

Social Services: 2011 Legislation Enacted

1. Consent orders. Section 5 of [S.L. 2011-295](#) (H 382) * adds new G.S. 7B-801(b1), providing that the court may enter a consent adjudication, disposition, review, or permanency planning order in an abuse, neglect, or dependency proceeding when
 - all parties are either present or represented by counsel who is present and authorized to consent;
 - the juvenile is represented by counsel; and
 - the court makes sufficient findings of fact.Section 8 of the act repeals G.S. 7B-902, the current provision regarding consent orders.
2. Adjudication. Section 6 of [S.L. 2011-295](#) (H 382) * rewrites G.S. 7B-807(a) to make clear that stipulations by a party may constitute evidence at adjudication and to require that a record of specific stipulated adjudicatory facts be made by either
 - submitting them to the court in writing, signed by each party who is stipulating; or
 - reading the facts into the record, followed by an oral statement of agreement from each party stipulating to them.
3. Disposition hearing. Section 7 of [S.L. 2011-295](#) (H 382) * rewrites G.S. 7B-901 to require the court, at the disposition hearing, to inquire about the identity and location of any missing parent and whether paternity is at issue. The court must make findings about efforts to locate and serve a missing parent and to establish paternity if paternity is in issue. The court may provide in its order for specific efforts aimed at locating, serving, or establishing the paternity of a parent. The court also must inquire about efforts made to identify and notify relatives as potential resources for placement or support.
4. Disposition order. Section 9 of [S.L. 2011-295](#) (H 382) * rewrites G.S. 7B-905(a) to require the clerk to schedule a hearing at the first session of juvenile court if a disposition order is not entered within 30 days after completion of the disposition hearing.
5. Placement responsibility. G.S. 7B-507(a)(4) requires that any order providing for a child to remain or be placed in the custody of DSS specify that the child's placement and care are the responsibility of DSS and that DSS provide or arrange for the child's foster care or other placement. Section 3 of [S.L. 2011-295](#) (H 382) * adds a provision that the court, after considering DSS's recommendations, may order a specific placement the court finds to be in the child's best interest.
6. Permanency planning hearing. Section 3 of [S.L. 2011-295](#) (H 382) * rewrites G.S. 7B-507(c) to clarify the scheduling of permanency planning hearings after a court determines that reunification efforts are not required. If the determination to cease reunification efforts is made at a hearing that was properly noticed as a permanency planning hearing, the court may proceed in that hearing to consider the criteria in G.S. 7B-907, make findings of fact, and order a permanent plan for the child. If the determination to cease reunification efforts is made at any other hearing, the court must schedule a subsequent hearing within 30 days to address the permanent plan pursuant to G.S. 7B-907.

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7. Termination of guardianship. Section 4 of [S.L. 2011-295](#) (H 382)* amends G.S. 7B-600(b), so that the restrictive criteria for terminating a guardianship when the court has made guardianship the permanent plan apply only if the guardian is a party to the proceeding.
8. Service of motion in termination cases. Section 4.1 of [S.L. 2011-332](#) (S 300) rewrites G.S. 7B-1102 to require that when a motion to terminate parental rights is served on a parent pursuant to G.S. 1A-1, Rule 4, a copy of the motion and notice be sent to the parent's attorney if the parent has an attorney of record. This change applies to motions filed on or after October 1, 2011.
9. Service pursuant to Rule 5(b). Section 4.2 of [S.L. 2011-332](#) (S 300) rewrites G.S. 1A-1, Rule 5(b), to require that service pursuant to Rule 5 be on the party's attorney of record and, if the court so orders, also on the party. If the party does not have an attorney of record, service must be on the party. The act also clarifies that service on an attorney pursuant to Rule 5(b) may be by mailing to the attorney's office. These changes apply to service made pursuant to G.S. 1A-1, Rule 5(b), on or after October 1, 2011.
10. Petitioner to send notice of termination hearings. Section 13 of [S.L. 2011-295](#) (H 382)* amends G.S. 7B-1106(b)(5), relating to the contents of the summons in a termination case, to provide that the petitioner, not the clerk, will mail notice of the date, time, and place of any pretrial hearing and the hearing on the petition.
11. Extension of time to file answer or response. Section 14 of [S.L. 2011-295](#) (H 382)* amends G.S. 7B-1108(a) to provide that only a district court judge may grant an extension of time to file an answer or response to a termination of parental rights petition or motion.
12. Unknown parent. Section 12 of [S.L. 2011-295](#) (H 382)* rewrites G.S. 7B-1105(b) to (i) provide that the court may order the petitioner in a termination of parental rights case to conduct a diligent search for an unknown parent, and (ii) delete the provision authorizing the court to appoint a guardian ad litem to conduct a search for the unknown parent.
13. Evidence at tpr adjudication. Section 15 of [S.L. 2011-295](#) (H 382)* adds to G.S. 7B-1109(f) a statement that the rules of evidence in civil cases apply at the adjudicatory hearing in a termination of parental rights proceeding.
14. Evidence and findings at tpr disposition. Section 16 of [S.L. 2011-295](#) (H 382)* rewrites G.S. 7B-1110(a) to authorize the court at disposition in a termination proceeding to consider any evidence, including hearsay, the court finds to be relevant, reliable, and necessary to determine the child's best interests. It also requires the court, in addition to considering statutory criteria that are relevant, to make written findings about those criteria.

