

**DSS ADMINISTRATIVE LETTER
CHILD WELFARE SERVICES CWS-AL-03-13**

TO: COUNTY DIRECTORS OF SOCIAL SERVICES

ATTENTION: ALL CHILD WELFARE STAFF AND CHILD WELFARE AGENCY ATTORNEYS

DATE: SEPTEMBER 17, 2013

SUBJECT: CHILD WELFARE LEGISLATIVE CHANGES FOR 2013 REGULAR (LONG) SESSION

EFFECTIVE: AS INDIVIDUALLY SIGNED INTO LAW OR EFFECTIVE DATES

I. Intent & Background

The purpose of this Administrative Letter is to provide information regarding legislative changes during the 2013 North Carolina General Assembly's long session that may impact child welfare services. Please discuss any new or revised legislation in its entirety with your agency's attorney(s) or legal staff to understand the impact that each law may have within your jurisdiction. These Session Laws and all other statutes can be accessed through the North Carolina General Assembly website (<http://www.ncleg.net>).

The Division will continue to evaluate the implications that these legislative changes may have on policy. Any required changes will be included in the upcoming manual revisions or communicated through regular correspondence.

II. Legislative Summary:

Session Law 2013-129 (HB 350) – Court Improvement Project Juvenile Law Changes

Effective date: This act becomes effective October 1, 2013 and applies to petitions pending or filed on or after that date.

Section 1 - G.S. § 7B-101 amended to repeal definitions that are holdovers from delinquency cases, clarifies the definition of dependent juvenile, and enacts new definitions that clarify the terms “return home” and “reunification” apply to either parent, or a guardian or custodian from whom the child was removed.

Section 2 - G.S. § 7B-200(b) amended to specify that the court has jurisdiction over a parent, guardian, custodian or caretaker if (1) there is proper service of the summons, (2) waived service of process, or (3) automatically becomes a party under G.S. § 7B-401.1.

Responsible Individuals List (RIL):

Several issues have arisen with the current statute that allows the local child welfare agency to combine adjudicatory hearings with judicial review of an individual identified as responsible for abuse or serious neglect. Accordingly, changes have been made to G.S. § 7B-311(b)(2), G.S. § 7B-320(b), G.S. § 7B-323, and G.S. § 7B-324. These changes are described below.

Section 3 - G.S. § 7B-311(b)(2) amended to only permit judicial review of placement on the RIL as an independent proceeding (previously set forth under G.S. § 7B-323) and not be combined with proceedings arising from the filing of a Juvenile Petition for Abuse/Neglect/Dependency.

Section 4 - G.S. § 7B-320(b) amended to require diligent efforts by the local child welfare agency to provide notice to the individual. G.S. § 7B-320(d) also amended to specify the director will provide a form, but not instructions on how to file and serve the Juvenile Review Petition because of concerns regarding unauthorized practice of law. The Administrative Office of the Courts (AOC) will develop a form for this purpose.

Section 5 - G.S. § 7B-323 amended to enact a new provision (a1) that allows for proceeding with RIL placement, when the director of the local child welfare agency cannot show the individual received actual notice, which includes an ex-parte hearing where the court is asked to find diligent efforts were made to serve the individual (a finding that the individual is evading service is relevant). G.S. § 7B-323(b) is amended to schedule the hearing for Judicial Review at 45 days instead of 15 days.

Section 6 - G.S. § 7B-324 amended to repeal the ineligibility of judicial review by a respondent named in a Juvenile Petition for Abuse/Neglect/Dependency under (a)(2) since this procedure is eliminated in the juvenile adjudication proceeding. G.S. § 7B-324(b) is amended to temporarily stay the judicial review proceeding if the individual is a defendant in criminal court and repeals the procedure related to the juvenile adjudication proceeding.

Note:

Policy under Chapter VIII; Section 1427 – Responsible Individuals List (<http://info.dhhs.state.nc.us/olm/manuals/dss/csm-60/man/pdf%20docs/CS1427.pdf>) and the Responsible Individuals List form (DSS-5104a) (<http://info.dhhs.state.nc.us/olm/forms/dss/dss-5104a.pdf>) will be updated to reflect this change in legislation.

Juvenile Petitions, Venue, Parties to Juvenile Proceedings, and Issuance of Summons:

Section 7 - G.S. § 7B-400 amended to clarify venue for filing the Juvenile Petition of Abuse/Neglect/Dependency when a juvenile is placed in a different county under a protection plan, or when a local child welfare agency has a conflict and another agency is conducting the CPS Assessment. Specifically, this section states that the absence of a child from their home pursuant to a protection plan during the CPS Assessment or provision of CPS In-Home Services does not change the original venue if it becomes necessary to file a petition. When the agency in one county conducts a CPS Assessment in another county due to a conflict of interest, the agency conducting the assessment may file a petition in either county. It also allows the court to grant a motion to change

venue pre-adjudication for good cause, but does not change the petitioner. Any change of venue after the adjudication will be pursuant to G.S. § 7B-900.1.

