

**DSS ADMINISTRATIVE LETTER
CHILD WELFARE SERVICES CWS-AL-07-09**

TO: COUNTY DIRECTORS OF SOCIAL SERVICES

**ATTENTION: CHILDREN'S SERVICES PROGRAM MANAGERS AND SUPERVISORS
CHILDREN'S SERVICES SOCIAL WORKERS**

DATE: October 29, 2009

SUBJECT: CHILD WELFARE LEGISLATIVE CHANGES FOR 2009

EFFECTIVE DATE: AS INDIVIDUALLY SIGNED INTO LAW OR EFFECTIVE DATES

BACKGROUND

This Administrative Letter is to provide information regarding legislative actions during the 2009 North Carolina General Assembly's long session that may have an impact on Child Welfare Services. Following an extensive review of this session's legislative impact by our Child Welfare Attorneys, with input from the North Carolina Administrative Office of the Courts and the Institute of Government, the Division offers the following interpretations.

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 and all other statutes can be accessed through the [North Carolina General Assembly website](http://www.ncleg.net/) (at <http://www.ncleg.net/>).

The Division will continue to evaluate the implications that these legislative changes will have on policy, if any. Should a change to policy be required, the change will be included in the upcoming manual revision.

LEGISLATIVE SUMMARY

[Session Law 2009-544 \(SB 464\)](#) Effective Date: January 1, 2010.

An act to amend the law requiring the collection of traffic law enforcement statistics in order to prevent racial profiling and to provide for the care of minor children when present at the arrest of certain adults.

N.C.G.S. § 15A-401 is amended to include a provision requiring law enforcement officers to contact the county Department of Social Services when arresting an adult who is caring for or supervising a minor, if the adult is not able to identify a responsible adult to care for the minor. This law requires law enforcement officers to ensure that when an adult is identified to provide care to the minor, that the adult is responsible.

[Session Law 2009-356 \(HB192\)](#) Effective Date: December 1, 2009

An act to establish procedural requirements for child witness testimony in criminal cases.

N.C.G.S. § 15A-1225 is amended to include a new section that establishes procedures for a child (under the age of 16) to remotely testify in criminal proceedings. This will allow the child to testify outside the presence of the defendant, after it is determined that the child would suffer serious emotional distress and the child's ability to communicate would be impaired. Procedures for conducting the hearing, the method used for remote testimony and specific language for the order allowing remote testimony are included.

[Session Law 2009-408 \(SB969\)](#) Effective Date: August 5, 2009

An act amending the policy of North Carolina regarding the protection of children's welfare under the laws pertaining to child placing and care.

N.C.G.S. § 131D-10.1 is amended to include language that recognizes that there are instances when reunification is contrary to the welfare of a child and that placement in a residential care facility can satisfy the requirement to place a child in the least restrictive environment possible.

[Session Law 2009-38 \(HB 1272\)](#) Effective Date: May 27, 2009

An act to make technical and clarifying changes to the juvenile code.

N.C.G.S. § 7B-101(1)d amends the definition of an abused juvenile to include language around the "rape of a child by an adult offender" and "sexual offense with a child by an adult offender".

N.C.G.S. § 7B-1104 is amended to read that the child shall be a party to an action to terminate parental rights.

N.C.G.S. § 7B-1106 is rewritten to no longer require that the juvenile be named as a respondent and served summons when the action is initiated by a petition. In addition, it is now required that if a Guardian ad Litem or attorney advocate has been appointed, that they are to be served with the petition.

N.C.G.S. § 7B-1106.1 now reads that juveniles 12 or older no longer need to be served with notice when the action is initiated by a motion. It is now permitted for the service on the Guardian ad Litem or the attorney advocate.

[Session Law 2009 \(HB 1106\)](#) Effective Date: June 26, 2009

An act amending and clarifying various provisions under the laws pertaining to adoption.

N.C.G.S. § 48-1-109 is rewritten to include provisions for the preparation of reports to the court when the adoptive parent lives in or moves to another state.

N.C.G.S. § 48-2-205 and N.C.G.S. § 48-2-301(c) adds language that when a married couple adopts in a foreign country, that they must readopt jointly even if they have since divorced.

N.C.G.S. § 48-2-401 clarifies that the issuance of a summons is not required to commence an adoption proceeding.

N.C.G.S. § 48-2-501(d) includes grandparents in the exception to the requirement for a report to the court. However, the court is required to order a report if the child's consent is being waived, the child has revoked a consent or the child is eligible for adoption assistance.

