

N.C. SESSION LAW 2001-208 (HB375)

Changes to Child Welfare Laws

This law makes clarifying and substantive changes to Chapter 7B. G.S.7B-602 is effective as of July 1, 2001. All other changes become effective on January 1, 2002 and apply to actions commenced on or after that date.

Appointment of Guardian ad litem--Change in Law: G.S.7B-602

This statute is amended to add the appointment of a guardian ad litem to represent a parent if the parent is a minor regardless of the allegations in the petition, or where it is alleged that the juvenile is a dependent juvenile because the parent is incapacitated because of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

Policy/Practice Guidance

The duties of a guardian ad litem have been expanded to include representation of a parent if the parent is a minor and in some dependency cases where the child is being alleged to be dependent because the parent is incapacitated due to substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition. This changes current policy that says the appointment of a guardian ad litem in dependency cases is optional. Appointment of a guardian ad litem in these two instances has been required in TPR cases under 7B-1011.

Service of Summons to Minor Parent—Change in Law 7B-406(a)

This amendment clarifies that the minor parent is to be served with the summons in an abuse/neglect/dependency petition, and the fact that the parent is a minor is not considered to be a disability. The minor parent can therefore be served as if he/she were an adult. Previously, our statute was silent as to whether or not it is appropriate to serve a parent if they are a minor.

Changes in Time Frames

Signed Court Orders--Change in Law 7B-506(d), 807(b), 905(a), 906(d), 907(c), 1109(e), and 1110(a)

These changes indicate that all juvenile court orders must be reduced to writing, signed by the judge, and filed with the Clerk of Court no later than 30 days of the completion of the hearing. Please assure that your agency's attorney(s) are aware of this important change.

Voluntary Placement Agreements—Change in law 7B-910(c).

The amendment shortens the time period within which the initial review hearing is to be held to 90 days after placement and mandates that an additional review be held at least 90 days thereafter. Further, this section changes current law by shortening the time period a juvenile may remain in foster care under a voluntary placement agreement without filing a petition to 6 months.

Practice/Policy Guidance

For children for whom a voluntary placement agreement has been accepted by the agency on or after January 1, 2002, the court reviews as described above will apply. For children who are currently in a voluntary placement agreement or will come under a voluntary placement agreement prior to January 1, 2002, the current statute regarding court reviews apply.

IV-E Funds

Wording of Court Order to Access IV-E Funds-- Change in Law 7B-2503(1) and 7B2506(1)

Language is added to the statutes setting forth the dispositional alternatives for undisciplined and delinquent juveniles so that if a court orders custody or placement of the juvenile with DSS, then the court must find that it is in the juvenile's best interest not to continue in the juveniles' own home, thus accessing Title IV-E funds to help support the juvenile, if all other eligibility requirements are met.

Access to Juvenile's Court Record—Change in Law 7B-2901(a)

This section was in Article 54 of the old juvenile code (7A). When this section was recodified, the provision describing who may have access to a juvenile's court records without a court order was left out. With the new language, the following persons would have access and be able to make copies of a juvenile's court record without a court order: the juvenile (even when the juvenile reaches majority), the guardian ad litem, the county DSS; the juvenile's parent, guardian, or custodian; and the attorney for the juvenile or for the juvenile's parent, guardian, or custodian.

Policy/Practice Guidance

This change does not apply to confidential records held by the agency. Current policy regarding agency cases remains the same.

Establishment of Paternity—Change in Law 7B-506(h)

This change adds a requirement that at each hearing to determine the need for continued custody, the court shall inquire as to whether paternity is at issue and, if so, what efforts are being undertaken to establish paternity.

Policy/Practice Guidance

From the initial involvement in each case, diligent efforts must be made to determine paternity of the child. These efforts must be documented in a court summary or in the case record and reported to the court.

Expanded authority

Expanded Court Authority Over Parents—Change in Law 7B-904

This amendment expands the authority of the court over the parents by permitting the court to order the parents to attend and participate in parental responsibility classes, to provide transportation to the juvenile to keep appointments for treatments, and to take appropriate steps to remedy conditions in the home that led to the juvenile's adjudication. The amendment to the statute specifically sets the procedure governing the contempt proceedings. Failure to comply with the order of the court may lead to the parent being found in civil or criminal contempt.

Policy/Practice Guidance

This amendment does not relieve the agency of the responsibility to support the parents in their efforts to follow the court order.