Section 8 - G.S. § 7B-401 provides a new subsection (b) which specifies that the adjudication hearing procedures of Article 8 of Chapter 7B apply when the local child welfare agency investigates a new report of abuse, neglect, or dependency on a parent, and then seeks court action by motion instead of filing a new petition. The purpose of this amendment is to provide the same due process protections to parents whether the new allegations of abuse, neglect, or dependency are filed by petition or motion.

Section 9 - G.S. § 7B-401.1 enacted to specifically identify the parties to juvenile abuse, neglect, and dependency proceedings. This section also gives the court discretion in releasing a guardian, custodian, or caretaker from being a party if no legal rights are affected and it is not necessary to meet the juvenile's needs. It limits the ability of a non-party to intervene in a juvenile proceeding. A non-party may still file a civil custody action and move to consolidate the proceedings. All dispositional hearings permit the court to hear from non-parties where it will aid the court's decision to determine the juvenile's best interest.

Section 10 - G.S. § 7B-402 amended to specify the parties to a juvenile petition in G.S. § 7B-401.1.

Section 11 - G.S. § 7B-406 amended in reference to the issuance of a Juvenile Summons. G.S. § 7B-406(a) is amended to reference the parties named are issued a Juvenile Summons. G.S. § 7B-406(b) is amended to specify a parent has the right to seek counsel prior to the hearing if provisional counsel is not identified, and repeals (2a) related to the RIL.

Section 12 - G.S. § 7B-407 amended in reference to the service of summons by publication, and other technical or language changes.

Placement of Children, Non-Relative Kin, Continued Non-Secure Custody, and Permanency:

Section 13 - G.S. § 7B-505 amended to provide changes to the placement of children while in non-secure custody. It provides subsections (a) through (d) for better reference, and enacts a new subsection (c) to expand types of placements available to a child in non-secure custody by identifying individuals who may not be relatives but have a substantial relationship with the child. These individuals are defined as "non-relative kin." It also gives additional placement options for American Indian children who are members of a state recognized tribe by defining non-relative kin to include members of state or federally recognized tribes regardless of the relationship with the child. One purpose of this change is to allow placement of children from state recognized tribes with American Indian families when in their best interest, given that state tribes are not protected by the federal Indian Child Welfare Act (ICWA). This change also encourages these placements be made at the onset of the case and only when the placement is in the child's best interest, so the placement does not violate the federal Multi-Ethnic Placement Act (MEPA), which prohibits moving a child based on ethnicity. The court may also order that the child's state recognized tribe be notified for purposes of placement, if this notification has not already occurred.

Section 14 - G.S. § 7B-506 amended on the hearing to determine the need for continued non-secure custody by enacting subsection (g) to specify that any party may schedule a hearing on placement. Subsection (h) is amended to require the court to inquire about efforts the local child welfare agency has made to identify relatives and provides the same language related to non-relative kin, including notification to state recognized tribes where the child is a member.

Section 15 - G.S. § 7B-600 amended related to reasonable efforts by repealing references to G.S. § 7B-907 and inserting G.S. § 7B-906.1 set forth in Section 26 of this law.

Section 16 - G.S. § 7B-600 amended to clarify that a guardian appointed as the permanent plan for a child is a party to the juvenile court proceedings.

Parent Guardian ad Litem:

Section 17 - G.S. § 7B-602 amended related to parent's right to counsel and Guardian ad Litem (GAL). Provides, under a new subsection (a1), a procedure for parents to waive court-appointed counsel after the court examines the parent, and finds the parent's waiver of counsel is knowing and voluntary, and recorded. Also, (c) and (d) amended to clarify and limit the appointment of Guardians ad Litem to parents who have been found incompetent. Note that this procedure is repealed in G.S. § 7B-1109 and enacted in G.S. § 7B-1101.1 for consistency with G.S. § 7B-602. G.S. § 7B-1101.1 (c), (d), and (e) were amended under this section to clarify and limit the appointment of GAL for incompetent parents. There has been much confusion about the role of GAL appointed to parents in juvenile proceedings. A recent appellate case (*In re P.D.R.*, COA10-1519-2, 12/18/12) (http://www.aoc.state.nc.us/www/public/html/AR/CourtAppeals/2012/18_December_2012/10-1519.pdf) held that there are two types of GAL for parents in abuse, neglect, and dependency or Termination of Parental Rights (TPR) proceedings. The first type is the well-established GAL appointed in the role of substitution for an incompetent parent. Guardians ad Litem of this type are able to make decisions in place of the parent. The second type of GAL acts in an assistive role for parents with diminished capacity. Amendments to (c) eliminate the assistive GAL role and clarify that the court appoints a GAL only for a parent who is incompetent in accordance with Rule 17 of the Rules of Civil Procedure. G.S. § 7B-1101.1(d) specifies that the GAL and parent attorneys cannot act in the same capacity. Under Section 32 of this act, G.S. § 7B-1101.1(a1) was amended to provide the same changes.

