

2012 Legislation – Juvenile Law

Child Protection

S.L. 2012-153 (S 910): Confidentiality of reporter’s name. Ordinarily a county department of social services must hold “in strictest confidence” the identity of a person who makes a report of suspected child abuse, neglect, or dependency. Section 6 of this act creates an exception, in new G.S. 7B-302(a1)(1a), requiring a department to disclose the reporter’s identity to any federal, state, or local government entity (i) pursuant to a court order or (ii) without a court order if the entity demonstrates a need for the reporter’s name in order to carry out its mandated responsibilities. These changes are effective October 1, 2012.

S.L. 2012-153 (S 910): Foster home register. Section 7 of the act rewrites G.S. 131D-10.6C to provide for the Division of Social Services, in the Department of Health and Human Services, to maintain a public register of foster homes licensed by the division (was, foster home applicants). It adds authority for the division to withhold specific information about a foster parent if releasing the information would likely pose a threat to the health or safety of the foster parent or a foster child. Anyone who is denied access to information based on this provision may seek a court order compelling disclosure in accordance with the Public Records law, in particular G.S. 132-9(a). These changes are effective October 1, 2012.

S.L. 2012-40 (H 235): Termination of parental rights ground. Effective October 1, 2012, this act adds to G.S. 7B-1111(a) a new ground for termination of parental rights – “The parent has been convicted of a sexually related offense under Chapter 14 of the General Statutes that resulted in the conception of the juvenile.” As with other grounds, the court must determine whether termination of the parent’s rights is in the child’s best interest before terminating a parent’s rights on this basis.

S.L. 2012-16 (H 637): Adoption law changes. Effective October 1, 2012, this act makes the following changes to the adoption laws:

- Repeals G.S. 48-2-302(a), which requires that an adoption petition be filed within 30 days after the child’s placement with the petitioner or the state’s acquisition of jurisdiction, whichever is later. [Because subsection (b) addresses failure to comply with subsection (a), it should have been repealed as well.]
- Amends G.S. 48-2-304(a)(6) to provide that an adoption petition must include a description and estimate of the value of any property belonging to the adoptee only if the adoptee is a minor or an adult who has been adjudicated incompetent.
- Amends G.S. 48-2-401(a), to provide that the petitioner must initiate service of notice (rather than actually serve notice) of an adoption petition no later than 30 days after the petition is filed.
- Amends G.S. 48-3-205(d) to permit the substitution of forms reasonably equivalent to those provided by the Division of Social Services to collect background information for submission to the prospective adoptive parent.
- Amends G.S. 48-3-303(c)(12) to add the prospective adoptive parent’s social security number and income to information that may be redacted from the preplacement assessment provided to a placing parent or guardian.
- Amends G.S. 48-3-602, which requires the appointment of a guardian ad litem for a parent who has been adjudicated incompetent, to provide that if the court determines that proceeding with an

adoption is in the child's best interest, the court is to order the parent's guardian ad litem to execute a consent or a relinquishment (was, a consent) for the parent.

- Amends G.S. 48-3-608(b) to require that a preplacement assessment that is prepared after placement occurs in a direct placement adoption be prepared substantially in conformity with the requirements of G.S. 48-3-303.
- Amends G.S. 48-3-707(a) to provide that a relinquishment will become void if, after placement but before entry of the adoption decree, the agency, the person relinquishing the child, and the prospective adoptive parent all agree to rescind the relinquishment.

These changes apply to adoption proceedings filed on or after October 1, 2012.

S.L. 2012-153 (S 910): Unlawful sale, surrender, or purchase of a child. Effective December 1, 2012, this act creates a new criminal offense, in G.S. 14-43.14, making it a Class F felony for a person, when acting with willful or reckless disregard for the life or safety of a child, to participate in the acceptance, solicitation, offer, payment, or transfer of any form of compensation in connection with the unlawful acquisition or transfer of physical custody of a child. The offense does not apply to actions that are ordered by a court, authorized by statute, or otherwise lawful. An amendment to G.S. 14-322.3 also makes the new offense inapplicable to a parent who voluntarily surrenders an infant less than seven days of age as provided in G.S. 7B-500.

