

## 2016 Legislative Changes Impacting Child Welfare

\*This post was updated on August 1, 2016 to reflect the Session Law for H424.

The 2016 Appropriations Act ([S.L. 2016-94](#)) addresses more than the State's budget. Section 12.C makes substantive changes to the General Statutes in Chapter 7B that govern abuse, neglect, or dependency proceedings. The statutory amendments became effective on July 1st. In addition, [S.L. 2016-115](#) (H424), creates a new criminal statute, "The Unlawful Transfer of Custody of a Minor Child," and is effective for offenses committed on or after December 1, 2016. The law also amends the definition of a neglected juvenile in G.S. Chapter 7B.

### The 2016 Appropriations Act

There are three substantive changes that were made to G.S. Chapter 7B.

#### 1. Caretakers

A child may be abused or neglected because of circumstances created by the child's parent, guardian, custodian, or caretaker. A caretaker is any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a child in a residential setting and includes categories of people, such as foster parents and stepparents. G.S. 7B-101(3). The **definition** of caretaker has been amended to add "a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department." S.L. 2016-94, p. 76. The effect of this amendment is twofold:

1. A county department may substantiate this person as an individual responsible for abusing or seriously neglecting a child. That substantiation may result in the caretaker's name being placed on the Responsible Individuals List. For more information on the RIL, see my [previous post](#).
2. A county department may file a new petition alleging a child is abused or neglected based on the circumstances created by the caretaker. Before a county department files a new petition alleging the child's abuse or neglect, it may want to review the recent NC Supreme Court decision, [In re R.R.N.](#), 368 N.C. 167 (2015). There, the Supreme Court addressed how to interpret the caretaker statute when viewed in context of examining the dual purpose of the Juvenile Code in "promoting the best interests of the child while still safeguarding the parent-child relationship from needless State interference." For more information, see my [previous post](#).

The statute authorizing **intervention** in an abuse, neglect, or dependency proceeding was amended by Section 12C.1.(f) of S.L. 2016-94 such that caretakers no longer have standing to intervene. G.S. 7B-401.1(h). An additional amendment was not made to G.S. 7B-401.1(e1), so it appears that a foster parent may be allowed to intervene if the foster parent has standing to file a

petition to terminate the parental rights of the child's parent. See 7B-1103.

## 2. Confidentiality

Unless a statutory exception applies, information received by a county department in an abuse, neglect, or dependency case must be "held in strictest confidence." G.S. 7B-302(a1); -2901(b). Section 12C.1.(e) of S.L. 2016-94 amends one of those exceptions. A county department shall disclose confidential information to any private child placing or adoption agency that is licensed by NC DHHS in order to protect a child from abuse or neglect. G.S. 7B-302(a1)(1).

## 3. Reunification and Concurrent Permanency Planning

In 2015, the General Assembly made significant changes to reunification services and permanency planning. See G.S. 7B-901(c) and -906.2. In determining whether **reasonable efforts** for reunification were required, G.S. 7B-901(c) mandated that the court order reasonable efforts were not required if the court made written findings of any of the enumerated statutory factors, such as a parent's rights to another child were involuntarily terminated, a parent was required to register as a sex offender, or a parent allowed for the child's chronic or toxic exposure to alcohol or controlled substances that caused the child's impairment or addiction. Section 12C.1.(g) of S.L. 2016-94 amends G.S. 7B-901(c) to give the court discretion to determine there is "compelling evidence" that warrants continued reasonable efforts even when the court makes written findings of one of the statutory factors.

At permanency planning, the court is required to order **concurrent permanent plans** and identify the primary and secondary plan. G.S. 7B-906.2(b). The court must order the department to make efforts to finalize the primary and secondary plans. Section 12C.1.(h) of S.L. 2016-94 adds 7B-906.2(a1), which terminates the requirement that a court order concurrent planning when a permanent plan has been achieved. In practice, this provision will apply when a permanent plan has been achieved but requires that the court retain jurisdiction in the abuse, neglect, or dependency action, such as guardianship [G.S. 7B-600(b); -903(a)(5)] or custody when state intervention is needed [G.S. 7B-903(a)(2), (4)]. See G.S. 7B-201(b).

## Unlawful Transfer of Custody of a Minor, G.S. 14-321.2

[S.L. 2016-115](#) creates a new criminal statute, G.S. 14-321.2, that will apply to offenses committed on or after December 1, 2016. An unlawful transfer of a minor child's custody will be an **A1 misdemeanor or a G felony** if the minor child suffers a serious physical injury. What does that mean?

To understand this statute, you have to start with the **definitions** found at G.S. 14-321.2(b). An "**unlawful transfer of custody**" consists of the following elements

- A parent's
- transfer of physical custody
- of a child who is younger than 18
- in willful violation of adoption laws (see G.S. Chapter 48) or in a grossly negligent omission in the child's care
- without a court order or other authorization under the law
- to a person who is not the child's relative or someone with whom the child has a substantial relationship.

Note that for purposes of this crime, “**parent**” is broadly defined to include a biological or adoptive parent as well as a person who is the child's legal guardian or legal custodian. G.S. 14-321.2(b)(2). This broad definition differs from how these terms are used in the abuse, neglect, or dependency; adoption; and criminal statutes. See G.S. 7B-101(3) (caretaker is someone other than a parent, guardian, or custodian); 7B-600(a) (in any case where no parent appears, ...the court may appoint a guardian); 7B-101(18b) (return home or reunification is placement with either parent or the guardian or custodian...); 48-1-102(8) (guardian is as an individual other than a parent...); 14-322 (abandonment and failure to support child refers to “a parent, whether natural or adopted”).

“**Relative**” is also defined by G.S. 14-321.2(b)(3) as the child's other parent, stepparent, grandparent, great grandparent, adult sibling, aunt, great aunt, uncle, great uncle, first cousin, or parent's first cousin. This definition refers to a “parent” twice. Because “parent” is also defined by the statute, it appears that the expanded definition of parent applies to a determination of whether a person is a relative. For example, the parent's first cousin would include a legal guardian's or legal custodian's first cousin. “**Substantial relationship**” is not defined.

### **Permissible Transfers, G.S. 14-321.2(b)(4)a. – i.**

The definition of unlawful transfer of custody contains **nine exceptions**, meaning the actions are not prohibited. The exceptions fall into three categories.

- **Purposes of Adoption**

Five exceptions apply to procedures that are authorized under North Carolina's adoption laws and address

- a child's placement with a prospective adoptive parent made pursuant to G.S. 48-3-201 or in substantial compliance with North Carolina's or another state's adoption laws,
- a parent or guardian's execution of a consent to or relinquishment for a minor child's adoption [see G.S. 48, Article 3, Part 6 (consent) & Part 7 (relinquishment)], or
- compliance with the Interstate Compact on the Placement of Children (G.S. 7B-3800) or the [Convention](#) addressing intercountry adoptions.

- **Temporary Transfer**

Three exceptions apply to a temporary transfer of a child's physical custody. A parent may transfer custody of the child for a specified period of time to

- a person with a prior substantial relationship with the child because of the child's medical, mental health, educational, or recreational needs or the parent's inability to provide proper care or supervision because of the parent's absence (such as hospitalization, incarceration, employment) or incapacity;
- a behavioral health facility or other health care provider, educational institution, or recreational facility because of the child's medical, mental health, educational, or recreational needs; or
- a voluntary foster care placement with a county department (see G.S. 7B-910; note that a petition alleging abuse, neglect, or dependency must be filed if a child remains in a voluntary placement for more than six months).

- **Transfer to a Relative**

This exception does not appear to require that the transfer be temporary or for a specified period of time.

### **Prohibited Actions, G.S. 14-321.2(a)**

The crime of the unlawful transfer of custody of a minor child consists of any of the following three actions:

1. A parent effects or attempts to effect an unlawful transfer of custody of his or her child;
2. A person accepts or attempts to accept custody of a child made by an unlawful transfer unless that person takes custody of the child and promptly notifies and makes the child available to law enforcement or child protective services in the county where the child resides or is found; or
3. A person advertises, recruits, solicits (or aids, abets, conspires, or seeks another person's assistance for) the unlawful transfer of custody.

Compensation is not required. G.S. 14-321.2(b)(4). If compensation is a part of the transfer, it's possible that a second crime, "the unlawful sale, surrender, or purchase of a minor," is also being committed. G.S. 14-43.14. If this second crime is committed by the child's parent, guardian, or custodian, the child is an abused juvenile for purposes of a child welfare proceeding. *Id.*; 7B-101(1)d.

### **Neglected Juvenile**

S.L. 2016-115 also amends the definition of a "neglected juvenile" to include a juvenile whose custody has been unlawfully transferred. G.S. 7B-101(15). Although the inclusion of an unlawfully transferred child makes it clear that the child is neglected, the practical effect for mandated

reporters or a county department may be negligible. The current definition of neglected juvenile includes a juvenile who has been abandoned. *Id.* Although abandonment is not defined in G.S. Chapter 7B, it has been defined by the NC Supreme Court as willful conduct by the parent that “evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child.” *Pratt v. Bishop*, 257 N.C. 486, 501 (1962). See *In re Estate of Lunsford*, 359 N.C. 382 (2005). Some of the conduct contemplated by the Unlawful Transfer of Custody of a Minor Child statute appears to encompass the willful abandonment of a child by a parent, guardian, or custodian such that a child may be considered neglected. If a report is made to a county department that alleges the child is either abandoned or was unlawfully transferred, the county department must immediately initiate an assessment. G.S. 7B-302(a).