Pre-Adjudication Hearings. Continuance based on Criminal Charges and other changes:

Section 18 - G.S. § 7B-800.1 enacted to provide for a pre-adjudication hearing. Increasingly, local child welfare agencies file Juvenile Petitions for Abuse/Neglect/Dependency, but do not request non-secure custody. In many of these cases it has been found that the adjudication hearings are being delayed because it is the first time parties come to court, and preliminary issues have not been addressed. The pre-adjudication hearings address appointment of counsel, identification of parties, paternity, missing parents, relatives, and procedural requirements. G.S. § 7B-800.1 also allows the pre-adjudication hearing to be combined with non-secure custody, pretrial, or other hearings as determined by local rules, and specifies that parties can enter stipulations or a consent order.

Section 19 - G.S. § 7B-803 amended continuances and specifies that resolution of a criminal charge out of the same incident or occurrence as the Juvenile Petition for Abuse/Neglect/Dependency is the sole extraordinary circumstance for granting a continuance. Resolution of criminal charges can take a long time, even years. Juvenile proceedings being placed on hold creates barriers to permanency and places children in legal limbo. The court may still consider resolution of criminal charges as a factor in granting a continuance. Parents who are charged criminally may still invoke the protections of the Fifth Amendment in the juvenile proceeding and have court-appointed counsel in both criminal and juvenile proceedings.

Section 24 - G.S. § 7B-905.1 enacted to provide a specific statute on visitation in juvenile proceedings. Many juvenile orders that are appealed have been sent back on the issue of visitation. This statute will provide guidance to judges on these matters. Specifically, subsection (a) states that when custody of a child is removed, visitation is provided in the child's best interest, health, and safety, subsection (b) indicates that if the local child welfare agency has custody, the agency must provide a visitation plan for court approval with minimum parameters of visitation indicated and specific notice provisions in the event that the visitation schedule must be altered, subsection (c) states when the court grants custody or guardianship, a visitation plan must be ordered with specific parameters for the visitation schedule, and, finally, subsection (d) provides that the court retains jurisdiction, parties are notified of the right to file a Motion for Review of the visitation plan. If the party files a Motion for Review on visitation, the court may order the local child welfare agency and the GAL to investigate and make written recommendations. The court can specify conditions to suspend visitation. The court may also order parents, guardians, or custodians to participate in custody mediation, where available. A copy of the mediated agreement is given to the parties, attorneys, and the court. The court must approve the agreement.

Section 26 - G.S. § 7B-906, Review of Custody Order, and G.S. § 7B-907 Permanency Planning Hearing were repealed. The provisions of each are combined and streamlined into G.S. § 7B-906.1, Review and Permanency Planning Hearings. Clarification has been provided that after the first Permanency Planning Hearing is held, subsequent hearings are designated Permanency Planning Hearings. Additional provisions not already specified under G.S. § 7B-906 or G.S. § 7B-907 include where custody is placed with either parent, review hearings are waived. The Division will work quickly and diligently to make any changes to the Model Court Reports necessitated by this legislation.

Section 27 - G.S. § 7B-908 clarified regarding the notice of Post-Termination of Parental Rights hearings pursuant to G.S. § 7B-908 are sent to the person providing care for the child and subsection (d) references to G.S. § 7B-1112.1 to specify that the term "prospective adoptive parents" refers to the adoptive parent selected by the local child welfare agency and not simply foster parents who may wish to adopt.

Section 29 - G.S. § 7B-911 amended to provide that in cases where custody is placed with a parent or other appropriate person, the court is required to determine whether jurisdiction should remain with the juvenile court or be transferred to civil custody court. Also allows for one order to both terminate juvenile court jurisdiction and support entry of a custody order under Chapter 50.

Section 33 - G.S. § 7B-1106 amended by adding a new provision (a2) that copies of the TRP pleadings are served on the parent attorney of record. This addition is in response

to reports that some counties do not provide the parent's attorney with a copy of the termination of parental rights petition served on a parent through Rule 4 of the Rules of Civil Procedure regarding personal service.

Section 35 - G.S. § 7B-1111(a)(5) amends the TPR ground related to the establishment of paternity. After a recent appellate decision (In re J.K.C., COA 11-783, 1/17/12)(http://www.aoc.state.nc.us/www/public/html/ar/CourtAppeals/2012/17_January_2012/11-783.pdf) held that a man's name on the birth certificate of a child born to an unmarried woman created a presumption that paternity of the child had been established. Local child welfare agencies will no longer be able to use G.S. § 7B-1111(a)(5) as a ground to TPR, when an Affidavit of Parentage has been executed.

