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## Children, Families, and Juvenile Law

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The short session of the 2003 North Carolina General Assembly addressed a number of issues relating to children and families. This chapter summarizes bills enacted dealing with divorce, domestic violence, and juvenile proceedings. Also included are bills relating to child care and early childhood programs. Other chapters that may contain legislation of interest regarding children and families include Chapter 5, "Courts and Civil Procedure"; Chapter 6, "Criminal Law and Procedure"; Chapter 8, "Elementary and Secondary Education"; Chapter 10, "Health"; Chapter 11, "Higher Education"; Chapter 16, "Mental Health"; and Chapter 21, "Social Services."

### **Divorce**

S.L. 2004-128 (S 577) amends G.S. 50-10 to allow the clerk of superior court, upon request of a plaintiff, to enter judgment in cases where the plaintiff's only claim is for absolute divorce or absolute divorce and resumption of former name. The clerk is allowed to enter judgment only when defendant has been defaulted for failure to appear, has answered admitting the allegations of the complaint, or has filed a waiver of the right to answer. The clerk cannot enter judgment if the defendant is a minor or is incompetent. S.L. 2004-128 applies to actions filed on or after October 1, 2004.

### **Family Court**

The appropriations act, S.L. 2004-124 (H 1414), includes \$150,000 to expand family court to one additional district. The General Assembly required the Administrative Office of the Courts (AOC) to establish the program in one of the following district court districts: 3A (Pitt County), 10 (Wake County), 19B (Randolph, Montgomery, and Moore counties), 21 (Forsyth County), 23 (Wilkes, Yadkin, Alleghany, and Ashe counties), and 28 (Buncombe County). The AOC decided to place the program in District 28. The program will begin January 1, 2005, bringing the total number of family court districts in the state to nine.

In addition, S.L. 2004-110 (H 1430) adds new G.S. 7A-314.1 to establish a \$30 per hour fee to be paid to the AOC for the use of a supervised visitation and exchange center through a family court program. The AOC is allowed to reduce fees based on economic hardship or a litigant's status as a victim of domestic violence. The act was effective July 17, 2004.

## **Domestic Violence**

The 2003 General Assembly created the House Select Committee on Domestic Violence. That committee studied various issues relating to domestic violence and issued an extensive report on April 15, 2004. Primarily as a result of this report, the General Assembly enacted S.L. 2004-186 (H 1354) entitled "An Act to Strengthen the Laws Against Domestic Violence, to Provide Additional Assistance to Domestic Violence Victims, and to Make Other Changes Recommended by the House Select Committee on Domestic Violence." The legislation includes provisions relating to civil protection orders, offender treatment programs, legal assistance for victims of domestic violence, and training for court, law enforcement, and school personnel. The act also amends the criminal law as it applies to domestic violence offenses.

Provisions relating to treatment programs and the criminal law are summarized in other chapters. All provisions of the legislation were effective August 12, 2004, unless otherwise provided.

## **Temporary Child Custody**

S.L. 2004-186 significantly revises statutory provisions relating to the award of temporary child custody as part of a domestic violence protective order entered pursuant to Chapter 50B. All changes apply to actions filed on or after October 1, 2004.

**Ex parte relief.** G.S. 50B-2(c) allows a judge, and G.S. 50B-2(c1) allows a magistrate in limited circumstances when so authorized by the chief district court judge, to enter a domestic violence protective order prior to the defendant's receiving notice and an opportunity to be heard, if the plaintiff provides evidence that there is a danger of domestic violence against the plaintiff or a minor child. Before amendment, the statutes allowed temporary custody to be granted as part of such an ex parte order only if the court found that the child at issue was exposed to "a substantial risk of bodily injury or sexual abuse." S.L. 2004-186 amends G.S. 50B-2(c) and -2(c1) to require the court to consider granting temporary custody at the ex parte hearing if it finds that the child "is exposed to a substantial risk of physical or emotional injury or sexual abuse." If the court finds such a risk, it must consider ordering the defendant to stay away from the child and must return the child to or not remove a child from the physical care of the parent or person acting as a parent. The court can enter such an order if it finds that the order is in the best interest of the child and necessary for the safety of the minor child. The court also can specify terms of visitation between the child and the offending parent, but the order itself must be designed to protect the safety of the minor child as well as the aggrieved party.

**Orders entered after a hearing.** G.S. 50B-3(a)(4) allows a court to enter a temporary child custody order as part of the relief granted in a domestic violence protective order entered after a defendant has been served with process and given notice of hearing. S.L. 2004-186 adds new section G.S. 50B-3(a1) to specify that, upon the request of either party, the court must consider including a custody determination as part of the protective order. The new statute provides that the court's decision whether to include custody and visitation provisions in the protective order must be based on the best interest of the child with particular consideration given to the safety of the minor child. The statute also lists a number of factors the court must consider when making any decisions regarding custody and visitation.

