine the specific details of the visit, such as location, who will supervise, and needed changes in the schedule. The director may temporarily suspend all or part of the visitation plan and must file a motion for review upon doing so. Any party has the right to file a motion for review of a visitation plan. The court may order the parties to participate in mediation if a program established pursuant to G.S. 7A-494 is available. Provisions in G.S. 50-13.1 (d) through (f) relating to child custody mediation apply, but the mediated agreement may not allow the parties to consent to a change in custody.
- **Review and Permanency Planning Hearings.** Sections 25 and 26 of the act repeal G.S. 7B-906 and 7B-907, which address review and permanency planning

hearings, and incorporate many of the same provisions into new G.S. 7B-906.1, which addresses both types of hearing. All review hearings held after the initial permanency planning hearing are designated as subsequent permanency planning hearings. The court's inquiry at each hearing must include whether the child can be placed with a parent within the next six months, making clear that reunification refers to placement with either parent, not just the parent from whose custody the child was removed. In addition, section 1 of the act adds new G.S. 7B-101(18b), defining "return home or reunification" as placement of the child in the home of either parent or in the home of a guardian or custodian from whose home the child was removed by court order.

- **Responsible Individuals List.** Sections 3 through 6 of the act rewrite G.S. 7B-311(b)(2), -320, -323, and -324 relating to Responsible Individuals List notification and procedures. Responsible individual issues may be raised only by a petition for judicial review filed by the named individual, not by an allegation in an abuse, neglect, or dependency petition. After making diligent efforts to notify an individual of the director's determination that the individual is a responsible individual, restricted delivery is no longer required for notification by registered or certified mail, return receipt requested. If the director cannot show that the individual received actual notice, the individual cannot be placed on the list until an ex parte hearing is held and the court finds that the director made diligent efforts to find the individual. The time within which a hearing on a petition for judicial review must be scheduled is increased from 15 to 45 days. The court may stay the judicial review proceeding if the individual seeking judicial review is named in a juvenile court case or is a defendant in a criminal court case arising from the same incident. The court cannot consolidate the judicial review proceeding with the juvenile court case.
- **Pre-adjudication venue.** Section 7 of the act rewrites G.S. 7B-400 to provide that (1) a child's absence from the home pursuant to a voluntary protection plan does not change the place of proper venue if a petition is filed subsequently; (2) a director who conducts an assessment in another county because of a conflict of interest may file a resulting petition in either county; and (3) for good cause the court may grant a pre-adjudication change of venue, but the venue change does not affect the identity of the petitioner.
- **Service by publication.** Section 7 of the act rewrites G.S. 7B-407 to delete the requirement for authorization by the court before serving a party by publication.
- **Nonsecure custody and nonrelative kin.** Sections 13 and 14 of the act rewrite G.S. 7B-505 and 7B-506 with respect to where a child in nonsecure custody is placed. It authorizes the court to consider placement with nonrelative kin,

defined as someone who has a substantial relationship with the child and, in the case of a child who is a member of a State-recognized Indian tribe [G.S. 143B-407(a)], any member of that tribe or a federally recognized tribe, regardless of whether a substantial relationship exists. It authorizes the court to order social services to notify the State-recognized tribe of the need for nonsecure custody placement. At every hearing on the need for continued nonsecure custody the court must inquire about efforts to identify and notify relatives as potential resources for placement or support.

- **Attorney and guardian ad litem (GAL) for parent.** Sections 17 and 32 rewrite G.S. 7B-602 and 7B-1101.1 to repeal language regarding the appointment of a guardian ad litem for a respondent parent due to “diminished capacity” and refer exclusively to appointment of a guardian ad litem for a respondent parent who is “incompetent.” This means there will no longer be a GAL of assistance for respondent parents, and instead only a GAL of substitution may be appointed under Rule 17 for respondent parents who are incompetent. Both sections also provide that a parent who qualifies for appointed counsel may proceed without counsel only after the court examines the parent and makes findings sufficient to show that the waiver is knowing and voluntary. The examination must be on the record.
- **Continuances.** Section 19 rewrites G.S. 7B-803 to provide that resolution of a pending criminal charge arising from the same occurrence as the juvenile petition may not be the sole basis for granting a continuance.
- **Civil custody.** Section 29 rewrites G.S. 7B-911 to require the court to determine whether jurisdiction of the juvenile proceeding should be terminated and a civil custody order entered upon placing custody of the juvenile with a parent or other appropriate person.
- **Appeal.** Section 31 rewrites G.S. 7B-1001, to provide that notice to preserve the right to appeal an order ceasing reunification efforts must be in writing and given within 30 days after the order is entered and served. It requires that all notices of appeal be signed by both the appealing party and counsel, if any, codifying a requirement that is in Appellate Rule 3.1(a).
- **Notice of termination action.** Section 33 rewrites G.S. 7B-1106 to require that in termination of parental rights proceedings service of copies of all pleadings and other documents be made on the respondent’s attorney pursuant to G.S. 1A-1, Rule 5, if that attorney has not been relieved of his or her obligation after being appointed pursuant to G.S. 7B-602.
- **Termination of putative father's rights.** Section 35 rewrites G.S. 7B-1111(a)(5), which states the ground for terminating the rights of a putative father, to specify