Section 36 - G.S. § 7B-1112.1 amended to require the local child welfare agency to consider current placement providers as potential adoptive parents if the current placement provider wants to adopt. Section 36 also provides specific provisions for the local child welfare agency to notify foster parents of the selection of prospective adoptive parents and a procedure by which the foster parents can seek Judicial Review of the agency's decision if the foster parents wanted to adopt, but were not selected. Upon motion, the court will determine whether the proposed adoptive placement is in the child's best interest. Rationale for this change is to provide the foster parents with some form of procedural due process if they are not selected as prospective adoptive parents.

Section 37 - G.S. § 7B-1114 amended to allow for Reinstatement of Parental Rights (RPR) where a child was relinquished for adoption and adopted or if rights were terminated outside North Carolina.

*The information above, regarding this session law, was provided by Deanna Fleming, Associate Counsel with the North Carolina Administrative Office of the Courts, via a detailed summary. The summary can be accessed online at <http://www.sog.unc.edu/sites/www.sog.unc.edu/files/SL2013-129%20Summary%20Leg%20Update%20CIP.pdf>

Session Law 2013-236 (HB 147) – Adoption Law Amendments

Effective date: Immediately

Section 1 - G.S. § 7B-909 rewritten to provide a subsection (a) that specifies the director of the child welfare agency or a licensed private child-placing agency will notify the clerk to calendar the case for review of the agency's plan for the child, if the child is in the custody of the agency and has not become the subject of a decree of adoption within six months following relinquishment of the juvenile for adoption by a parent, guardian, or GAL under Part 7 Article 3 of Chapter 48 of the General Statutes. A new subsection (b1) is added to provide that if the court finds that a consent or Relinquishment for Adoption, necessary for the child to be adopted, cannot be obtained and no further steps are being taken to terminate the rights of the parent from whom consent or relinquishment has not been obtained, the court may order in the child's best interest, that any relinquishment for adoption signed by the other parent will be voided pursuant to G.S. § 48-3-707(a)(4). Before voiding any relinquishment under this subsection, the court will require the local child welfare agency or licensed child-placing agency to give at least 15 days notice to the relinquishing parent whose rights will be restored. The relinquishing parent will have the right to be heard on whether the relinquishment should be voided and the parent's

plan to provide for the child if the relinquishment is voided. If the relinquishing parent cannot be located, the notice of hearing will be deposited in the United States mail, return receipt requested, and sent to the address of the parent given in the relinquishment. The date of receipt of the notice is deemed the date of delivery or last attempted delivery.

Section 2 - G.S. § 48-2-204 rewritten to provide that when a stepparent who has petitioned to adopt dies before entry of a final decree, the adoption may proceed in the name of the petitioning stepparent if the court causes to be mailed to any individual who executed a contest to the adoption a notice advising that the petitioning stepparent has died and the individual may, within 15 days from the date the individual receives notice, request a hearing on the adoption.

Section 4 - G.S. § 48-2-302 rewritten to provide that a Petition for Adoption may be filed concurrently with a Petition to Terminate Parental Rights.

Section 5 - G.S. § 48-2-305 rewritten to include that the petitioner must file a certificate as required by G.S. § 48-3-307(c), if the person who placed the child executes a consent before receiving a copy of the Pre-placement Assessments, and a certified copy of any judgment of conviction of a crime specified under G.S. § 48-3-603(a)(9) establishing that an individual's consent to adoption is not required.

Section 6 - G.S. § 48-2-401(c)(3) rewritten to include that the petitioner need not serve notice of the filing to a man whose consent to the adoption is not required under G.S. § 48-3-603(a)(9) due to his conviction of a specified crime.

Sections 7, 8, and 9 rewrite **G.S. § 48-3-603(a)**, **G.S. § 48-3-605(c)**, and **G.S. § 48-3-606**, respectively, to provide certain technical changes, such as language and grammar.

Section 10 - G.S. § 48-3-702 enacts a new subsection (b1) to provide that an individual before whom a relinquishment is signed and acknowledged under subsection (a) of this section will certify in writing that to the best of the individual's knowledge or belief, the parent, guardian, or child to be adopted executing the relinquishment has met each of the following:

1. read or had read to him or her, and understood the relinquishment;
2. signed the relinquishment voluntarily;
3. been given an original or copy of his or her fully executed relinquishment; and
4. been advised that counseling services are available through the agency to which the relinquishment is given.

Section 11 - G.S. § 48-3-703 rewritten to provide certain technical changes, such as language and grammar.

Section 12 - G.S. § 48-3-707(a) rewritten to provide that in addition to subsections 1, 2, and 3, that a relinquishment will become void if, upon motion of a local child welfare agency or licensed child-placing agency under G.S. § 7B-909, the court orders that the relinquishment will be voided based on a finding that another consent or relinquishment necessary for an adoption cannot be obtained and that no further steps are being taken to TPR of the parent from whom the consent or relinquishment has not been obtained.

Section 13 - G.S. § 7B-505 rewritten to provide certain technical changes, such as language and grammar.