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15. Post-termination review. Section 10 of [S.L. 2011-295](#) (H 382)* rewrites G.S. 7B-908 relating to post-termination of parent rights review hearings, to
- require the court to make findings about relevant subjects the court is required to consider under G.S. 7B-908(c);
 - add a requirement that the court consider whether the current placement is in the child's best interest; and
 - authorize the court to order a different placement or plan if the child is not placed with prospective adoptive parents and the court has considered DSS's recommendations.
16. Selection of adoptive parents. Section 10 of [S.L. 2011-295](#) (H 382)* deletes G.S. 7B-908(f), relating to the selection of adoptive parents, and section 18 adds new G.S. 7B-1112.1 addressing that subject. It requires DSS to notify the child's guardian ad litem of the selection of prospective adoptive parents within ten days of the selection and before an adoption petition is filed. A guardian ad litem who disagrees with the selection then has ten days to file a motion for a hearing in juvenile court. DSS may not change the child's placement to that of the prospective adoptive parents unless the time for the guardian ad litem to file a motion has passed without a motion's being filed. After a hearing and consideration of DSS's and the guardian ad litem's recommendations, the court must determine whether the proposed adoptive placement is in the child's best interest.
17. Reinstatement of parental rights. Section 18 of [S.L. 2011-295](#) (H 382)* adds new G.S. 7B-1114 establishing for the first time a juvenile court proceeding in which the parental rights of a parent whose rights have been terminated may be reinstated. Previously, the only means of regaining parental rights was for the parent to adopt the child. Circumstances in which the procedure will be available, beginning October 1, 2011, are narrow.
- A motion to reinstate parental rights may be filed only by the guardian ad litem attorney or a DSS that has custody of the child.
 - The child must be at least 12 years old or, if younger than 12, the motion must allege extraordinary circumstances requiring consideration of the motion.
 - The juvenile must not have a legal parent, must not be in an adoptive placement, and must not be likely to be adopted within a reasonable time.
 - The order terminating parental rights must have been entered at least three years before the motion is filed, unless the juvenile's attorney advocate and the DSS with custody stipulate that the child's permanent plan is no longer adoption.

If a motion could be filed and a parent contacts DSS or the child's guardian ad litem about reinstatement of the parent's rights, DSS or the guardian ad litem must notify the child that the child has a right to file a motion for reinstatement of parental rights. If the child does not have a guardian ad litem when a motion is filed, the court must appoint one.

The party filing the motion must serve it on each of the following that is not the movant:

- the child
- the child's guardian ad litem or guardian ad litem attorney
- the DSS with custody of the child
- the former parent whose rights the motion seeks to have reinstated

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Although the former parent must be served, the former parent is not a party to the proceeding and is not entitled to appointed counsel if indigent.

The party filing the motion must ask the clerk to calendar it for a preliminary hearing within 60 days of the filing and must give at least 15 days notice to those who were required to be served and to the child's placement provider (who is not made a party by virtue of receiving notice). At least seven days before the preliminary hearing, DSS and the child's guardian ad litem must provide the court, the other parties, and the former parent with reports that address a list of factors specified in the new statute. At the preliminary hearing the court must consider those criteria and make findings about those that are relevant. At the conclusion of the hearing, the court must either dismiss the motion or order that the child's permanent plan become reinstatement of parental rights.

If the motion is not dismissed at the preliminary hearing, the court must conduct hearings at least every six months until the petition is granted or dismissed, which must occur within 12 months from the date the motion was filed unless the court makes written findings about why that cannot occur and specifies a time frame for entering a final order. At any hearing under the new section the court may enter an order for visitation under G.S. 7B-905(c) or order that the child be placed in the former parent's home and supervised by DSS. If the court orders placement in the former parent's home, the child's placement and care remain the responsibility of the DSS with custody.

After an order reinstating parental rights, the court is not required to conduct further reviews. A parent whose rights are reinstated is not liable for child support or the cost of services provided to the child between the date of the termination order and the date of the reinstatement order.

18. Set aside paternity/child support. [S.L. 2011-328](#) (S 203):

- adds new G.S. 49-14(h) to authorize the court, without regard to the time limitations in G.S. 1A-1, Rule 60, to set aside an order of paternity if (i) the order was entered as the result of fraud, duress, mutual mistake, or excusable neglect, and (ii) genetic tests establish that the putative father is not the child's biological father.
- rewrites G.S. 110-132 to authorize the court, without regard to the time limitations in G.S. 1A-1, Rule 60, to set aside an affidavit of parentage if (i) the affidavit was entered as the result of fraud, duress, mutual mistake, or excusable neglect, and (ii) genetic tests establish the putative father is not the child's biological father.
- adds new G.S. 50-13.13 establishing procedures and criteria for a motion or claim seeking relief from a child support order, by someone who
 - ▶ is not the child's father;
 - ▶ has not acknowledged paternity, or has acknowledged paternity without knowing that he was not the child's biological father;
 - ▶ has not adopted or legitimated the child and is not the child's legal father; and
 - ▶ did not act to prevent the child's biological father from asserting his paternal rights.

