

H 1449 – “An Act to Make Various Revisions to the Juvenile Code.”

House Bill 1449 passed 2nd and 3rd readings in the Senate and was sent to the Governor on July 8, 2009. A bill is not enacted until signed by the Governor. The following summary describes the effect the bill will have, assuming it is signed into law. The bill can be found at <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/HTML/H1449v2.html>.

S.L. 2009-___ (H 1449), effective October 1, 2009, makes numerous changes in the Juvenile Code, primarily regarding proceedings under Subchapter I – abuse, neglect, dependency, and termination of parental rights.

Confidentiality. G.S. 7B-302 requires DSS to hold in strictest confidence all information it receives in connection with the receipt and assessment of a report of abuse, neglect, or dependency. The act rewrites the exceptions to that requirement to specifically authorize examination of the information by the juvenile, including a juvenile who is eighteen or older or emancipated, or the juvenile’s guardian ad litem.

The act authorizes a judge, in any civil action in NC to which DSS is not a party, to order DSS to release confidential information, after giving DSS reasonable notice and an opportunity to be heard and determining that the information is relevant and necessary to the trial and unavailable from any other source. (The act makes clear that this does not affect any requirements relating to medical, mental health, or HIV information.) It authorizes DSS to surrender records to the court for in camera review when necessary for the court to make the required determinations.

In any criminal or delinquency case, the act requires a judge to conduct an in camera review before releasing to the defendant or juvenile any confidential DSS records other than those the defendant or juvenile is authorized to examine.

The act rewrites G.S. 7B-2901(b) to make the same changes with respect to records DSS is required to maintain for children placed by the court in DSS custody.

Discovery and information sharing. The act completely rewrites G.S. 7B-700 to address both discovery and the sharing of information.

It authorizes DSS to share with any other party information relevant to a pending action under Subchapter I of the Juvenile Code, except (i) the identity of a reporter of abuse, neglect, or dependency; (ii) information that would lead to discovery of the reporter’s identify; or (iii) the identity of any other person, if the agency making the information available determines that disclosure would be likely to endanger the person’s life or safety.

The rewritten section specifically authorizes chief district court judges to adopt local rules or enter administrative orders addressing the sharing of information among parties and the use of discovery.

Current law provides for motions to deny, restrict, or defer discovery, suggesting that the discovery provisions of the Rules of Civil Procedure apply unless such a motion is made and granted. The act provides that any party may file a motion for discovery, specifically describing the information sought and stating that the party has not been able to obtain the information through the provisions for information sharing established by statute or by local rule or administrative order. A party served with a discovery motion may request that discovery be

denied, restricted, or deferred, and must submit for in camera inspection any document, information or materials the party seeks to protect. The act requires that any materials submitted for in camera review be preserved for appellate review in the event of an appeal, if the court enters an order granting the motion to deny, restrict, or defer discovery.

The fact that the act requires disclosure does not authorize redisclosure that is prohibited by state or federal law.

Unless local rules provide otherwise, information obtained by the guardian ad litem pursuant to G.S. 7B-601 is not subject to disclosure pursuant to the subsection (the intent almost certainly was to refer to the “section,” because the subsection contains no other provisions), but all reports and records submitted to the court first have to be shared with all parties.

Venue and inter-county coordination. An amendment to G.S. 7B-302 requires a DSS director, after receiving a report of abuse, neglect, or dependency and determining that the juvenile’s legal residence is in another county, to promptly notify the DSS director in the county of the juvenile’s residence. The two directors are required to coordinate efforts to ensure that appropriate actions are taken.

G.S. 7B-400 is amended to delete the provisions for transferring a case that is filed in a district other than that of the juvenile’s residence. Implicit in this and other changes is a requirement that adjudication occur in the district in which the petition is filed and that the DSS that filed the petition be responsible for proving the allegations in the petition. An amendment to G.S. 7B-402 requires a DSS that files a petition in a county other than that of the juvenile’s residence to provide a copy of the petition and any notices of hearing to the DSS director in the county of the juvenile’s residence.

A new section, G.S. 7B-900.1, addresses changes of venue and transfer of custody after adjudication. It allows the court, any time after adjudication, to transfer venue to another county, even if the petition could not have been filed there, if the court finds that the present forum is inconvenient, that transfer is in the juvenile’s best interest, and that the parties’ rights are not prejudiced by the change in venue. Before ordering the transfer, however, the court must find that the DSS directors in the two counties have communicated about the case, and either (i) the directors are in agreement with respect to each county’s responsibility for providing financial support and services in the case, or (ii) the director of the Division of Social Services or his or her designee has made that determination pursuant to G.S. 153A-257(d).