Session Law 2013-378 (HB 399) – Amend Laws Pertaining to DHHS

Effective date: This act becomes effective October 1, 2013

G.S. § 7B-507(a) requires “an order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued non-secure custody, a dispositional order, or a review order” to contain specific language. Subsection (2) will now require:

specific findings as to whether a county department of social services has made reasonable efforts to either prevent the need for placement or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease.

Previously, subsection (2) required:

findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease.

This statutory change requires the court to address efforts to prevent removal or efforts to eliminate the need for placement, depending on which finding is appropriate at a particular phase of the case.

The new G.S. § 7B-507(b)(4) adds sex offenders to the list of persons to whom the court may justify not requiring reasonable reunification efforts. The new language includes:

a court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; ~~or~~ has committed a felony assault resulting in serious bodily injury to the child or another child of the parent; has committed sexual abuse against the child or another child of the parent; or has been required to register as a sex offender on any government-administered registry.

Session Law 2013-360 (SB 402) – Budget Appropriations

Effective date: This act contains different effective dates for specific portions of the act, beginning retroactively with June 30, 2013.

This law provides for certain performance enhancements to existing programs, as well as for the creation of new programs within existing funding allocations. Examples of such enhancements and processes for the establishment of new programs are explained in further detail below.

Use of Foster Care Budget for Guardianship Assistance Program

Of the funds available for the provision of foster care, the Department of Health and Human Services | Division of Social Services, may provide for the financial support of children who are:

1. in a permanent family placement setting;
2. eligible for legal guardianship; and
3. otherwise unlikely to receive permanency.

The Division of Social Services will design the Guardianship Assistance Program (GAP) in such a way that no additional expenses are incurred beyond the funds budgeted for foster care. In other words, the GAP program **must be** cost neutral. The GAP rates will reimburse the legal guardian for room and board and be set at the same rate as foster care room and board rates in accordance with G.S. § 108A-49.1. The social services board will adopt rules establishing the GAP, including the definition of “legal guardian.”

Study Procedures for Reporting Child Abuse

The Department of Health and Human Services | Division of Social Services, will study the policies and procedures in place for reporting child abuse. In conducting the study, the Division will review the following:

1. reports of child abuse in child care facilities;
2. how reports of child abuse are received;
3. the number of inaccurate reports of child abuse the division receives annually;
4. the number of children the division has placed in child protective services pursuant to a report of child abuse;
5. the reasons the child is placed in child protective services pursuant to a report of child abuse;
6. the procedures the division follows after determining child abuse has occurred as well as the procedures the division follows after determining child abuse has not occurred;
7. the number of reports the division has determined to be false and a summary of actions taken in response to false reports;
8. procedures and actions the division follows in removing or redacting reports or other information made available to the public regarding an individual accused of child abuse or a child care facility where the alleged abuse occurred when there is a determination that no abuse has occurred; and
9. any recommendations the division has for improving the process for reporting instances of child abuse.

The Division will report any study findings and recommendations to the Joint Legislative Committee on Health and Human Services and the Fiscal Research Division no later than April 1, 2014.

A Family for Every Child / Provision of Foster Care

The sum of one million five hundred thousand dollars (\$1,500,000) for the 2013-2014 fiscal year and the sum of one million five hundred thousand dollars (\$1,500,000) for the 2014-2015 fiscal year have been appropriated to restore the Adoption Promotion Fund to:

1. reimburse private nonprofit organizations through performance-based contracts to support adoption programs; and
2. provide financial incentive to public county Departments of Social Services to complete adoptions above an established baseline.

Of the total funds appropriated to the Department of Health and Human Services | Division of Social Services, the sum of one million dollars (\$1,000,000) for the 2013-2014 fiscal year and the sum of two million seven hundred fifty thousand dollars (\$2,750,000) for the 2014-2015 fiscal year will be used solely for the Permanency Innovation Initiative Fund for services provided by the Children's Home Society of North Carolina as established by G.S. § 131D-10.9B.

G.S. § 131D-10.9B creates the Permanency Innovation Initiative Fund that will support a pilot project with services provided by Children's Home Society to improve permanency outcomes for children living in foster care through reunification with parents, providing placement or guardianship with other relatives, or adoption, improve engagement with biological relatives of children in or at risk of entering foster care, and reduce costs associated with maintaining children in foster care. The Permanency Innovation Initiative Fund will support strategies such as Family Finding, Child Specific Adoption Recruitment Services, and Permanency Training Services. The Social Services Commission will adopt rules to implement this initiative.

There will be a total of 11 persons appointed to the committee. Of the 11 member committee, at least one member will be a member of the judiciary; one member will be a representative from Children's Home Society; one member will be of the House of Representatives; one member will be from the Department of Health and Human Services | Division of Social Services; one member will be a representative from the Duke Endowment; one member will be from a local child welfare agency; and one member will be a representative from the University of North Carolina at Chapel Hill. G.S. § 131D-10.9A provides more detail on how members are appointed to this committee, how long these appointments will last, and the organization of the group with respect to frequency of meetings and chair appointments. Of the funds available to the General Assembly, the Legislative Services Commission will allocate money to fund the work of this committee, including travel reimbursement for members.