Expanded Authority of the Director in Visitation Plans—Change in Law 7B-905(c)

This amendment makes it clear that if the Director makes a good faith determination that the visitation plan outlined in the court order is not in the juvenile's best interest (because, for example, the juvenile is being abused during the visitation), the Director can temporarily suspend all or part of the visitation plan until further review by the court.

Policy/Practice Guidance

Current policy states that before visits can be sharply limited or terminated, one of the requirements is to file a motion for review to obtain a court order even if the parents agree. This amendment gives the Director authority to limit or terminate the visits without first petitioning the court. The agency must document with clear and convincing reasons why the action by the Director was in the child's best interest and

present the evidence to the court at the next hearing or request an earlier review of the case.

Appeals

Notice of Appeal—Change in Law 7B-1001

This amendment requires any notice of appeal to the Court of Appeals to be in writing.

Policy/Practice Guidance

This change conforms to the Rules of Appellate procedure which govern appeals to the Court of Appeals.

Juvenile’s Right to Appeal—Change in Law 7B1113

This amendment clarifies that the juvenile acting through the juvenile’s guardian ad litem, if one has been appointed, may appeal the order of adjudication or the order of disposition, provided the appeal is made in writing within 10 days after the entry of the order. This gives the guardian ad litem standing in these appeals.

Disposition Pending Appeal—Change in Law 7B1003

This amendment clarifies that the judge has the authority, but is not required, to place the juvenile with the parent or guardian of the juvenile pending the disposition of an appeal.

Changes in Termination Procedures

Timely Permanence—Change in Law 7B-907(d)

This amendment changes the statute by reducing the time period for initiating a TPR proceeding from 15 to 12 months of the 22 most recent months unless one of the three conditions for not initiating a TPR exists. It also requires the Director to automatically initiate TPR proceedings at that time unless one of the three exceptions to the requirement to initiate TPR exists and can be documented clearly and specifically in the case plan.

Policy/Practice Guidance

This applies to every child who comes into agency custody on or after January 1, 2002. Please refer to DSS Administrative Letter No. 2-98 dated 1-1-99 for guidance on ASFA requirements for recruitment of adoptive homes for these children.

Summons of Juvenile—Change in Law 7B1106(a)

This change clarifies that the juvenile, no matter what age, is served with the summons and petition in a TPR action. Additionally, the amendment to the statute requires that the papers directed to the juvenile must be served upon the juvenile’s guardian ad litem, if one is appointed.

Grounds for TPR—Change in Law 7B1111(a)(2)

This amendment clarifies the grounds upon which the Court may grant a petition for termination of parental rights. Two separate grounds are amended--willful abandonment and violence in the home by the parents. In the case of willful abandonment, the change clarifies that termination may be granted upon a showing that the parent has willfully left the child in foster care or other placement outside the home for a total of more than 12 months. Secondly, the amendment clarifies that the petitioner has the responsibility of proving that the parent has committed murder or voluntary manslaughter of another child of the parent or a child residing in the parent’s home; or has aided, abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of the child, another child of the parent or a child residing in the parent’s home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent or a child residing in the parent’s home.

**N. C. SESSION LAW 2001-150 (SB499)
CHANGES IN ADOPTION LAWS**

There were several changes in the adoption laws during the 2001 session. Some of these changes are also included in HB375. Changes in SB499 become effective on November 1, 2001 and changes in HB 375 become effective on January 1, 2002.

Changes effective November 1, 2001 are:

Revocation Period—Change in Law G.S. 48-3-608 and 48-3-706

These amendments change the revocation of consent and the revocation of relinquishment for all children from 21 days to 7 days. All other provisions remain the same.

Policy/Practice Guidance

New forms will be available by November 1, 2001.

Agency Identified Adoption—Change in Law G.S. 48-1-101(4(a); 48-9-109(2) and 48-3-203(d)

These amendments provide for an agency placement where the parent or guardian and adoptive parents mutually agree to disclose identifying information. The consent to the release of identifying information must be in writing and signed prior to the adoption by the placing parent or guardian and the adopting parents. This document must be acknowledged under oath in the presence of an individual authorized to administer oath or take acknowledgements. The document must be filed with the petition for adoption.

Agency identified placements can only be made with individuals who have a favorable preplacement assessment. When the agency agrees to place the minor with the prospective adoptive parents selected by the parent or guardian, the agency must place the minor with the approved prospective parent selected by the parent or guardian.

Policy/Practice Guidance

This change in law allows for face-to-face meetings and exchange of confidential information between the placing parent and the prospective adoptive parents who have an approved preplacement assessment. The release of identifying information occurs **prior** to the adoption. **The release of identifying information after the adoption is finalized is still prohibited.** Once the adoption is finalized, the adoption record is sealed and no identifying information may be disclosed except pursuant to the G.S. 48-9-105.