For an initial violation a minimum fine of \$5,000 must be imposed, and for any subsequent violation a minimum fine of \$10,000 is required. In sentencing someone who is convicted under this section the court must consider whether the person is a danger to the community and whether requiring the person to register as a sex offender under Article 27A of G.S. Chapter 14 would further the purpose of the sex offender registration law, and the court may enter an order requiring the person to register. The act amends G.S. 14-208.6(4) to make a conviction under the new section a "reportable conviction" for purposes of the sex offender registration law, but only if the sentencing court specifically orders the person to register.

A child whose parent, guardian, or custodian has sold or attempted to sell the child in violation of the section is an *abused juvenile* for purposes of the Juvenile Code [G.S. 7B-101(1)] and the court may place the child in the custody of a county department of social services or any person, as the court finds to be in the child's best interest. The act makes a conforming amendment to the definition of "abused juvenile" in G.S. 7B-101(1). The act requires the N.C. Conference of District Attorneys to study additional measures that may be taken to stop criminal activities involving the sale of children and to submit a final report of its findings and recommendations to the 2013 General Assembly by January 30, 2013.

S.L. 2012-160 (H 737): Child care facilities. Effective January 1, 2013, the act expands the scope of criminal record checks required of persons who care for children in child care facilities and adds additional restrictions on who may be a child care provider in a licensed or regulated child care facility.

Undisciplined and Delinquent Juveniles

S.L. 2012-172 (H 853): Limit secure custody for undisciplined juvenile. The act rewrites G.S. 7B-1903(b)(7) and (8), which describe when a juvenile who is alleged to be undisciplined may be held in secure custody, to limit the time the juvenile may spend in secure custody in all instances to 24 hours, excluding Saturdays, Sundays, and state holidays. Previously, that period could be extended to 72 hours "where circumstances require[d]." The change is effective October 1, 2012.

S.L. 2012-172 (H 853): No contempt for undisciplined juvenile. The act rewrites G.S. 7B-2505, which describes procedures and consequences for finding a juvenile in contempt for violating the terms of protective supervision. Effective October 1, 2012, the section no longer refers to contempt and no longer authorizes the court to order any period of detention as a consequence of a juvenile's violating the terms of protective supervision. Instead, after notice and a hearing and a finding that the juvenile violated those terms, the court may (i) continue or modify the terms of protective supervision, (ii) order any disposition authorized for undisciplined juveniles under G.S. 7B-2502, or (iii) extend the period of protective supervision for up to three months.

S.L. 2012-83 (H 881): Appointment of chief court counselor. Section 12 of the act amends G.S. 143B-806 to make a Chief Deputy Secretary (formerly the Secretary) of the Department the head of the Division of Juvenile Justice. The duties of the Chief Deputy Secretary include appointing the chief court counselor in each district. The act omits language that provided for the appointment of a chief court counselor to be made upon recommendation of the chief district court judge in the district. (The omitted language involving the chief district judge in the selection of the chief court counselor dates back to the pre-1999 organization of juvenile services, in which court counselors were employees of the Administrative Office of the Courts in the judicial branch, rather than an executive agency.) The act, which is effective June 26, 2012, also makes various technical changes relating to the Department of Public Safety and the Division of Juvenile Justice in that department.

S.L. 2012-172 (H 853): Intake procedures. The act rewrites G.S. 7B-1803(a), effective July 12, 2012, to delete language providing that procedures for receiving complaints and drawing petitions must be established by administrative order of the chief district court judge in each district.

S.L. 2012-172 (H 853): Local detention facilities. The act rewrites G.S. 153A-221.1, effective July 12, 2012, to make the Chief Deputy Secretary of Juvenile Justice in the Department of Public Safety responsible for state services to county juvenile detention homes. That responsibility previously belonged to the Secretary of Health and Human Services and the Social Services Commission. Effective January 1, 2013, the act amends G.S. 7B-1905(b), to make it unlawful for a county to operate a juvenile detention facility that does not meet the standards and rules adopted by the Department of Public Safety (previously, Department of Health and Human Services). The act also modifies the duty of the Secretary of Health and Human Services to develop standards for the use of a jail as a holdover facility, to require that the standards be developed in consultation with the Chief Deputy Secretary of Juvenile Justice in the Department of Public Safety.