**Renewal of custody provisions.** G.S. 50B-3(b) allows a court to renew a domestic violence protective order for up to an additional year upon the request of the aggrieved party. The statute contains no limit on the number of times a protective order may be renewed. However, S.L. 2004-186

amends this section to specify that an order for temporary custody is limited to a duration of one year only. While other provisions of a protective order can be renewed, custody and visitation provisions cannot be renewed to extend beyond one year from the time of the initial custody determination.

### **Legal Services Assistance for Domestic Violence Victims**

S.L. 2004-186 also adds new Article 37B to G.S. Chapter 7A appropriating funds to allow Legal Services to provide legal assistance to victims of domestic violence in actions for 50B domestic violence protective orders, for custody or visitation pursuant to G.S. Chapter 50, and for other services ensuring the safety of victims of domestic violence and their children. The funding is to be obtained from civil and criminal court costs collected throughout the state. Specifically, the statute requires the State Treasurer to send 95 cents from each civil and criminal General Court of Justice cost assessed by any court in the state to the State Bar for distribution to the legal services programs throughout North Carolina. Twenty percent of the funds collected will be distributed equally among the counties while 80 percent will be distributed based upon the number of Chapter 50B actions filed in each county.

### **Protection against Employment Discrimination**

S.L. 2004-186 creates new G.S. 50B-5.5 and amends G.S. 95-241(a) to prohibit an employer from discharging, demoting, denying a promotion to, or disciplining an employee because the employee took reasonable time off from work to obtain or to seek to obtain a domestic violence protective order pursuant to Chapter 50B.

### **Privacy for 50B Intake**

S.L. 2004-186 amends G.S. 50B-2(d) to provide that the clerk of superior court shall, whenever feasible, provide a private area for persons seeking to file 50B complaints to complete forms and make inquiries.

### **Training for Law Enforcement, School, and Court Personnel**

S.L. 2004-186 amends G.S. Chapters 17C and 17E to require that law enforcement officers receive education and training in how to respond to and investigate domestic violence cases as well as how to conduct investigations for evidence-based prosecutions. The legislation also requires that the N.C. Department of Public Instruction, in collaboration with the State Board of Education, study the use of antiviolence programs in the schools and the training of school personnel who deal with students who are victims of physical violence and mental or verbal abuse, particularly abuse related to domestic and relationship violence. The results of the study are to be submitted to the House Select Committee on Domestic Violence and the Joint Legislative Education Oversight Committee by November 15, 2004, and a final report is due to the General Assembly by January 15, 2005. With regard to court personnel, S.L. 2004-186 requests that the North Carolina Supreme Court adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases. The act also requires the AOC to study the issue of training in the area of domestic violence for all other court personnel. The AOC report is to be submitted to the 2005 General Assembly.

### **Civil No-Contact Orders for Victims of Violence**

In addition to S.L. 2004-186, which deals primarily with domestic violence, the General Assembly enacted S.L. 2004-194 (H 951) to create new G.S. Chapter 50C to allow victims of sexual assault and stalking to seek civil no-contact orders similar to the domestic violence protective orders available pursuant to Chapter 50B. Chapter 50B relief is available to persons

who have a *personal relationship* with the defendant, as that term is defined by G.S. 50B-1(b). Because new Chapter 50C is intended to provide protection to persons not presently covered by Chapter 50B, it authorizes claims for civil no-contact orders only by persons who do not have a “personal relationship” with the defendant. New Chapter 50C is described in detail in Chapter 5, “Courts and Civil Procedure.”

The General Assembly also enacted S.L. 2004-165 (S 916) to create new Article 23, entitled “Workplace Violence Prevention,” in G.S. Chapter 95. Article 23 allows an employer to file a district court civil action seeking a no-contact order on behalf of an employee who has suffered unlawful conduct from any individual, conduct “that can reasonably be construed to be carried out, or to have been carried out, at the employee’s workplace.” This legislation is also described in detail in Chapter 5.