a variety of ways a father of a child born out of wedlock may establish paternity prior to the filing of a petition or motion to terminate parental rights.

- **Selection of adoptive parents.** Section 36 rewrites G.S. 7B-1112.1 to require an agency making the selection of adoptive parents to consider any current placement provider who wants to adopt the child. It requires social services to notify foster parents of the selection of prospective adoptive parents. A foster parent who wanted to be but was not selected has 10 days after the notification to file a motion for a court hearing. Social services must include with the notification a copy of a form for making such a motion.

**S.L. 2013-378 (H 399): Cease Reunification.** Section 1 of this law amends G.S. 7B-507(b)(4), effective October 1, 2013, to authorize the court to order that reasonable efforts to reunify are not required or may cease if the court makes written findings that a court of competent jurisdiction has determined that a parent has committed sexual abuse against the juvenile or another child of that parent or that the parent is required to register as a sex offender.

**S.L. 2013-326 (H 510): Bill of Rights for Children in Foster Care.** Effective July 23, 2013, this session law rewrites G.S. 131D-10.1 to set forth a Foster Care Children's Bill of Rights – a list of eleven things the State promotes on behalf of children in foster care. These include a safe foster home, priority for sibling placement, communication with siblings, communication with the case worker, school stability and participation in extracurricular activities, identification of and notice to relatives to allow for participation in the child's placement, communication with parents regarding needed immunizations, and transition planning for those phasing out of foster care. A violation of the statute does not create a cause of action against the state, the Department of Health and Human Services, or anyone providing foster care services.

**S.L. 2013-236 (H 147): Review of agency plan for placement.** This law became effective on July 3, 2013. Section 1 of the act rewrites G.S. 7B-909 to require a review hearing within 6 months after a juvenile is relinquished for adoption if the juvenile has not become the subject of an adoption decree. The law also provides that when a consent or relinquishment is necessary for adoption but cannot be obtained and further steps to terminate parental rights are not being taken, on motion by the agency with custody and after notice to the parent who has relinquished the child, the court may void that parent's relinquishment. The relinquishing parent has a right to be heard. NOTE: Section 28 of S.L. 2013-129 also

amended G.S. 7B-909. However, that section was repealed by S.L. 2013-410, Section 27.

Section 12 of the act makes a conforming amendment to the adoption law, rewriting G.S. 48-3-707 to authorize the court, in a proceeding under G.S. 7B-909 (Review of agency's plan for placement), to void a relinquishment on motion of the agency with custody if the court finds that

1. the agency is unable to obtain another consent or relinquishment that is necessary for an adoption and
2. no further steps are being taken to terminate the rights of the parent from whom consent or relinquishment has not been obtained.

## **Adoption**

**S.L. 2013-236 (H 147): Adoption Law Changes.** S.L. 2013-236 makes various changes to the adoption laws, Chapter 48 of the General Statutes, effective July 3, 2013.

**Death of stepparent petitioner.** G.S. 48-2-204 provides for the completion of an adoption in the name of both petitioning spouses when one spouse dies after the petition is filed but before completion of the adoption. Section 2 of S.L. 2013-236 amends the statute to add a similar provision for stepparent adoptions. If a petitioning stepparent dies before the adoption is complete, the adoption may be completed in the petitioner's name, but only if the court gives notice to anyone who executed a consent to the adoption, giving that person notice of the death and notice that he or she may request a hearing on the adoption within 15 days after receiving the notice.

**Failure to respond to notice.** Section 3 of the act rewrites G.S. 48-2-207(a) to make clear that if a person whose consent to adoption is required by G.S. 48-3-601 is served with notice of the adoption and fails to respond, on motion of the petitioner the court must order that the person's consent to the adoption is not required.

