

## It's October and Child Welfare Legislative Changes Are in Effect!

As the 2021 Legislative Session continues, many session laws that revised the abuse, neglect, dependency and termination of parental rights (TPR) statutes in the Juvenile Code (G.S. Chapter 7B) became effective on October 1, 2021 (last Friday), unless stated otherwise. Previously, I blogged about [S.L. 2021-100](#), "*An Act to Make Revisions to the Juvenile Code Pursuant to Recommendations by the Court Improvement Program*," which you can read [here](#). Today's post summarizes [S.L. 2021-132](#) (S693), which makes additional **significant amendments to the Juvenile Code**.

**Amendments to the Definitions:** Section 1.(a) amends G.S. 7B-101.

Neglected Juvenile: Section 1.(a) reformats the definition of "neglected juvenile" to mirror the format of "abused juvenile" by adding subdivisions a. through f. rather than maintain a singular sentence. Some of the language had to be amended slightly to grammatically allow for the subdivisions, but substantively, no changes were made. Note that as of December 1, 2021, the definition of neglected juvenile will be amended to address situations involving a "vulnerable juvenile" as set forth in the new minimum age for juvenile delinquency jurisdiction legislation (for more information read Jacqui Greene's blog post summarizing that legislation [here](#)).

Relative Defined: Section 1.(a) adds a definition of "relative" at G.S. 7B-101(18a). A relative is "an individual directly related to the juvenile by blood, marriage, or adoption, including, *but not limited to*, a grandparent, sibling, aunt, or uncle." This definition was also added to the Juvenile Code by S.L. 2021-100 although the italicized language was not included there. A plain reading shows that the definition is quite broad and does not contain an exhaustive list of who is considered a relative. As with S.L. 2021-100, Section 1.(a) also makes conforming changes to the numbering of the definitions for "responsible individual" and "return home or reunification" to accommodate the addition of the new definition of "relative." A similar conforming change is made to G.S. 7B-1001(a)(5), the statute designating which final orders are subject to appeal, by Section 1.(b).

**Legislative Access to DSS Records:** Section 1.(c) amends G.S. 7B-302 by creating subsections (a3)–(a5), which authorize legislative access to child welfare information maintained by a county department of social services (DSS) and/or the North Carolina Department of Health and Human Services (DHHS). These new provisions and all their requirements are discussed in detail by my colleague, Kristi Nickodem, in her blog post [here](#).

**Placement:** Sections 1.(d) amends the nonsecure custody statute, G.S. 7B-505, subsections (b) and (c). Subsection (b) is amended to require DSS to (1) use due diligence to identify and notify adult relatives and other persons with legal custody of the juvenile's sibling within 30 days after the initial order that removes custody of the juvenile and (2) file with the court its attempts to do so.

This new provision incorporates state plan requirements under federal law ([42 U.S.C. 671\(a\)\(29\)](#)); however, the federal provision includes specific notice requirements and exceptions for family or domestic violence. Additionally, G.S. 7B-505(b) is amended to add “appropriate former foster parent” to the list of individuals the court *may* consider as a placement option when the juvenile is not placed with a relative. This change appears to contemplate a situation where a juvenile may be reentering foster care because of a new petition and request for nonsecure custody.

Section 1.(e) enacts G.S. 7B-903(a4), which applies to dispositional alternatives. When a juvenile requires out-of-home placement and is not placed with a relative under G.S. 7B-903(a1), the court may consider the juvenile’s placement with nonrelative kin or other persons with legal custody of the juvenile’s sibling. The court was able to do this before S.L. 2021-132; however, this new language makes it clear the court may do so and mirrors much of the language that applies at nonsecure custody in G.S. 7B-505(c).

Remember, S.L. 2021-100 amended G.S. 7B-505(a1) and 7B-903.1(c1) to specifically address a preference for placing siblings together both at the nonsecure custody and dispositional stages of an A/N/D proceeding.

**DSS Observations of Visits with Removal PGCC:** Section 1.(f) amends the observation components of G.S. 7B-903.1(c), which is often referred to as “Rylan’s Law.” Before DSS may make a recommendation to the court that a juvenile be returned to the physical custody of the parent, guardian, custodian, or caretaker from whom the juvenile was removed (“removal PGCC”), DSS must first make two observations of visits that are at least one hour in duration and at least seven days apart. The amendment now requires DSS to also comply with the observation requirement before recommending unsupervised visits with that removal PGCC. Further, the observations must occur within 30 days of the court hearing where DSS is making the recommendation for either unsupervised visits with or the return of physical custody to the removal PGCC. The new time limit is something to keep in mind if a hearing is continued, such that an additional observation or two are required.