Adoption Promotion Fund

G.S. § 108A-50.2 was rewritten to change the name of the Special Children Adoption Fund to the Adoption Promotion Fund. Article 1A of Chapter 131D of the General Statutes was amended by creating Permanency Innovation Initiative Oversight Committee. This committee will identify short and long-term cost-savings in the provision of foster care, oversee program implementation and ensure model fidelity identified under subsections (1) and (2) of G.S. § 131D-10.9(B)(a), design and implement data tracking methodology to collect and analyze information about the success of the initiative, and make other recommendations with regard to policy and services that may positively impact permanency outcomes.

Session Law 2013-111 (HB 68) – Establish Foster Care Ombudsman Pilot

Effective date: This act becomes effective June 13, 2013 and expires July 1, 2015. **This session law only applies to Gaston County.**

Section 1.(a) creates a Foster Care Ombudsman Pilot Program in Gaston County.

Section 1.(b) designates that the Board of County Commissioners will establish qualifications for the selection of the Foster Care Ombudsman, including the criteria that the person selected will have experience in child welfare and State laws and policies governing children in foster care and will remain objective and impartial when performing his or her duties. The Board will appoint a person to serve as the Foster Care Ombudsman for a period of time established by the Board. The ombudsman will serve at the discretion and under the direction and supervision of the Board.

Section 1.(c) enumerates the duties and responsibilities of the Foster Care Ombudsman. These duties include, but are not limited to: the Foster Care Ombudsman will be a party in all actions under G.S. § 7B-906 and G.S. § 7B-907 on behalf of the foster parents and permitted to speak on their behalf when a child is placed into foster care, the ombudsman will be appointed an attorney to assist them if they request such assistance, the ombudsman will determine the facts, the needs of the child, and the available resources within the family, foster community, and community at large to meet those needs, the ombudsman will have authority to obtain any information or reports that may, in the ombudsman's opinion, be relevant to the case, and refer to the director of the local child welfare agency and any appropriate law enforcement agency any cause of suspect that any child is abused, neglected, or dependent.

Section 2. rewrites G.S. § 7B-906(c) to include the Foster Care Ombudsman among those which the court will consider information from at every review hearing.

Section 3. rewrites G.S. § 7B-907(a) to include the Foster Care Ombudsman be provided 15 day notice of a Permanency Planning Hearing occurring within 12 months after the date of the initial order to remove custody, and (b) to include the foster care ombudsman among those form which the court may consider information during any permanency planning review.

The information above, regarding this Session Law, was provided by Janet Mason, formerly of the School of Government at the University of North Carolina at Chapel Hill, via a detailed summary. The summary can be accessed online at <http://www.sog.unc.edu/sites/www.sog.unc.edu/files/Selected2013Legislation%20Leg%20Update%20Other%20Child.pdf>

Session Law 2013-326 (HB 510) – Foster Care Children's Bill of Rights

Effective date: Immediately

G.S. § 131D-10.1 rewritten to include a Bill of Rights for children in foster care. As it is the policy of the State to strengthen and preserve the family unit, as well as protect the welfare of children, the provision of these rights to children in foster care will enhance the quality of services received. A violation of these rights will not create a cause of legal action against the State, the Department of Health and Human Services, or a person or entity providing foster care. The rights enumerated in this law are as follows:

1. A safe foster home free of violence, abuse, neglect, and danger;
2. First priority regarding placement in a home with siblings;

3. The ability to communicate with the assigned social worker or case worker overseeing the child's case and have calls made to the social worker or case worker returned within a reasonable period of time;
4. Allowing the child to remain enrolled in the school the child attended before being placed into foster care, if at all possible;
5. Having a social worker, when a child is removed from the home, to immediately begin conducting an investigation to identify and locate all grandparents, adult siblings, and other adult relatives of the child to provide those persons with specific information and explanation of various options to participate in placement of a child;
6. Participation in school extracurricular activities, community events, and religious practices;
7. Communication with the biological parents if the child placed in foster care receives any immunizations and whether any additional immunizations are needed if the child will be transitioning back into a home with his or her biological parents;
8. Establishing and having access to a bank or savings account in accordance with State laws and federal regulations;
9. Obtaining identification and permanent documents, including a birth certificate, Social Security card, and health records by the age of 16, to the extent allowed by federal and State law;
10. The use of appropriate communication measures to maintain contact with siblings if the child placed in foster care is separated from his or her siblings; and
11. Meaningful participation in a transition plan for those phasing out of foster care, including participation in family team, treatment team, court, and school meetings.