Advertising Desire to Adopt—Change in Law G.S. 48-10-101(b)

This amendment allows a person to advertise that he/she desires to adopt. That person must have completed a preplacement assessment and been found suitable as an adoptive parent. Advertisement under the amended statute may state whether the person is willing to provide lawful expenses as permitted in G.S. 48-10-103.

Policy/Practice Guidance

Agencies are required to give a copy of the approved preplacement assessment to the prospective adoptive parent. However, the agency is not required to monitor the prospective adoptive parent's activities as related to the advertisement of the desire to adopt.

Redacted Preplacement Assessment—Change in Law G.S. 48-3-202(b) and 48-3-303(c)(12)

These statutes have been rewritten to include a new provision that allows an agency to redact certain detailed and identifying information from the preplacement assessment.

Policy/Practice Guidance

Agency practice has varied on how preplacement assessments have been done. Some agencies have included social security numbers, full disclosure of financial status of the prospective adoptive parents, and detailed information about family members. This change of law addresses the concern that much of this information could lead to the identity of a person. Detailed information should be gathered by the agency in the assessment process, but the written preplacement assessment should not include information that could lead to the identity of the prospective adoptive parent.

Certification of Service to Placing Parent-Change in Law G. S. 48-3-307 and 48-2-305

These amendments require that a prospective adoptive parent file a certificate indicating that the prospective adoptive parent has delivered a copy of the preplacement assessment to the parent or guardian who placed the minor for adoption. The required certificate must be filed with the petition.

Policy/Practice Guidance

This change formalizes the process for a parent to receive the preplacement assessment of a prospective adoptive parent in independent adoptions. Previously a verbal statement that a copy of the preplacement assessment had been given to the placing parent was acceptable. This is no longer true.

Notice to Parent of the Filing of an Adoption Petition in Agency Adoption--Change in Law G.S. 48-2-402(b)

This amendment provides that a TPR petition will not be required in an agency adoption where a known or possible parent has been served by personal service or registered mail with notice of the filing of the adoption petition under G.S. 48-2-401. If the known or possible parent does not respond to the personal or registered mail service within 30 days, the clerk can find pursuant to G.S. 48-603(a)(7) that his consent to the adoption is not required, and the Decree of Adoption will terminate his parental rights.

Policy/Practice Guidance

Prior to this change in law, the agency had to file a TPR action to clear an unknown parent rather than giving the unknown parent notice of the filing of the adoption petition. The agency then had to get an order from the clerk that his consent to the adoption was not necessary when he did not respond to the publication notice. This change should help expedite some adoptions.

Update of Preplacement Assessment—Change in law G.S.48-2-304(b)

The update period for a preplacement assessment is 18 months. This change was inadvertently left out of the law when it went into effect. G.S. 48-2-304(b) corrects this error by making the technical change.

Effective January 1, 2002

Adult Adoption/Notice—Change in Law G.S. 48-2-401(d)

This amendment allows the court to waive the requirement of notice to a parent of an adult adoptee if the court finds good cause.

Affidavit of Parentage—Change in Law G.S. 48-3-206

This statute has been rewritten to include a knowledgeable individual as one who can execute an affidavit of parentage if the placing parent or guardian is unavailable. Additionally, the amended language would eliminate the requirement that the agency must obtain the affidavit of parentage, when the agency has obtained legal and physical custody of a child by a court order terminating the parental rights of a parent or guardian. The TPR order contains the information set forth in the affidavit of parentage.

Revocation of Relinquishment in Specified Placements—G.S. 48-3-704

This amendment gives a parent 10 days, inclusive of weekend and holidays, to revoke a relinquishment to a specified prospective adoptive parent after the date she receives notice from the agency that the adoption by the specified prospective adoptive parent will not take place. If the agency cannot locate the parent and/or if the parent does not revoke the relinquishment within the 10-day period, the agency may place the child for adoption with a prospective adoptive parent selected by the agency.

Policy/Practice Guidance

This change sets a time frame for the parent to revoke in a specified placement to an agency. It also gives the agency the right to proceed with the adoptive placement of a child with another family if the parent does not revoke or cannot be located within the 10-day period. Previous law did not include a time frame.

**Transmittal of Adoption Records to the State Office—Change in Law—
G.S. 48-9-102(d)**

This amendment orders the clerk of court to hold all documents in an adoption proceeding until the Decree of Adoption is entered or after the final disposition of an

appeal. The clerk then has 10 days to send them to the Division. The clerk will maintain the original petition and final decree in the clerk's office.