**Documents petitioner must file.** In G.S. 48-2-305, which lists the things an adoption petitioner must file, section 5 of S.L. 2013-236 makes the following changes:

- Adds a provision that documents that are required to be filed and are not available when the petition is filed must be filed as they become available. Otherwise, documents must be filed when the petition is filed.
- Clarifies the requirement that a certificate of service required by G.S. 48-3-307(c) be filed if the person who placed the child for adoption executes a consent before receiving a copy of the preplacement assessment.

- Adds a requirement to file a certified copy of any judgment of conviction for first or second degree rape or rape of a child by an adult offender, resulting in the conception of the child, to establish that a person's consent to adoption is not required.

**Notice and consent.** Section 7 of the act amends G.S. 48-3-603(a)(9) to provide that consent is not required from a man who has been convicted of rape of a child by an adult (adding that offense to first and second degree rape) resulting in the conception of the child. Section 6 of the act rewrites G.S. 48-2-401(c)(3) to provide that notice need not be given to a man whose consent is not required because of his conviction of first or second degree rape or rape of a child by an adult offender, resulting in the conception of the child.

**Copy of consent or relinquishment.** Section 8 rewrites G.S. 48-3-605(c) to require that a person before whom a consent is signed and acknowledged certify that to the best of his or her knowledge the person giving consent was given an original or copy of his or her fully executed consent. Section 10 rewrites G.S. 48-3-702 to require a person before whom a relinquishment is signed and acknowledged to make certifications comparable to those made when a consent is signed.

### **Budget Act Changes Affecting Child Welfare**

**S.L. 2013-360 (S 402): Budget Act.** Subpart XII.C addresses the Division of Social Services. The following sections impact child welfare.

- SECTION 12C.2 addresses the Intensive Family Preservation Services (IFPS) Program referred to in G.S. 143B-150 including performance based measures for funding.
- SECTION 12C.4 directs the Division to design a Guardianship Assistance Program and authorizes the use of foster care funds to reimburse legal guardians for room and board when a child is in a permanent family placement, is eligible for legal guardianship, and otherwise is unlikely to receive permanency. Reimbursements are at the same rate as foster care room and board, as set forth in G.S. 108A-49.1. No additional expenses may be incurred beyond the funds budgeted for foster care.
- SECTION 12C.5 expands funding for the educational needs of foster youth aging out of the system who attend public institutions of higher education in North Carolina and for special needs children adopted from foster care after age 12, in the amount of two hundred thousand dollars (\$200,000) for the 2013-2014 fiscal year and four hundred thousand dollars (\$400,000) for the 2014-2015 fiscal year.



- SECTION 12C.7 requires the Division of Social Services to study the policies and procedures in place for reporting child abuse, lists specific factors to be studied, and requires a report of the results and any recommendations to the Joint Legislative Committee on Health and Human Services and the Fiscal Research Division no later than April 1, 2014.
- SECTION 12C.10 allocates funding for the Adoption Promotion Fund, which is the new name of the “Special Children Adoption Fund.”
- SECTION 12C.10(e) rewrites G.S. 131D-10.9A to create a Permanency Innovation Initiative Oversight Committee of the General Assembly. This Committee shall consist of 11 members serving staggered 3-year terms with initial Committee members to be appointed on or after July 1, 2013. The Committee is directed to collect and analyze data to gauge the success of the permanency initiative, identify short- and long-term cost savings in the provision of foster care, and recommend other policies and services that may positively impact permanency and well-being outcomes. A report and recommendations to the General Assembly are required by September 15 of each year. The act also rewrites G.S. 131D-10.9B to create a Permanency Innovation Initiative Fund to support a demonstration project with services provided by Children's Home Society of North Carolina. The project is subject to the availability of funds.

### **Court Costs**

**[S.L. 2013-225 \(H 343\)](#): Counties and municipalities to advance court fees.** Section 5 rewrites G.S. 7A-317 to provide that counties and municipalities are required to pay all costs and fees due to the court at the time of filing, authorize the clerk of superior court to allow the county or municipality to pay costs and fees within 45 days of the date of the filing in lieu of paying them at the time of filing, and require the clerk of superior court to withhold all facilities fees due to a county or municipality when the county or municipality does not pay costs and fees due to the court within 90 days of the date of filing any action. It also repeals the exception for child support, child abuse, and other actions filed by a county department of social services. These changes apply to actions filed and amounts assessed or collected on or after June 30, 2013. **NOTE:** Historically, the courts do not charge court fees for abuse, neglect, and dependency actions.