N.C.G.S. § 48-3-608(a) and N.C.G.S. § 48-3-706(a) now states that that a “weekend or a North Carolina or federal holiday”, refers to Saturday, Sunday, or a legal holiday when North Carolina courthouses are closed for transactions.

[Session Law 2009-311 \(HB 1449\)](#) Effective Date: October, 2009

An act to make various revisions to the Juvenile Code.

N.C.G.S. § 7B-302 amends the exceptions to the release of confidential information. The Guardian ad Litem and the juvenile, including those who are 18, may have access to confidential information. It also provides for the release of confidential information to a judge in a civil matter when the department of Social Services is not involved provided that reasonable notice and an opportunity to be heard has been provided. Relevant to this release is a determination that the information is relevant and necessary. This does not apply to the release of medical, mental health, or HIV information.

There is a provision that requires a judge to conduct an in camera review of confidential information prior to releasing in it criminal and delinquency cases.

In regards to venue and inter-county coordination the statute requires the DSS director promptly notify the county of residence for any report that is accepted and that the directors are required to coordinate efforts to ensure appropriate action is taken.

N.C.G.S. § 7B-400 and N.C.G.S. § 7B-402 removes the provision allowing a case to be transferred if filed in a district other than the one of residence. However, when a petition is filed in a district other than that of the juvenile’s residence, a copy of the petition and notices shall be provided to the county of the juvenile’s residence.

N.C.G.S. § 7B-700 has been completely rewritten. In regards to the sharing of information, a DSS may share confidential information that does not include the identity of the reporter or other identifying information about the reporter. Chief district court judges are authorized to adopt local rules or enter into administrative orders addressing the sharing of information.

N.C.G.S. § 7B-900.1 is a new section regarding post adjudication venue. This section provides for the transfer of a case after adjudication once the court determines that the directors involved have communicated and agree or after the Division has made that determination. When a judge is considering the transfer of a case, the judges in both counties are required to communicate regarding the proposed transfer. There are eight factors to consider prior to transferring a case such as the permanent plan for the child, the impact on the child and the residences of those resources considered for stable for the child.

N.C.G.S. § 7B-906(a), N.C.G.S. § 7B-907(a) and N.C.G.S. § 7B-908(b) have been amended with respect to reviews, permanency planning and post termination of parental rights hearings. DSS is now required to provide the name and address of the person who is currently providing care for the child.

The amendment also puts into place new procedures for when an adoption decree has been received, providing notice the Guardian ad Litem, a the timeframe for the notice, and a timeframe for the Guardian ad Litem to file a motion alleging misconduct by the DSS in regards to the adoption.

N.C.G.S. § 7B-1101.1(a) is amended to state that in a termination of parental rights hearing that provisional counsel shall be appointed for each respondent parent named in the petition unless they already have counsel. It also indicates that the provisional appointment shall be dismissed at the first hearing if the parent does not appear, does not qualify, already has counsel, or waives their right to counsel.

N.C.G.S. § 7B-1106(b) is rewritten to include language that previously appointed counsel in an abuse, neglect, or dependency case, will continue unless ordered by the court.

N.C.G.S. § 7B-1108(b) and N.C.G.S. § 7B-1108.1 are amended to remove the requirement of a special hearing to determine the issues raised by the petition. A new section is added that requires the court to hold a pretrial hearing in every termination case, but allows the pretrial and adjudication hearing to be combined. Procedures for this hearing are also outlined.

N.C.G.S. § 7B-1700.1 reiterates that anyone who has cause to suspect abuse, neglect of dependency is a mandated reporter, but specifically speaks to Juvenile Court Counselors.

N.C.G.S. § 7B-1904 is amended to require that an order for non-secure custody of a delinquent or undisciplined juvenile be provided to the person or agency with whom the juvenile is placed.

N.C.G.S. § 7B-72503(1)c and N.C.G.S. § 7B-2506(1)c have been rewritten to permit the court at the disposition of a delinquent juvenile to place the juvenile in DSS custody only if the director has received notice and an opportunity to be heard.

PROCEDURE

If you have any questions about this letter, please contact your Children's Program Representative or the Child Welfare Section at (919) 733-4622.

Sincerely,



Charisse S. Johnson, Chief
Child Welfare Services

cc: Sherry S. Bradsher
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Child Welfare Services Team Leaders
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