

## 2018 N.C. Legislative Changes Impacting Child Welfare

The 2018 Legislative Session created and amended various North Carolina statutes affecting child welfare. Some of those changes are effective now and others at later dates. Here are the highlights.

### **Changes to the Juvenile Code**

#### **An Act to...Clarify Findings of Fact Requirements Made in Dispositional Orders Where Reasonable Efforts for Reunification Are Not Required, [S.L. 2018-86](#).**

Section 2 amends [G.S. 7B-901\(c\)](#) by adding the present tense verb “determines.” This amendment allows the court, at the initial dispositional hearing, to take evidence and determine the existence of any of the enumerated factors listed in G.S. 7B-901(c) that supports an order relieving DSS of providing reasonable efforts for reunification. The amendment applies to initial dispositional orders that are effective on or after June 25, 2018. This new language supersedes the holding of *In re G.T.*, \_\_\_ N.C. App. \_\_\_, 791 S.E.2d 274 (2016), affirmed per curiam, 370 N.C. 387 (2017), which required that the determination must have been made in an earlier court order and could not be made at the initial dispositional hearing because the statute used the present perfect verb tense “has determined.” Now, G.S. 7B-901(c) uses “determines or has determined.”

#### **An Act to Amend Various Provisions under the Laws Governing Adoptions and Juveniles, [S.L. 2018-68](#).**

Section 8.1 amends the definitions of “abused juvenile” at G.S. 7B-101(1)\* and “neglected juvenile” at G.S. 7B-101(15). Both definitions add minor victims of human trafficking, without any reference to the role of a parent, guardian, custodian, or caretaker. “Minor victims” of human trafficking are specifically addressed in a new criminal statute, G.S. 14-43.15, which refers to abuse, neglect, and the provision of Subchapter I of the Juvenile Code. These amendments are effective October 1, 2018 and comply with the federal Justice for Victims of Trafficking Act of 2015.

Section 5.1 creates [G.S. 7B-1105\(g\)](#), effective October 1, 2018. A summons is not required for an unknown parent in a termination of parental rights action who is served by publication pursuant to the procedures of G.S. 7B-1105.

#### **An Act to Provide Restorative Justice to Victims of Human Trafficking, [S.L. 2018-75](#).**

\*Section 5 amends the definition of “abused juvenile” at G.S. 7B-101(1) effective December 1, 2018. It repeals G.S. 7B-101(1)g. and replaces it with language that clarifies that any juvenile who is or is alleged to be a victim of human trafficking, sexual servitude, or involuntary servitude is an abused juvenile regardless of the relationship of the victim and the perpetrator. Note that this amendment differs from the amendment to the definition of “abused juvenile” made by S.L.

2018-68. Although the language is different, both amendments make it clear that a minor victim of human trafficking is an abused juvenile even when the juvenile's circumstances are not created or allowed by a parent, guardian, custodian, or caretaker.

Note that Section 3 creates G.S. 14-43.16, effective December 1, 2018. The name, address, and other information that could reasonably be expected to lead to the identity of the victim or alleged victim of human trafficking and his/her immediate family member (as defined in that statute) is confidential. There are four enumerated exceptions, one of which includes disclosure to ensure the provision of family services or benefits to the victim, alleged victim, or his/her immediate family member. A knowing violation is a Class 3 misdemeanor.

### **An Act to Update the General Statutes of N.C. with People First Language..., [S.L. 2018-47](#).**

This session law amends various North Carolina statutes by making technical corrections to refer to the individual first before their condition (e.g., person with mental illness rather than mentally ill person), replace the term "mental retardation" with "intellectual disability," and improve readability and consistency with formatting. Section 2 amends G.S. 7B-1111(a), which enumerates the grounds to terminate parental rights and is effective for proceedings commenced on or after October 1, 2018.

### **Changes to the Adoptions Statutes**

#### **AOC Omnibus Changes, [S.L. 2018-40](#).**

Section 12 amends G.S. 48-9-102 regarding records, effective June 22, 2018. The Special Proceedings Index is excluded from adoption records that must be sealed. The time period for the clerk of superior court to send designated records to the NC DHHS Division of Social Services is extended to within 10 days after the appeal period has expired (instead of within 10 days of the entry of the final adoption decree). Orders of dismissal are explicitly included in records that must be sent to the Division of Social Services.

### **An Act to Amend Various Provisions under the Laws Governing Adoptions and Juveniles, [S.L. 2018-68](#)**

This session law makes various changes to the adoption statutes and is effective October 1, 2018.

