

S.L. 2021-100 Amends the Juvenile Code Related to Abuse, Neglect, Dependency and Termination of Parental Rights

As the 2021 Legislative Session continues, laws that revise the Juvenile Code are being enacted. The most recent session law is [S.L. 2021-100](#), which amends various provisions of Subchapter I of Chapter 7B of the General Statutes – the laws that relate to abuse, neglect, dependency and termination of parental rights proceedings. This blog summarizes the amendments made by “*An Act to Make Revisions to the Juvenile Code Pursuant to Recommendations by the Court Improvement Program.*”

Relative Defined: Section 1 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 a grandparent, sibling, aunt, or uncle.” This definition is quite broad and does not contain an exhaustive list of who is considered a relative. The role of relatives is important given that a county department of social services (DSS) must exercise due diligence in identifying and notifying relatives when a child is placed in DSS custody, and a court must give relative placement priority over a non-relative placement when the child is being placed outside of their home. See, e.g., 7B-506(h)(2); -903(a1). Section 1 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.”

The Juvenile’s and GAL’s Access to DSS Records: Sections 2 and 18 amend G.S. 7B-302(a1)(2) and 7B-2901(b)(1) to explicitly allow for the juvenile (even after turning 18) and their GAL to receive from DSS electronic or written copies of requested DSS records, which are not prohibited from disclosure under federal law, within a reasonable period of time.

Sibling Placement and Contact: Sections 3 and 6 add 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. The new subsections incorporate federal law (see [42 U.S.C. 671\(a\)\(31\)](#)). The DSS director must make reasonable efforts to place siblings together unless the director documents that such a placement would be contrary to the safety or well-being of any of the siblings. When a director is unsuccessful in placing siblings together after making reasonable efforts to do so, the director must make reasonable efforts to provide frequent visitation and interaction between the siblings unless there is documentation that such contact would be contrary to the safety or well-being of any of the siblings.

Practice Note: Although sibling visitation is not specifically addressed in the visitation statute, G.S. 7B-905.1(a) authorizes the court to order visitation that is in the child’s best interests and is not limited to ordering visitation with a parent, guardian, or custodian. Similarly, a court may determine whether DSS made reasonable efforts and may specify efforts. See, e.g., G.S. 7B-507, -903(a3), -906.2(b).

Appointment of Counsel for Parent: Sections 4 and 17 amend G.S. 7B-602(a) and 7B-1101.1(a) to make it clear that the provisional counsel appointed to a respondent parent in an A/N/D or TPR action receive from the clerk a copy of the petition and summons or notice.

Authority over Parents and Medication-Assisted Treatment: Section 7 enacts G.S. 7B-904(c1), which specifically addresses medication-assisted treatment (MAT). This new subsection defines MAT and explicitly states that an individual is not in violation of a court order to comply with treatment for substance use when that individual is complying with MAT. Essentially, this new subsection recognizes that MAT is treatment and may be necessary and ongoing for an individual.

Section 7 also makes technical corrections to G.S. 7B-904(a) and (b) by conforming to the 2019 amended definition of caretaker. The amendment to the definition of caretaker applies to any adult (versus an adult relative) entrusted with the juvenile's care. See G.S. 7B-101(3). The conforming amendments remove references to "relative" and refer to an "adult."

Visitation: Section 9 amends G.S. 7B-905.1(d) to limit when a court must inform the parties of a right to file a motion for review of any visitation plan. The court need only inform the parties when it has waived permanency planning hearings but retained jurisdiction – in other words, when another hearing is not required to be scheduled. This statutory amendment appears to supersede the holding of *In re K.W.*, 272 N.C. App. 487 (2020), remanding an initial dispositional order for compliance with G.S. 7B-905.1(d) to inform the parties of their right to review even though a review hearing needed to be scheduled under G.S. 7B-906.1. In this opinion, the court of appeals recognized that it was common sense that the party need not be informed because a further hearing was being scheduled but that the law did not make any distinction between when a further hearing was being scheduled or waived.