## **Juvenile Law**

### **Parental Rights and Conviction of Rape**

Upon conviction under G.S. 14-27.2 or G.S. 14-27.3 for a rape that occurs on or after December 1, 2004, the person convicted will have no custody rights in relation to a child born as a result of the rape, no right to inherit from the child, no rights under the state adoption laws, and no rights in any abuse, neglect, dependency, or termination of parental rights proceeding involving the child. In addition to amending the two criminal statutes to add those provisions, S.L. 2004-128 amends the following sections:

- G.S. 48-3-603(a), to provide that the convicted parent’s consent to the child’s adoption is not required
- G.S. 50-13.1(a), to provide that the parent may not claim a right to custody of the child
- G.S. 7B-402 and 7B-406(a), to provide that the parent need not be named in a petition alleging that the child is abused, neglected, or dependent and that no summons for that parent is required
- G.S. 7B-1103, to provide that the convicted parent may not file a petition to terminate the rights of the other parent
- G.S. 7B-1104, to provide that the parent need not be named in a petition or motion for termination of parental rights

### **Nurse Privilege**

Effective December 1, 2004, Sections 16.1 and 16.2 of S.L. 2004-186 amend the nurse privilege enacted in 2003 by

1. rewriting the nurse privilege statute, G.S. 8-53.13, to clarify that it does not preclude the admission in court of otherwise admissible medical records pursuant to G.S. 8-44.1, once the court determines that disclosure should be compelled; and
2. rewriting G.S. 8-53.1 to provide that the nurse privilege, like the physician–patient privilege, cannot be a ground for excluding evidence about abuse or neglect of a child younger than sixteen or about the fact or cause of a child’s illness or injuries in any proceeding related to an abuse, neglect, or dependency report under the Juvenile Code.

### **Child Fatality Task Force**

S.L. 2004-186 rewrites G.S. 7B-1402 to replace two of the four public members on the North Carolina Child Fatality Task Force with (1) a representative from the North Carolina Domestic Violence Commission and (2) a representative from the North Carolina Coalition Against Domestic Violence.

## Technical Changes

**Predisposition report by department of social services.** S.L. 2004-203 (H 281) amends G.S. 7B-808(b) to correct a reference to a mental health evaluation of an alleged perpetrator.

**Effect of legitimation.** The act also repeals G.S. 49-13.1, an obsolete provision relating to the effect of one parent's legitimating a child on the other parent's consent to the child's adoption.

**Indecent liberties with a student.** S.L. 2004-203 amends G.S. 14-202.4 to clarify that, for purposes of the crime of taking indecent liberties with a student, *same school* means a school at which (1) the student is enrolled or is present for a school-sponsored or school-related activity and (2) the alleged perpetrator is employed, volunteers, or is present for a school-sponsored or school-related activity.

## Venue in Delinquency Cases

S.L. 2004-155 (H 1665) rewrites the venue provisions for delinquency proceedings in G.S. 7B-1800 to provide the following:

1. The adjudication hearing must occur in the district in which the offense occurred.
2. Except as specified in (3) below, after an adjudication in a district that is not the district of the juvenile's legal residence, the presiding judge may transfer the case to the juvenile's home district for disposition. If the presiding judge does not transfer the case, he or she must contact the chief judge in the juvenile's home district, and that judge may demand that the case be transferred to the home district for disposition. If the case is not transferred pursuant to either of these provisions, the juvenile may demand that it be transferred to the home district.
3. If the offense is committed in a district in which the juvenile is in residential treatment or foster care but that is not the juvenile's home district, then, after an adjudication in that district, the court must conduct the dispositional hearing in that same district, unless the judge enters an order, supported by findings of fact, that a transfer would serve the ends of justice or would be in the juvenile's best interests.

The act applies to hearings held on or after October 1, 2004.

## Office of Juvenile Defender

Section 14.3 of S.L. 2004-124 authorizes the state Office of Indigent Defense Services to use up to \$177,500 in appropriated funds to create the Office of the Juvenile Defender, to consist of one attorney position and one support staff position.

## Youth Development Centers

Section 16.3 of S.L. 2004-124 authorizes the Department of Juvenile Justice and Delinquency Prevention (DJJDP) and the State Construction Office in the Department of Administration to continue planning and design for up to 512 youth development center beds. DJJDP must provide a final recommended plan for new youth development centers by November 1, 2004, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the chairs of other specified legislative committees. The plan must include the following:

1. A recommended number of beds and facilities, including schemes for 512 beds at thirteen facilities and alternate schemes for up to 512 beds at fewer sites
2. A project schedule for new facilities
3. A detailed schematic of a prototype facility
4. A facility staffing plan
5. A detailed transition plan for recruiting, establishing, and converting staff positions
6. Recommended site locations
7. A construction and operating cost comparison with other states
8. A description of major facility programs

9. An explanation of security components
10. Recommendations for new initiatives to provide community-based programs that will reduce youth development center populations

The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee must report its recommendations upon the convening of the 2005 General Assembly.

### **Youth Development Center Staffing**

Section 16.4 of S.L. 2004-124 directs DJJDP to prepare a long-range plan for establishing a therapeutic staffing model for all youth development centers. It authorizes DJJDP to create and reclassify certain positions as a first step toward that possible model. The department must report by December 1, 2004, on the long-range plan and the costs involved in statewide implementation of the therapeutic staffing model.