The rights contained within this law support and strengthen the rights of children in foster care provided under North Carolina Administrative Code 10A 70E .1101

<http://reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2070%20-%20children%27s%20services/subchapter%20e/10a%20ncac%2070e%20.1101.pdf>).

Session Law 2013-258 (HB 543) – Guardianship Roles of Mental Health Developmental Disabilities and Substance Abuse (DMH/DD/SAS) Providers

Effective date: Immediately

G.S. § 35A-1213(c) rewritten to provide that a corporation will not be appointed as a guardian for any individual to whom it provides mental health, developmental disabilities, or substance abuse services for compensation as part of a contractual or other arrangement with a local management entity (LME) including an LME that has been approved to operate the 1915(b)/(c) Medicaid Waiver. Subsection (f) is rewritten to provide that an individual that contracts with or is employed by an entity that contracts with an LME for the delivery of the aforementioned services may not serve as guardian for a ward for whom the individual or entity is providing these services unless the individual is one of the following:

1. a parent of that ward;

2. a member of the ward's immediate family, a licensed family foster care provider, or a licensed therapeutic foster care provider who is under contract with an LME for the delivery of services and is serving as a guardian as of January 1, 2013; or
3. a biologically unrelated individual who was serving on March 1, 2013 as a guardian without compensation for guardianship services.

The Joint Legislative Oversight Committee on Health and Human Services will appoint a subcommittee to examine the impact of the 1915(b)/(c) Medicaid Waiver and other reforms of public guardianship services, including guardianship roles, responsibilities, and procedures that effect relationships between guardians and wards.

Session Law 2013-27 (HB 139) – Deployed Parents Custody and Visitation Act

Effective date: This act becomes effective October 1, 2013

G.S. § 50-13.2 rewritten to provide that in custody proceedings involving the minor child of a service member, a court may not consider the parent's past deployment or possible future deployment as the only basis in determining the best interest of the child. However, the court may consider significant impact on the best interest of the child regarding the parent's past or possible future deployment.

Session Law 2013-52 (HB 149) – Caylee's Law

Effective date: This act becomes effective December 1, 2013 and applies to offenses committed on or after that date.

G.S. § 14-318.5 creates a duty to report to law enforcement the disappearance of a child under the age of sixteen. For the purposes of this duty, a child has disappeared when a parent or other person supervising a child does not know where the child is and has not had contact with the child for 24 hours. Under G.S. § 14-318.5 it is a Class I felony for a parent or other person supervising a child to knowingly or wantonly fail to report a child's disappearance to law enforcement. An amendment to G.S. § 14-318.4 provides that if the failure to report results in serious physical injury to the child, then this failure is characterized as "grossly negligent omission" and is a Class H felony. A report to law enforcement is also required by any person who reasonably suspects that a child has disappeared and that the child may be in danger. Failing to report the suspicion to law enforcement within a reasonable timeframe is a Class 1 misdemeanor. The statute does not apply to operators and staff of child care facilities or adults present in a child care facility with the provider's approval, as G.S. § 110-102.1 already provides a duty to report. The statute does not apply to teachers, as Article 26 of G.S. § 115C already provides a duty to report. G.S. § 14-318.5 provides immunity for any person who makes a report in good faith.

It is the Division's strong recommendation that each child welfare agency develop a mechanism to ensure that the foster and adoptive resource parents with whom the agency works understands the impact of this specific law.

G.S. § 14-401.22 rewritten to make it a Class H felony for a person to attempt to conceal the death of a child by failing to notify law enforcement of a child's death or secretly burying or otherwise disposing of the body of a dead child under the age of 16. The

offense is a Class D felony if the person violating the statute knows that the child did not die of natural causes.

G.S. § 14-225 makes it a Class 2 misdemeanor to willfully make, or cause to be made, a false, misleading, or unfounded report to law enforcement for the purpose of interfering with, hindering, or obstructing a law enforcement agency or officer in the performance of official duties. The offense is a Class H felony if the law enforcement investigation involves a child under the age of 16 who has disappeared or who is the victim of a Class A, B1, B2, or C felony.

G.S. § 7B-301 rewritten to make it 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 local child welfare agency 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.**

The information above, regarding this Session Law, was provided by Janet Mason, formerly of the School of Government at the University of North Carolina at Chapel Hill, via a detailed summary. The summary can be accessed online at <http://www.sog.unc.edu/sites/www.sog.unc.edu/files/Selected2013Legislation%20Leg%20Update%20Other%20Child.pdf>

Session Law 2013-35 (HB 75) – Kilah’s Law

Effective date: This act becomes effective December 1, 2013 and applies to offenses committed and judgments entered on or after that date.

G.S. § 14-318.4 rewritten to increase the penalty for each offense under the felony child abuse statute; changing a Class E felony to a Class D felony, changing a Class C felony to a Class B2 felony, and changing a Class H felony to a Class G felony.