**Visitation and Positive Drug Screens when the Juvenile Is in DSS Custody:** Section 1.(g) enacts G.S. 7B-905.1(b1), which explicitly addresses positive drug screen results and a parent’s court-ordered visitation with their child when the child is placed in DSS custody. This new subsection prohibits a parent’s visit with their child – whether that visit is supervised or unsupervised – from being denied *solely* on the basis of the parent’s positive drug screen. Although the legislation does not specifically prohibit a court from conditioning visitation on negative drug screens, that provision standing alone as a condition for a parent to exercise visitation is no longer allowed by this new law. If a parent appears at a visit while (1) under the influence of drugs or alcohol and exhibits behavior that may create an unsafe environment for their child or (2) actively impaired, that visit may be cancelled. If a parent has unsupervised visits and tests positive, DSS (1) must expeditiously file a motion to review the visitation plan to ensure the child’s safety and request that the hearing be scheduled within 30 days and (2) may temporarily

impose supervision requirements during all or part of the visits while the motion is pending and promptly communicate that temporary and limited change to the parent.

**Review and Permanency Planning Hearings – Now 2 Different Tracks:** Under amendments made by Section 1.(h) to G.S. 7B-906.1, court cases will proceed on two separate tracks following the initial dispositional hearing – the review track or the permanency planning hearing track. The determinative factor is whether the juvenile was removed from a parent, guardian, or custodian. A companion amendment was made by Section 1.(j), which repeals G.S. 7B-905(b) regarding the scheduling of a review hearing under the previous language of the statutes.

Permanency Planning Track: In cases where the juvenile is removed from the custody of a parent, guardian, or custodian, the amended G.S. 7B-906.1(a) establishes the hearing process as adjudication/initial disposition followed by permanency planning hearings (PPH). There is never a review hearing. The first PPH must be scheduled within 90 days of initial dispositional hearing (or 30 days if reunification efforts are ceased at initial disposition; see G.S. 7B-901(c), (d)). Because there is never a review hearing, G.S. 7B-906.1(d)(3) is amended to remove any reference to scheduling an accelerated permanency planning hearing when the finding in that subdivision is made by the court.

Review Track: In the minority of court cases where the juvenile remains in the custody of the parent, guardian, or custodian, the amended G.S. 7B-906.1(a) establishes the hearing process as adjudication/initial disposition followed by review hearings. A PPH is never scheduled so long as the juvenile remains in the custody of the parent, guardian, or custodian. Regarding a caretaker, the review track does not appear to apply, and instead the case should proceed on the PPH track.

When the case is on the review track, there is no permanent plan because the child has never been removed from the custody of the parent, guardian, or custodian. Instead, under the newly enacted G.S. 7B-906.1(d)(1a), the court is reviewing the appropriateness of the juvenile's continued placement in the home, and under the new G.S. 7B-906.1(d1), the court may order that the juvenile remain in their home. When the parent, guardian, or custodian successfully completes court-ordered services and the juvenile is residing in a safe home, the court may terminate its jurisdiction under G.S. 7B-906.1(d2) or 7B-911 or may waive further review hearings. If review hearings are waived, the court must hold a review hearing if a party files a motion for review and alleges a significant fact. G.S. 7B-906.1(k1).

Switching from Review to Permanency Planning Track: The new G.S. 7B-906.1(d1) authorizes the court to order a dispositional alternative identified in G.S. 7B-903, which includes the juvenile being removed from the custody of their parent, guardian, or custodian. If the court orders the juvenile's removal, under G.S. 7B-906.1(d)(1a), the case switches tracks and moves from review hearings only to PPHs only.

Remember, under S.L. 2021-100, hearings under G.S. 7B-1000 are now motions to modify (not

review hearings) and are appropriate when a review hearing or PPH is not needed.