The act is effective January 1, 2012, and applies to motions and claims filed on or after that date. Beginning January 1, 2013, a motion or claim under G.S. 50-13.13 must be filed within a year after the moving party knew or reasonably should have known that he was not the child's father. That restriction does not apply for the first year after the act becomes effective.

19. Discovery. [S.L. 2011-247](#) (H 379) enacts the North Carolina Interstate Depositions and Discovery Act, as new Chapter 1F of the General Statutes, effective December 1, 2011. [S.L. 2011-199](#) (H 380) amends various Rules of Civil Procedure to clarify procedures that relate to discovery of electronically stored information, effective October 1, 2011.
20. Indigent defense. Sections 12(a) and 12(b) of [S.L. 2011-326](#) (S 148) amend G.S. 7B-602(a) and 7B-1110.1(a) to specify that the appointment of provisional counsel shall be pursuant to rules adopted by the Office of Indigent Defense Services. Section 15.20 of [S.L. 2011-145](#) (H 200) amends G.S. 7A-498.5(f) to require IDS, in setting compensation rates for expert witnesses, not to exceed the rate set by the AOC under G.S. 7A-314(d).
21. Child care subsidies for noncitizen families. Section 10.1.(h) of [S.L. 2011-145](#) (H 200) provides that if all other conditions of eligibility are met, noncitizen families who reside in the state illegally are eligible for child care subsidies only for a child who
- is receiving child protective services or is in foster care,
 - is developmentally delayed or at risk of being developmentally delayed, or
 - is a citizen of the United States.
- Noncitizen families residing in the state legally are eligible if other eligibility criteria are met.
22. Adoption assistance. [S.L. 2011-383](#) (S 644) provides that the Division of Social Services may not require redetermination of a child’s eligibility for vendor payments under any adoption assistance agreement entered before July 1, 2011.
23. Medicaid fraud. [S.L. 2011-117](#) (S 307) authorizes a Smart Card Pilot Program for up to one year to test the effectiveness of such a program in combating fraud in the Medicaid system.
24. Discharge from adult care homes. [S.L. 2011-272](#) (H 677) adds new G.S. 131D-4.8, authorizing adult care homes to initiate the discharge of residents for any of six reasons stated in the section. The resident and the resident’s representative must be given at least 30 days notice of the discharge, and the notice must include the reason for the discharge and other information specified in the statute. The act adds new G.S. 131D-2.1(16), defining an “adult care home resident discharge team” as a team consisting of one person from DSS and one from the local management entity (LME), established by DSS in every county that contains a licensed adult care home. The teams are responsible for assisting in finding appropriate placements for discharged residents of adult care homes. G.S. 131D-4.8 requires an adult care home to convene a discharge team when the destination of a discharged resident is either unknown or inappropriate. DSS is assigned the lead role when a resident’s primary unmet needs are related to health (including dementia, welfare, abuse, or neglect). The lead role is assigned to the local LME when a resident’s primary unmet needs are related to mental health, developmental disabilities, or substance abuse, and the resident meets the criteria for the target population established by the state Division of MH, DD, and SAS. The act establishes an appeals process that begins with the Hearing Unit (defined in new G.S. 131D-2.1(16)) in the Division of Medical Assistance. The act is effective October 1, 2011.

Selected Bills Not Enacted but Still Eligible for Consideration

1. Confidentiality of reporter's identity. [H 387](#) adds new G.S. 7B-302(a1)(1a) to provide that DSS must disclose confidential information about the identify of a reporter to any federal, State, or local government entity or its agent with a court and may do so without a court order only if the entity or its agent demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.
2. Foster care registry. [H 387](#) rewrites G.S. 131D-10.6C to specify the contents of a register of licensed family foster and therapeutic foster homes, maintained by the Division of Social Services. Previously the requirements were written in terms of "applicants." Current law states that the specified register information is a public record. The act adds a provision authorizing the Division to withhold any specific register information about a foster parent to the extent its release would likely pose a threat to the health or safety of the foster parent or a foster child. A person denied access to information under this provision may seek a court order compelling disclosure or copying in accordance with G.S. 132-9(a).
3. Local human services administration. [S 433](#) amends G.S. 153A-77, which allows a board of county commissioners to assume the powers, duties, and responsibilities of local human services boards (health, mental health, and social services), to make that option available in all counties, not just those with a population over 425,000. It also allows a board of county commissioners to elect to subject local employees of a consolidated county human services agency to the State Personnel Act and requires all such agencies to comply with applicable federal laws, rules, and regulations that require the establishment of merit personnel systems.