G.S. § 15A-1382.1 rewritten to make changes to the official record of any defendant who is convicted of an offense against a minor that involves child abuse, assault, or an act of domestic violence as defined in G.S. § 50B-1(a). The judge must indicate on the judgment form that the case involved child abuse and the clerk of court must ensure that the official record of the defendant’s conviction includes the court’s determination.

The information above, regarding this Session Law, was provided by Janet Mason, formerly of the School of Government at the University of North Carolina at Chapel Hill, via a detailed summary. The summary can be accessed online at <http://www.sog.unc.edu/sites/www.sog.unc.edu/files/Selected2013Legislation%20Leg%20Update%20Other%20Child.pdf>

Session Law 2013-368 (SB 683) – Safe Harbor for Victims of Human Trafficking

Effective date: This act becomes effective October 1, 2013 and applies to offenses committed on or after that date.

G.S. § 14-43.11 rewritten to specify that a person commits the offense of human trafficking when that person knowingly or in reckless disregard of the consequences of

the action, recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude or willfully or in reckless disregard of the consequences of the action causes a minor to be held in involuntary servitude or sexual servitude. Previously this statute did not provide the language regarding “reckless disregard of the consequences of the action”. Additionally, subsection (c1) was added to provide that the mistake of age is not a defense to prosecution nor is the consent of a minor a defense to prosecution. The same language change has been made to G.S. § 14-43.12 (involuntary servitude) and G.S. § 14-43.13 (sexual servitude).

G.S. § 14-204(c) provides immunity from prosecution for minors (anyone under age 18 years old) suspected or charged with prostitution and instead provides for the minor to be taken into temporary protective custody as an undisciplined juvenile. Pursuant to G.S. § 7B-301, a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. § 14-43.11 and G.S. § 14-43.13 (human trafficking and/or sexual servitude) to the director of the local child welfare agency in the county where the minor resides or is found, as appropriate, which will commence and initial investigation into child abuse or neglect within 24 hours pursuant to G.S. § 7B-301 and G.S. § 7B-302.

It is important to note that as of 2012, a child whose parent, guardian, or custodian has sold or attempted to sell them in violation of G.S. § 14-43.14 is an abused juvenile as defined by G.S. § 7B-101(1). Thus, the unlawful sale, surrender, or purchase of a child (human trafficking) is within the definition of abuse for the purposes of child abuse or neglect investigations.

Session Law 2013-33 (SB 122) – Sex Trafficking/Sex Offender Registration

Effective date: This act becomes effective December 1, 2013 and applies to offenses committed on or after that date.

G.S. § 14-208.6(5) rewritten to include human trafficking on the list of criminal convictions that require registration under the sex offender and public protection registration program.

Session Law 2013-364 (HB 269) – Children with Disabilities Scholarships and Grants

Effective date: This act contains different effective dates for specific portions of the act, beginning retroactively with July 1, 2013, and is designed to be available for the spring semester of the 2013-2014 school year.

G.S. § 115C-112.3 creates a special education scholarship fund for children with disabilities to attend any non-public school.

Session Law 2013-42 (SB 369) – Name Change Requirements for Minors

Effective date: This act becomes effective October 1, 2013 and applies to applications filed on or after that date.

G.S. § 101-2(d) rewritten to clarify that an application to change a minor's name may be filed by the child's parent(s), guardian appointed pursuant to G.S. § 35A, or GAL appointed under G.S. § 1A-1, Rule 17. Additionally, it specifies in circumstances where both parents are living, the consent of only one of the parents is required in the application to change a minor's name, if:

1. a minor age 16 or 17 applies to change his or her own name with the consent of the parent who has custody and the clerk is satisfied that the other parent has abandoned the minor;
2. a parent files an application to change a minor's name and the other parents has abandoned the minor; or
3. a parent files an application to change minor's name and the other parent has been convicted of certain offenses against the minor or a sibling of the minor (for example, child abuse, indecent liberties, rape or other sexual offense, and other violent crimes).

G.S. § 101-5(a) rewritten to provide that every applicant for a name change must present a state and national criminal history record check that was conducted within 90 days of the date of the application, except when the application is to change the name of a minor younger than 16.

G.S. § 101-5(e) rewritten to provide that if the name change is not a matter of public record due to domestic violence or participation in an address confidentiality program, the clerk is directed to notify the State Registrar not to disclose the name change the register of deeds in the applicant's county of birth or the registration office of the state of birth.

*The information above, regarding this Session Law, was provided by Janet Mason, formerly of the School of Government at the University of North Carolina at Chapel Hill, via a detailed summary. The summary can be accessed online at <http://www.sog.unc.edu/sites/www.sog.unc.edu/files/Selected2013Legislation%20Leg%20Update%20Other%20Child.pdf>

If you have any questions about these legislative changes please contact the Child Welfare Policy Team at 919-527-6340.

Sincerely,



Kevin Kelley, Section Chief
Child Welfare Services

cc: Wayne Black
Jack Rogers
Kathy Sommese
Child Welfare Services Team Leaders