Eliminating Reunification after Ceasing Reunification Efforts: Section 11 amends G.S. 7B-906.2(b) to state that when a court finds that reunification efforts would clearly be unsuccessful or inconsistent with the child's health or safety, the court "shall eliminate reunification as a plan." The new requirement that reunification as a permanent plan be eliminated when reunification efforts are ceased addresses the confusion created by published appellate opinions that allowed a district court at permanency planning hearings to bifurcate ceasing reunification efforts from eliminating reunification as a permanent plan. This change appears to answer the following request from the Court of Appeals, "[t]o avoid confusion of our DSS workers and trial courts and to promote permanency for children in these cases, we encourage the North Carolina General Assembly to amend these statutes to clarify their limitations." *In re M.T.-L.Y.*, 265 N.C. App. 454, 466 (2019) (addressing *In re C.P.*, 258 N.C. App. 241 (2018), which "created a dichotomy between 'reunification' and 'reunification efforts'").

Waiving Permanency Planning Hearings: Section 10 amends G.S. 7B-906.1(n), which authorizes the court to waive further hearings while retaining jurisdiction over the A/N/D proceeding. The language of G.S. 7B-906.1(n) is amended to refer to "permanency planning"

hearings and removes references to “review” hearings.

Permanency Planning Hearings and Post-TPR Hearings: Section 10 amends G.S. 7B-906.1(o) to make it clear that when post-TPR review hearings are required, the court is no longer obligated to also conduct permanency planning hearings under G.S. 7B-906.1. Instead, when there is an underlying A/N/D action, the court will switch from permanency planning hearings to post-TPR review hearings under G.S. 7B-908.

Section 12 amends G.S. 7B-908 and clarifies that a post-TPR review hearing is required when either (1) both parents’ parental rights have been terminated or (2) one parent’s rights have been terminated and one parent has executed a relinquishment. (Note that when a parent executes a relinquishment and there has not been a TPR for the other parent, the court conducts post-relinquishment review hearings pursuant to G.S. 7B-909.) Additional amendments to G.S. 7B-908 address the type of relief the court may order at a post-TPR review hearing. This includes situations where there is an underlying A/N/D action with the need for the court to adopt concurrent permanent plans and situations where there is not an underlying A/N/D action where DSS or a private child-placing agency would have developed only one permanent plan.

Juveniles 17 and Older: Sections 14 and 15 amend G.S. 7B-912 to address 17-year-old youth who are likely to age out of foster care. After a juvenile turns 17, at every permanency planning hearing held, the court must inquire about whether the juvenile has copies of certain documents (e.g., birth certificate) and whether they have information about how to participate in the Foster Care 18–21 program. A new G.S. 7B-912(b1) is enacted to address what DSS must include in its report to the court for each of those permanency planning hearings. The information addresses enumerated factors that will assist the juvenile with transitioning to adulthood as well as information about how the juvenile may maintain contact with their families.

Foster Care 18–21: Section 13 amends G.S. 7B-910.1, which applies to court reviews of the Foster Care 18–21 program. Termination of the voluntary placement agreement is addressed by the new G.S. 7B-910.1(e). DSS must file a motion for review before it may terminate the agreement with the young adult when the young adult disagrees with the proposed termination. Although a court review is required, the statute does not include any criteria for what the court should consider when resolving the contested issue of whether the young adult’s participation in the program should be terminated.

Motion to Modify under G.S. 7B-1000: Section 16 makes significant amendments to G.S. 7B-1000. These hearing are now referred to as “modification” hearings and are not review hearings or hearings to vacate an order. The purpose of a modification hearing under G.S. 7B-1000 is limited to issues that do not warrant a permanency planning or review hearing under G.S. 7B-906.1. When the relief sought is to change a permanent plan or dispositional alternative, a motion for review or permanency planning hearing under G.S. 7B-906.1 should be filed, rather than a motion to modify under G.S. 7B-1000.

When a motion to modify is filed, a GAL for the child and provisional counsel for parents should be reappointed if they had been previously released.

Interstate Compact on the Placement of Juveniles (ICPC): Section 19 repeals G.S. 7B-3807, which was enacted in 2019, and codified the AAICPC regulations as North Carolina law. With the repeal of G.S. 7B-3807, North Carolina is still bound by the ICPC (see G.S. 7B-3800), but the regulations that are created by the association of compact administrators do not have the effect of law.

The effective date of all the various amendments is October 1, 2021.

Stay Updated: Previously, the General Assembly passed [S.L. 2021-18](#), which returned appeals of TPR orders and orders that eliminated reunification as a permanent plan that were combined with a TPR appeal back to the court of appeals (from the supreme court), effective July 1, 2021. 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.