S.L. 2012-149 (S 707): Cyber-bullying of school employee. The act creates a new offense in G.S. 14-458.2, cyber-bullying of a school employee by a student, a Class 2 misdemeanor. The new section provides that if a juvenile court counselor receives a complaint based on a student's violation of the section, upon a finding of legal sufficiency the juvenile may enter into a diversion contract pursuant to G.S. 7B-1706. The section applies to offenses committed on or after December 1, 2012.

S.L. 2012-149 (S 707): Principal's duty to report criminal/delinquent acts. The act amends G.S. 115C-288(g), which specifies a school principal's duty to report to law enforcement certain criminal or delinquent acts that occur on school property. The amendments apply with the beginning of the 2012 – 2013 school year. As amended, the subdivision

1. requires a principal to report to law enforcement when he or she has personal knowledge or actual notice from school personnel (but no longer when the principal has only a "reasonable belief") that one of the acts specified in the statute has occurred on school property. [The "reasonable belief"

provision deleted by this act was added to the statute, effective for the 2011 – 2012 school year, by [S.L. 2011-248](#) (S 394).]

2. no longer provides that a principal who willfully fails to comply with the reporting requirement may be subject to demotion or dismissal pursuant to G.S. 115C-325. [This deleted provision was added to the statute, effective for the 2011 – 2012 school year, by [S.L. 2011-248](#) (S 394), which deleted a provision making a principal’s violation of the reporting duty a Class 3 misdemeanor.] Now the statute is silent with respect to consequences for a principal’s failure to make a required report.

Juveniles Tried as Adults

[S.L. 2012-148](#) (S 635): Sentencing of juveniles to life imprisonment. North Carolina law authorizes a juvenile’s case to be transferred to superior court and the juvenile to be tried as an adult for a felony allegedly committed when the juvenile was 13, 14, or 15. (If the juvenile court finds probable cause for first degree murder, the transfer is mandatory.) If convicted in superior court, the juvenile is sentenced in the same way that an adult would be sentenced for the same offense, with few exceptions. The U.S. Supreme Court held in *Roper v. Simmons*, 543 U.S. 551 (2005), that imposing the death penalty on someone who was younger than eighteen when he or she committed a capital offense violates the Eighth Amendment. Five years later, in *Graham v. Florida*, ___ U.S. ___, 130 S. Ct. 2011 (2010), the Court held that a sentence of life without the possibility of parole also violates the Eighth Amendment when imposed on someone who committed a non-homicide offense when younger than age eighteen. Consistent with those cases, in North Carolina the death penalty can never be imposed on someone for an offense committed before age eighteen, and a sentence of life without the possibility of parole can be imposed only in cases of first-degree murder. See G.S. 14-17.

On June 25, 2012, in *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455, the Supreme Court extended its holding in *Graham* and held in a capital murder case involving a juvenile defendant that an automatic sentence of life without the possibility of parole violates the Eighth Amendment when the defendant was a juvenile when the offense was committed. Because North Carolina required such a sentence on a juvenile’s conviction for first degree murder, legislative changes were needed. The General Assembly made those changes in [S.L. 2012-148](#), effective July 12, 2012. This act creates a new Article 93, Sentencing for Minors Subject to Life Imprisonment without Parole, in G.S. Chapter 15A. The new article authorizes a sentence of life imprisonment *with* the possibility of parole after 25 years for juvenile defendants convicted of first-degree murder. If the murder conviction is based solely on the felony murder rule, the court must impose this sentence. In other cases involving first-degree murder committed by juveniles, the court must conduct a hearing, pursuant to new G.S. 15A-1477, to determine whether the defendant should be sentenced to life imprisonment with parole or without parole. The new statute identifies mitigating factors the court may consider in making this decision. New G.S. 15A-1479 describes the conditions and procedures for parole for juvenile defendants who receive a sentence of life imprisonment with the possibility of parole.

The act applies to sentencing hearings held on or after July 12, 2012. It also applies to resentencing hearings for defendants who were younger than eighteen at the time of their offense and who were sentenced to life imprisonment without parole. New G.S. 15A-1478 establishes procedures for motions for appropriate relief seeking resentencing in such cases. The act also directs the North Carolina Sentencing and Policy Advisory Commission, in consultation with the Office of the Juvenile Defender, the Conference of District Attorneys, and other organizations and agencies identified by the Sentencing Commission, to study and report to the General Assembly by January 31, 2013, on sentencing of juveniles convicted of first-degree murder.