Policy/Practice Guidance

Currently, the clerk sends adoption documents to the Division when they are filed. This practice will change so that all documents will be sent at one time to the Division. This process should help expedite the indexing of adoption proceedings.

Certification of Identification in Foreign Adoptions—Change in Law 130A-108

This amendment requires the State Registrar to prepare a certificate of identification for any adopted person born in a foreign country and readopted in this state upon the receipt of a report of the adoption from the Division, regardless of whether the adopted person is residing in this state at the time of the application for the certificate.

N. C. Session Law 2001-291 (HB 275) Infant Homicide Prevention Act—Effective 7-19-2001

This act decriminalizes abandonment of an infant under certain circumstances and modifies procedures involving abandonment of juveniles as created under this statute. When the agency receives a report that alleges abandonment, the Director shall immediately initiate an investigative assessment and take the appropriate steps to assume temporary custody and take appropriate steps to secure an order for nonsecure custody of the child. When the report alleges abandonment, the investigation shall include a request to law enforcement to investigate through the NC Center for Missing Persons and other national and state resources as to whether or not the child is a missing child. A parent may voluntarily deliver an infant less than seven days old into the temporary custody of a health care provider, a law enforcement officer, a social worker, or any adult. The individual who takes an infant into temporary custody shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services or a law enforcement agency. The individual who takes an infant into temporary custody may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide the information. **Abandonment of an infant under this act would cause no civil or criminal liability.** This act revised the ground for termination of parental rights GS 7B-1111(a)(7) to include situations in which a parent has voluntarily abandoned an infant for at least 60 consecutive days immediately preceding the filing of the petition or motion for review.

Practice/Policy Guidance

This act changes the timeframes for responding to all child protective services reports of abandonment which falls under the neglect statute from 72 hours for initiation to immediately initiating an investigation. This act also requires contacting law enforcement to request their assistance to inquire through the NC Center for Missing

Persons and other resources to determine if the child has been reported as a missing person. County Departments of Social Services will need to make sure that the local law enforcement agencies are aware of this. The ground for termination of parental rights mentioned above now makes a distinction between willful abandonment and voluntary abandonment regarding timeframes when this ground can be used.

N.C. Session Law 2001-303 (SB836)

School Assignment/Child in Pre-Adoptive Home Act—Effective 7-21-2001

This act modifies the public school residency requirement to include children residing in a pre-adoptive home following placement by a county department of social services or a licensed child-placing agency.

Practice/Policy Guidance

This amendment was necessary because some school systems have refused to admit children placed in pre-adoptive homes from other counties or states to enroll in school. If agencies experience any problems in enrolling these children in school, referral should be made to this law.

N.C. Session Law 2001-309 (SB715)

DSS/Indian Affairs Collaboration Act—Effective 7-27-2001

This act orders the Division of Social Services, and the Department of Health and Human Services to work in collaboration with the Commission of Indian Affairs, Department of Administration, and the North Carolina Directors of Social Services Association to develop, in a manner consistent with federal law, an effective process to meet the needs of Indian children in the child welfare system. Specific guidance is given on what has to be accomplished.

N.C. Session Law 2001-277 (HB643)

Testimonial Privilege for Violence Victims Act—Effective 12-1-2001

This act establishes qualified testimonial privilege for communications with agents of rape crisis centers and domestic violence programs. Agents of a center shall not be required to disclose information acquired from a victim that was necessary to render services to a victim. The right to maintain privileged communication may be waived by the victim, in order to facilitate court proceedings. Nothing in the act relieves a person of any duty pertaining to abuse or neglect of a child or a disabled adult as required by law.

N. C. Session Law 2001-109 (SB541)

Sanitation Rules/Family Foster Homes Act—Effective 5-24-2001

A single family dwelling that is used as a family foster home or a therapeutic home is exempt from the requirement of sanitation rules as established by the Environmental

Management Commission. For purpose of this law, “therapeutic home” means a 24-hour residential facility located in a private residence that provides professionally trained parent-substitutes who work intensively with children and adolescents who are emotionally disturbed or who have a substance abuse problem.

Policy/Practice Guidance

Please refer to the Dear County Director Letter dated 9-7-01.

**N. C. Session Law 2001-124 (SB542)
Database on Psychotropic Medication for Children—Effective 5-25-01**

This act states that the Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention shall review the feasibility of establishing and maintaining a statewide database containing information on the prescription and administration of psychotropic medications to children who receive state services while residing in state facilities administered by the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention.