

Highlights of 2017 Legislative Changes Impacting Child Welfare Practice

Since the initial publication of this post, the Governor signed H362. This post was amended on July 31, 2017 to reflect that change and reference the session law.

The 2017 Legislative Session created and amended various statutes affecting child welfare. Some of those changes are effective now and others will become effective at later dates. This post highlights those amendments that directly impact practice in abuse, neglect, dependency, or termination of parental rights actions. A more complete summary of the numerous legislative changes can be found on the School of Government website, [here](#).

Rylan's Law/Family and Child Protection and Accountability Act, [S.L. 2017-41](#).

This law is expansive in scope and consists of several parts -- regional supervision by the state Department of Health and Human Services (DHHS) of county social services agencies and programs by March 1, 2020; the creation of a "Child Well-Being Transformation Council" located administratively in the General Assembly with members appointed on or after July 1, 2018; amendments addressing foster home licensing, appeals of certain juvenile orders, and reunification requirements; and a pilot program for driver's licenses. Three parts of this law and the implications on court practice are discussed below.

1. DSS observation before reunification with a removal parent, guardian, custodian, or caretaker

"Part X. Rylan's Law/CPS Observation" was enacted in memory of a toddler who died after being reunified with his mother from whose care he was removed. **Effective June 21, 2017**, Rylan's law amends GS 7B-903.1(c) to require a county department of social services (DSS) to observe a child who is placed in its custody with the parent, guardian, custodian, or caretaker from whose care the child was removed before DSS recommends the child's return of physical custody to that removal parent, guardian, custodian, or caretaker. DSS must observe a minimum of two visits that are each one hour or longer in length and are at least seven days apart. DSS must provide documentation of the observed visits to the court for the court to consider.

There are some limitations to the law's applicability. The law focuses on the adult who created the circumstances resulting in the child's abuse, neglect, or dependency. It does not apply to the non-removal parent, guardian, custodian, or caretaker. It also does not apply in those cases where DSS fails to prove by clear and convincing evidence at adjudication that the child is abused, neglected, or dependent. See GS [7B-805](#), [-807](#); *In re E.H.*, 227 N.C. App. 525 (2013) (DSS has burden). Instead, when the court finds the allegations in the petition have not been proved, it must dismiss the petition with prejudice; and if the child is placed in nonsecure custody, the child must be

released to the parent, guardian, custodian, or caretaker. [GS 7B-807\(a\)](#).

The law does not designate when or where the observed visits should occur or what conditions, if any, should be imposed during the visit. However, the court has the authority to designate the minimum length of a visit, level of supervision, and location of a visit. [GS 7B-905.1\(b\)](#). The court may also specify in an order the efforts that are reasonable to achieve permanency for the child. [GS 7B-906.2\(b\)](#). Designating specific conditions for the observed visit so that the court has information it believes will be necessary when it is considering whether a child should be placed back with the removal parent, guardian, custodian, or caretaker (either as a trial placement or an order changing both legal and physical custody to that person) may be such a reasonable effort.

2. Driver's License Pilot Project

Effective July 1, 2017, Part VI requires DHHS to establish a two-year pilot program that reimburses youth and caregivers their costs associated with the youth in foster care obtaining a driver's license. Examples of costs include driver's education, driver's license fees, and vehicle insurance. Funding is available on a first-come, first-serve basis. By March 1, 2018, the DHHS Division of Social Services must report on the pilot project to the Joint Legislative Oversight Committee on Health and Human Services.

Through the provision of funding, this pilot project expands on 2015 statutory amendments that addressed the federally required "reasonable and prudent parent" standard. North Carolina specifically addressed an older youth in foster care obtaining a driver's license and being competent to contract for automobile insurance as part of the reasonable and prudent parent standard. See [S.L. 2015-135](#); for more information, see my earlier blog post, [Children in Foster Care, "Normal Childhood Activities" and the "Reasonable and Prudent Parent" Standard](#). The 2015 statutory amendments sought to reduce barriers older foster youth experienced when trying to obtain a driver's license, as those barriers impede a youth's ability to become independent. Part VI of S.L. 2017-41 further reduces these barriers by providing funding for these youth and their caregivers.

When a youth is 14 or older and is in DSS custody, at permanency planning hearings, the court must inquire about and include written findings of (1) the services provided to assist the youth to transition to adulthood, (2) the steps DSS has taken to ensure the placement provider is following the reasonable and prudent parent standard, and (3) whether the youth has regular opportunities to engage in age- and developmentally-appropriate activities. [GS 7B-912\(a\)](#). For older youth, this may include an inquiry and findings regarding the decision about and efforts made in obtaining a driver's license.

