

REPORT TO THE NORTH CAROLINA GENERAL ASSEMBLY  
PURSUANT TO SESSION LAW 2003 – 381

PILOT PROGRAM - TWELFTH JUDICIAL DISTRICT  
CONFLICTING CUSTODY ORDERS

STATEMENT OF ACTION

Session Law 2003 – 381 was ratified on July 18, 2003 by the North Carolina General Assembly establishing a pilot program in the Twelfth Judicial District to determine the process for handling conflicting custody actions filed in the juvenile and domestic courts. The Administrative Office of the Courts was directed to “evaluate the pilot program and report its findings and recommendations to the 2005 General Assembly prior to its convening.”

BACKGROUND

For more than fifteen years, there has been an ongoing discussion among judges, attorneys, social service agencies and legal experts about the relationship between actions filed in the abuse and neglect juvenile court (Chapter 7B) and actions filed in civil domestic court (Chapter 50) seeking resolution of the custody of the same children. No statutory provision established which action should have priority or if the courts entered conflicting orders of custody which order had priority. This often resulted in conflicting orders entered by different judges in the same or multiple counties.

In March 2003, the Chief Justice’s Family Court Advisory Committee invited Professor Janet Mason of the Institute of Government to attend their meeting and discuss this ongoing issue and assist the committee in developing an appropriate resolution of the issue. At that meeting, the committee members discussed this issue fully and ultimately requested that Professor Mason with the assistance of Professor Cheryl Howell of the Institute of Government draft proposed legislation for submission to the General Assembly. (A copy of the minutes of that meeting is attached.)

Professors Mason and Howell prepared legislation that was reviewed by committee members and other judges and attorneys. At the request of the committee, Chief District Court Judge A. Elizabeth Keever, committee chair, reviewed the history of the proposed bill with Representative Rick Glazier and requested that he introduce the bill. House Bill 1033 was introduced in April 2003 (a copy of that bill is attached). During hearings before House Judiciary Committee IV, questions were raised about the effect of the bill’s provision, allowing a judge to stay a juvenile action pending resolution of the domestic case, on the completion of juvenile cases within the federal time limits. As a result, the

decision was made to establish a pilot program in the Twelfth Judicial District to determine the possible effects of the legislation.

## THE PROGRAM

Upon ratification of Session Law 2003 – 318, Chief District Court Judge A. Elizabeth Keever of the Twelfth Judicial District convened a committee composed of a juvenile court judge, the Guardian ad Litem attorney, an attorney representing the Department of Social Services, a domestic attorney, and an attorney who represents respondents in juvenile actions. The committee met regularly over the next sixteen months to review the cases pending in both juvenile and domestic court, to establish policy on how and when completed juvenile cases should be converted to domestic cases, and to develop form orders to do so. In developing policy and form orders, the committee followed the language contained in House Bill 1033.

## CROSS OVER CASES

Cross over cases are those cases that are filed in both juvenile and domestic court to determine custody of the same children. At the time the committee began meeting, there were 8 such cases in the Cumberland County court system. Over the next 16 months, an additional 5 cases were filed. In each case, the domestic case filing was stayed pending resolution of the juvenile action. In 3 of the 13 cases, the Department of Social Services in consultation with attorneys in the case determined that the juvenile petition should be dismissed and the domestic case should proceed as the primary case. In the other 10 cases, all parties agreed that the case should be resolved within the juvenile court setting and the domestic action was stayed permanently. In no case did the court stay a juvenile action pending resolution of the domestic action.

## JUVENILE TO DOMESTIC ORDERS

The other issue before the committee was how to handle cases in which the juvenile court had entered orders but it was no longer necessary for the juvenile court to continue exercising jurisdiction. In many of these cases, further hearings might become necessary between the parties to resolve issues of custody and visitation but it would not be necessary for the Department of Social Services to be involved. The case effectively would then be a domestic not a juvenile case. To resolve the issue of the affect of the juvenile order on any subsequent domestic action, the legislation allowed the pilot program to develop a process to transfer the orders from juvenile court to domestic court.

The committee developed policy considerations to determine when and how cases should be considered for transfer from juvenile orders and court to domestic orders and court. In determining policy and form orders to accomplish the transfer, the committee considered the provisions of House Bill 1033. House Bill 1033 provided that such

transfer should not occur until at least six months after the permanency planning order that set out the final custody plan was entered. (A copy of the policy is attached).

During the period of the pilot program, four cases were identified for possible transfer of juvenile orders to domestic orders. Orders have been entered in two of the cases (copies are attached), orders are pending in a third case and the fourth case is still under review.

## FINDINGS

The provisions of House Bill 1033 resolve questions which have inhibited the speedy resolution of custody matters that are filed in both the juvenile and domestic courts of the state. In practice, the juvenile court was viewed as the appropriate court for an initial resolution of the children's custody. Juvenile court provides impartial evidence of a child's condition and is designed to focus first on the safety and emotional and physical needs of the child and then on the permanent custodial relationship. In those cases where it is appropriate for the juvenile court to terminate its jurisdiction of a case because there is unlikely to be a reoccurrence of the events that led to the involvement of the Department of Social Services, it is appropriate to transfer the case from juvenile to domestic court for future issues that may arise surrounding custody and visitation of the minor child.

## RECOMMENDATIONS

The pilot program demonstrates that the court looks first to resolve these cases in the juvenile court and that it would be unlikely for the federal timelines to be negatively effected by actions under this bill. This bill provides an appropriate and necessary resolution to a legal issue that has plagued the system for years and enables the system to better serve the needs of families and children.

It is the recommendation of the AOC that the bill (2003 House Bill 1033) be reintroduced for passage and that the provisions be applied statewide.