### **Juvenile Escapees**

S.L. 2004-161 (§ 1152) authorizes the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee to study the problem of persons who escape from the custody of DJJDP and to develop appropriate sanctions for those persons. If the committee undertakes this study, it is required to consult with DJJDP, the AOC, and the North Carolina Sentencing and Policy Advisory Commission to develop a statutory scheme through which both juveniles and persons over the age of sixteen are punished for escaping from the custody of DJJDP. The committee must report its findings and recommendations no later than the convening of the 2005 General Assembly.

### **Juvenile Recidivism**

Section 16.5 of S.L. 2004-124 directs the state Sentencing and Policy Advisory Commission, in consultation with DJJDP and the legislature's Fiscal Research Division, to develop a methodology for measuring juvenile recidivism. The commission must report the proposed methodology and any related recommendations to the 2005 General Assembly by March 1, 2005.

### **Alternatives to Commitment of Juveniles**

Section 16.6 of S.L. 2004-124 directs DJJDP, in consultation with the Fiscal Research Division of the General Assembly, to study electronic monitoring and house arrest programs for juvenile offenders. The department must report certain data and any recommendations on ways to expand the use of electronic monitoring programs as alternatives to committing juveniles to youth development centers by March 1, 2005.

Section 16.7 of the act authorizes DJJDP to use up to \$500,000 for demonstration projects involving Juvenile Crime Prevention Councils to identify effective community programs for juveniles who have been committed to, or who may be committed to, youth development centers. The department may award up to ten competitive grants to up to ten councils, and no award may exceed \$100,000. When selecting award recipients, the department must consider (1) commitment rates, (2) programs that target juveniles in rural areas, (3) geographical representation, and (4) collaboration among counties. Funds that are not awarded by June 30, 2005, will revert to the General Fund.

### **Education of Committed Juveniles**

Section 16.8 of S.L. 2004-124 requires DJJDP, in consultation with the state Board of Education and the Community Colleges System Office, to review the assessment of juveniles committed to DJJDP and the curricula, education plans, and alternative education programs

available to those juveniles. DJJDP, the state Board of Education, and the Community Colleges System Office must report to the General Assembly by March 1, 2005.

### **Youth Advocacy and Involvement Fund**

Section 19.10 of S.L. 2004-124 rewrites G.S. 143B-387.1 to (1) change the name of the fund created by that section from Youth Legislative Assembly Fund to Youth Advocacy and Involvement Fund and (2) expand the purposes for which the fund may be used to include North Carolina Students Against Destructive Decisions (SADD) programs.

## **Child Day Care and Early Childhood Programs**

### **Child Day Care Facilities**

Section 10.35 of S.L. 2004-124 amends G.S. 110-88 to authorize the state Child Care Commission to adopt rules for child care facilities that provide care for medically fragile children.

### **Child Day Care Subsidies**

S.L. 2004-124 provides an additional \$25.1 million in state and federal funding for subsidized child care. The act also gives the Department of Health and Human Services additional flexibility in allocating federal and state child care funding to counties when doing so is necessary to prevent termination of services.

### **Criminal Records Checks**

Section 10.36 of S.L. 2004-124 requires the Division of Child Development to use lapsed salary funds to support up to three temporary positions during fiscal year 2005 to eliminate the backlog of criminal history record checks for local child care centers.

### **More at Four**

S.L. 2004-124 appropriates \$9.1 million to fund approximately two thousand additional slots in the state's More at Four prekindergarten program. State funding for the program may not supplant any funding for classrooms that served four-year-olds as of fiscal year 2003-2004. The act also requires the program to establish income eligibility requirements in which the participants' family incomes do not exceed 75 percent of the state's median income but that allow up to 20 percent of the children enrolled in the program to come from families whose incomes exceed 75 percent of the state's median income if the children have other designated risk factors. S.L. 2004-124 also requires the program to shift unfilled slots to counties with waiting lists and to transfer any slots that remain unfilled on January 30, 2005, to the Division of Child Development for use in reducing the waiting list for subsidized child care.

Finally, S.L. 2004-124 provides that the director of the More at Four program (or his or her designee) will be a member of the board of directors of the North Carolina Partnership for Children (Smart Start).

## **Other Legislation Affecting Children and Families**

S.L. 2004-191 (S 1218) amends G.S. 20-137.1(a1) to require that a child who is younger than eight years of age and who weighs less than eighty pounds be properly secured in an appropriate child passenger restraint system. (Until January 1, 2005, the requirement applies to children younger

than five who weigh less than forty pounds.) If no seating position equipped with a lap and shoulder belt in which to properly secure a weight-appropriate child restraint system is available, the restraint system may be secured by a properly fitted lap belt only. The act is effective January 1, 2005.

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