**Termination of Parental Rights – Standing:** Section 1.(l) amends G.S. 7B-1103(a)(5) to give standing to file a TPR petition or motion to a person with whom the juvenile has been residing continuously for 18 months immediately preceding the filing of the petition or motion. This 18-month period is reduced from 24 months.

**Responsible Individuals List (RIL) and Human Trafficking:** Section 2 enacts G.S. 7B-320(a1), a provision that addresses situations where the juvenile is a victim of human trafficking through someone who is not the juvenile's parent, guardian, custodian, or caretaker. In those situations, the DSS director must cooperate with local law enforcement and the district attorney when determining whether it is possible and if so, how in the safest way, to send notice to the alleged responsible individual. The new provision identifies three conditions under which notification must not be provided and steps to place the alleged responsible individual on the RIL should not occur. When notification is not provided, the director must document the reason.

**Mental Health Treatment for Juveniles in DSS Custody Who Present at Hospitals:** Two new statutes address situations where juveniles who are in DSS custody present at a hospital emergency department for mental health treatment and are in need of less restrictive treatment.

Section 5.(a) amends Article 4 of G.S. Chapter 122C, which governs mental health treatment, by enacting G.S. 122C-142.2. When a juvenile who is in DSS custody presents at a hospital emergency department for mental health treatment, there must be coordination between the DSS director, appropriate local management entity/managed care organization (LME/MCO) or prepaid health plan, hospital (if able and willing), or other qualified licensed clinician to address the juvenile's needs and treatment, with a focus on discharge. The new statute requires specific time-limited assessments and the identification of and placement in an appropriate placement outside of the hospital. DSS must provide ongoing case management for the juvenile's educational and social needs while the juvenile is hospitalized. The DHHS Rapid Response Team (RR Team) must be notified immediately when an appropriate placement is not available or if assessment recommendations differ. The DSS director may share confidential information with the RR Team, which must be kept confidential by the RR Team. The RR Team, which consists of various stakeholders, evaluates the information provided and coordinates an appropriate response to address the juvenile's immediate needs (five such responses are enumerated in the statute).

Section 5.(b) creates G.S. 7B-903.2, which is effective on January 1, 2022, and authorizes the filing of an emergency motion in an abuse, neglect, or dependency (A/N/D) action to address placement and payment. If the provisions of the newly enacted G.S. 122C-142.2 are not satisfied, a motion in the A/N/D action may be filed by a party to that action, DHHS, the hospital where the juvenile is located, the LME/MCO, or the prepaid health plan. Procedures regarding party status, service, information sharing, and the hearing are addressed in G.S. 7B-903.2. The types of relief available to the court are set forth in G.S. 7B-903.2(g) and include monetary damages, such as the payment

of the hospital charges for the juvenile's stay after it is no longer medically necessary for the juvenile to remain in the hospital, and any other relief the court determines is proper. However, parties to the hearing are responsible for their own costs.

**Foster Parents:** There are provisions of S.L. 2021-132 that apply to foster parents and a separate session law that creates a Foster parents' Bill of Rights. Those amendments will be the subject of my next post.

**DHHS Plans:** Section 3 requires DHHS to develop a plan to create and implement a statewide child protective services hotline. The plan must address seven identified issues and be submitted to the Joint Legislative Oversight Committee on Health and Human Services by September 1, 2022.

Section 4 requires DHHS to develop a plan in consultation with representatives from various identified stakeholders to increase the supply of appropriate treatment and residential settings for juveniles who are and are not in DSS custody and who need behavioral and mental health services. The plan must consider four identified factors and be submitted to the Joint Legislative Oversight Committee on Health and Human Services by October 1, 2021 (last Friday).

**Public Schools:** Effective September 1<sup>st</sup> for the beginning of the 2021-2022 school year, Section 6 amends various statutes in G.S. Chapter 115C and 116, which applies to education in our state. The State Board of Education must adopt a rule requiring age-appropriate information on child abuse and neglect, including a reporting number to call, be provided to students in grades 6 through 12. The rule must be implemented by public school units, charter schools, regional schools, laboratory schools, and high schools under UNC control.

**Stay Updated:** Various amendments have been made to the Juvenile Code and other statutes impacting children. This blog post summarizes one session law and references and links to other blog posts that summarize other statutory amendments. There are more bills pending that make additional changes to the Juvenile Code. Be sure to stay informed. As those bills become law (assuming more do), I will continue to blog about them.