Consents and Relinquishments. Section 1.1 amends G.S. 48-3-603 regarding consents executed by a minor parent or minor adoptee. A new subsection (h) specifically addresses how the minor may be identified to an individual authorized to administer oaths or take acknowledgements. Section 2 amends G.S. 48-3-606(3) and 48-3-703(a)(3) to address how a newborn who is the subject of the consent or relinquishment may be referred to in that consent or relinquishment.

Order to Confirm Custody Transfer to Obtain Documentation and Benefits. Section 3 adds G.S. 48-3-607(d) regarding prospective adoptive parents with whom the child was placed in an independent adoption and who have filed an adoption petition and G.S. 48-3-705(e) regarding an agency to whom the child was relinquished. After the expiration of the revocation period for a consent or relinquishment, the prospective adoptive parents or the agency may apply to the clerk of superior court for an ex parte order confirming the transfer of the child's custody that resulted from the consent or relinquishment. The purpose of the order is to allow the prospective adoptive parents or agency to obtain a certified copy of the child's birth certificate, the child's social security number, or federal or state benefits for the child.

Service in Pre-birth Determination. Section 4.1 amends G.S. 48-2-206(e) to address service by publication on a biological father and allows the father 40 days from the date of the first publication to respond.

Preplacement Assessment. Section 5.1 adds G.S. 48-3-303(c)(13) addressing updated or amended preplacement assessments and requirements for the delivery of a copy of the assessment to the court or placing parent, guardian, or agency.

## **Other Changes**

### **Appropriations Act of 2018, [S.L. 2018-5](#).**

Part XXIV, Section 24 repeals and replaces the North Carolina Child Well-Being Transformation Council (Children's Council) that was originally created by S.L. 2017-41 (Rylan's Law/Family and Child Protection and Accountability Act). Effective June 30, 2018, the state is required to establish a 25-member Children's Council that must focus on improving coordination, collaboration, and communication among agencies and organizations that provide public services to children. There are six identified tasks that include

- identifying
  - child-serving agencies in the state;
  - problems with collaboration, coordination, and communication in child welfare; and
  - gaps in coordination of publicly funded child-serving programs;
- researching the work of other states' equivalents to the Children's Council;
- monitoring child welfare and social services reform in North Carolina; and
- recommending changes in law, policy, or practice to improve coordination, collaboration, and communication between publicly funded child-serving agencies.

The legislation designates the membership representation and requires appointments be made on or after September 1, 2018. There will be two co-chairs. The Children's Council will be located administratively in the General Assembly, and the Legislative Services Commission is responsible for staffing. Meetings will be held quarterly and are subject to the Open Meetings Law. The UNC

School of Government is required to convene the first meeting before October 31, 2018, host and facilitate the first four meetings, and provide administrative support and technical assistance for those meetings.

The Children's Council is required to prepare two reports that summarizes the work for the previous year and any findings and recommendations for change. The first report is due June 30, 2019 and must also include a work plan for the upcoming year. The second (and final) report is due June 30, 2020, which is when the Children's Council terminates.

Part X, Subpart X-A, Section 10.A.1 amends two education statutes that address special education scholarships for attendance at a nonpublic school or public school that charges tuition. Beginning with scholarship applications for the 2019-2020 school year, the amendments add G.S. 115C-112.5(2)f.7. and 8. to the definition of an "eligible student" to include

- a child in foster care or
- a child whose adoption decree was entered not more than one year before the scholarship application is submitted.

The priority given to these children when scholarships are awarded are addressed in amendments to G.S. 115C-112.6(a2)(2).

**An Act to Authorize the DMV to Produce an Eastern Band of Cherokee Indians, A Federally Recognized Tribe, Special Registration Plate..., [S.L. 2018-7](#).**

Effective June 13, 2018, Section 1 authorizes a special registration plate, for no additional fee, to a member of the Eastern Band of Cherokee Indians (EBCI) who presents the DMV with a tribal identification card. Note that such a license plate may indicate that the child is an "Indian child" for purposes of the Indian Child Welfare Act (ICWA) An inquiry should be made as to (1) whether the child is a member of the EBCI or (2) whether one of the child's biological parents is a member and whether the child is eligible for membership in the EBCI or another federally recognized tribe. For more information about ICWA, see Chapter 13.2 in *Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina* (the A/N/D Manual), [here](#).