Any time the court transfers a case to a different county, the court is required to join or substitute as a party the DSS director in the county to which the case is being transferred and, if the juvenile is in the custody of DSS in the county where the action is pending, transfer custody to the DSS in the county to which the case is being transferred. Such orders may be entered, however, only if the DSS director in the transferee county has been given notice and an opportunity to be heard or has waived the right to notice and a hearing.

Before transferring a case to another district, the court is required to communicate with the chief district court judge or a judge presiding in juvenile court in that district and explain the reasons for the proposed transfer. If that judge makes a timely objection to the transfer, either verbally or in writing, the court may order the transfer only after making detailed findings of fact that support a conclusion that the juvenile’s best interests require that the case be transferred.

Before ordering that a case be transferred to another county, the court must consider the eight factors set out in the statute and any other relevant factors.

An order transferring a case must be entered within 30 days after the hearing. The clerk is required to transmit to the other county a copy of the complete record of the case within three business days after entry of the transfer order. The clerk receiving the transferred case is required to promptly assign a file number, ensure that any necessary appointments of new attorneys or guardians ad litem are made, and calendar and give notice of the next court action required in the case.

Review, permanency planning, and post-tpr hearings. The act amends G.S. 7B-906(a), 7B-907(a), and 7B-908(b) with respect to review, permanency planning, and post termination of parental rights hearings, to require DSS to either (i) provide the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child, for purposes of notice of the hearing, or (ii) file written documentation with the clerk that the child's current care provider was sent notice of the hearing.

With respect to post-tpr hearings, if the juvenile is the subject of an adoption decree before the date of a scheduled review, within 10 days of receiving notice that the adoption is final, DSS must file with the court and serve on any guardian ad litem for the juvenile written notice of the entry of the adoption decree. The decree itself may not be filed in the juvenile court file.

The act also rewrites G.S. 7B-908(f) to require DSS, within 10 days of receiving a copy of the adoption petition, to file with the court and serve on any guardian ad litem for the juvenile written notice that the petition has been filed, but the petition may not be filed in the juvenile file. The guardian ad litem then has 10 days from service of the notice to file in the adoption proceeding a motion alleging any abuse of discretion by DSS or other agency in the adoption selection process. After such a motion, the case must be transferred to district court. The guardian ad litem is required to serve DSS with written notice of the motion, but the motion may not be filed in the juvenile file.

Termination of parental rights. The act rewrites G.S. 7B-1101.1(a) to provide that when a petition to terminate parental rights is filed, the clerk must appoint provisional counsel for each respondent parent unless the parent is already represented. At the first hearing after service on the parent, the court is required to dismiss provisional counsel if the parent (i) does not appear at the hearing, (ii) does not qualify for appointed counsel, (iii) has retained counsel, or (iv) waives the right to counsel. Otherwise the court confirms the appointment.

The act also amends G.S. 7B-1106(b) to require that the summons include notice that if the parent is represented by counsel appointed previously in an abuse, neglect, or dependency case, that attorney will continue to represent the parent unless the court orders otherwise. Other changes to the summons conform to the provisional counsel and pretrial hearings requirements.

The act deletes the "special hearing" requirement in G.S. 7B-1108(b) and adds a new section, G.S. 7B-1108.1, requiring the court to conduct a pretrial hearing in every termination case, but allowing the court to combine the pretrial and adjudicatory hearings. At a pretrial hearing the court is required to consider retention or release of provisional counsel; whether a GAL should be appointed for the child if not previously appointed; whether summons, service of process, and notice requirements have been met; any pretrial motions; any issues raised by any responsive pleading; and any other issue properly addressed as a preliminary matter.

Delinquent and undisciplined juveniles. The act adds a new section, G.S. 7B-1700.1, repeating the duty to report when a person has cause to suspect that a juvenile is abused, neglected, or dependent, as stated in G.S. 7B-301, with specific reference to juvenile court counselors' having that duty. It rewrites G.S. 7B-1904 to require an official executing an order for nonsecure custody of a juvenile alleged to be delinquent or undisciplined to give a copy of the petition and order to the person or agency with whom the juvenile is being placed. The act rewrites G.S. 7B-2503(1)c. and 7B-2506(1)c. to permit the court at disposition to place an undisciplined or delinquent juvenile in DSS custody only if the DSS director has received notice and an opportunity to be heard.



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