3. Appeals from Termination of Parental Rights and Orders Eliminating Reasonable Efforts

Part VIII amends GS 7B-1001* (as well as [S.L. 2017-7**](#)) regarding the appeal procedures for two types of final orders in a juvenile matter

- an order granting or denying a petition or motion for the termination of parental rights and
- a permanency planning order that eliminates reunification as a concurrent permanent plan.

These changes are effective for appeals made on or after **January 1, 2019**.

GS 7B-1001(a)(5) is amended and shortens the time within which a parent may appeal an order eliminating reunification as a concurrent permanent plan to 65 days (from 180 days) after the order has been entered and served and a termination of parental rights (TPR) motion or petition has not been filed. A new GS 7B-1001(a1) makes an order denying or granting a termination of parental rights directly appealable to the NC Supreme Court. An appeal of an order eliminating reunification as a concurrent permanent plan is also made directly to the NC Supreme Court when a TPR motion or petition was filed within 65 days of entry and service of that permanency planning order and the TPR is granted and properly and timely appealed. Under both GS 7B-1001(a)(5) and (a1), a parent must preserve the right to appeal the order eliminating reunification as a concurrent permanent plan in writing, and a separate notice of appeal must be filed during the appropriate time period to appeal.

Changes to the Juvenile Code, S.L. 2017-161 ([H362](#))

The effective date for the provisions of S.L. 2017-161 is **October 1, 2017**. Some of the amendments provide clarifying language or are technical corrections. Other amendments address procedural or substantive matters and include the following:

- GS 7B-200(a)(5a) is added, which explicitly grants the district court exclusive original jurisdiction to review **Foster Care 18-21** placements as required by [GS 7B-910.1](#). For more information on these review hearings and Foster Care 18-21, see my previous blog [post](#).
- GS 7B-404 authorizes a **magistrate** to “accept for filing” when the clerk’s office is closed and an emergency exists, a petition alleging (1) a juvenile’s abuse, neglect or dependency or (2) interference or obstruction. References to “draw, verify, and issue” petitions and authorization by the chief district court judge is removed.
- GS 7B-407 and 7B-1106(a) incorporate Rule 4 of the Rules of Civil Procedure for **service of a summons** in abuse, neglect, dependency, and TPR proceedings. Additionally, before a respondent parent in a **TPR may be served by publication**, GS 7B-1106(a) requires
 1. findings by the court that the respondent cannot be otherwise served despite diligent efforts by the petitioner for personal service and
 2. court approval of the form of the notice before it is published.
- GS 7B-505.1(a)(1) includes “treatment for common pediatric illnesses and injuries that require prompt intervention” in “**routine**” **medical or dental care** that DSS is authorized to consent to when a child is in its custody. Note that there is no statutory definition or listing of

“common pediatric illness and injuries”.

- GS 7B-506(g1) is added and specifically incorporates **visitation** and the provisions of GS 7B-905.1 at **continued nonsecure custody**.
- GS 7B-906.1(a) requires a **review hearing** within ninety days of the initial dispositional hearing and is no longer limited to when custody has been removed from a parent, guardian, or custodian.
- GS 7B-906.1(d)(3) requires the court to **schedule a permanency planning hearing** within thirty days of finding at a review hearing that efforts to reunify the child with either parent would clearly be unsuccessful or inconsistent with the juvenile’s health and safety and need for a safe permanent home within a reasonable period of time. Note, the scheduling requirement does not specify whether the thirty days is from the completion of the review hearing or the entry of the review order.
- GS 7B-906.1(o) is added and makes clear that 7B-906.1 permanency planning hearings (and their findings) do not apply to **post-TPR placement reviews**, which are held under GS 7B-908.
- GS 7B-908 is amended to require concurrent permanency planning under GS 7B-906.2 and clarifies when **post-TPR placement reviews** are required:

within six months of the hearing when parental rights have been terminated by a petition or motion that was filed by (1) DSS or a child-placing agency that has custody through a court order or because of an executed relinquishment, (2) the child’s GAL or guardian of the person, or (3) a person the child has continuously resided with for two years or more preceding the filing of the TPR, or one parent’s rights have been terminated and the other parent has executed a relinquishment.

**Note section 40.(f) of [S.L. 2017-102](#) (GSC Technical Corrections) amends Part VIII of S.L. 2017-41.*

***Note that S.L. 2017-7 also amends GS 7A-27(a)(5) to include an order that grants or denies a TPR as an order with an appeal of right directly to the Supreme Court.*