

SESSION LAW 2005-276 (S622) Enacted Budget 2005

<http://www.ncga.state.nc.us/Sessions/2005/Bills/Senate/PDF/S622v9.pdf>

The 2005 budget has provisions to support and enhance Work First and child welfare services in North Carolina. Both county departments of social services and the Division are affected greatly by the state budget. Some of the budget items that most affect the county and state social services include:

SECTION 5.1(a) discusses the DHHS Block Grant and the distribution of funds. **SECTION 5.1(p)** the sum of one million two hundred thousand dollars (\$1,200,000) appointed under this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2005-2006 fiscal year shall be used to provide domestic violence services to Work First recipients. These funds shall be used to provide domestic violence counseling, support and other direct services to clients. These funds may be used to fund one position within the Division of Social Services to coordinate Domestic Violence Services.

SECTION 5.1(q) the sum of two million two hundred forty-nine thousand six hundred forty-two dollars (\$2,249,642) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, shall be used to expand after-school programs and services for at-risk children. The Department shall develop and implement a grant program to award grants to community-based programs that demonstrate the ability to reach children at risk of teen pregnancy, school dropout, and gang participation. The Department shall award grants to community-based organizations that demonstrate the ability to develop and implement linkages with local departments of social services, area mental health programs, schools, and other human services programs in order to provide support service and assistance to the child and family. These funds may be used to fund one position within the Division of Social Services to coordinate at-risk after-school programs.

SECTION 5.1(s) the sum of twelve million four hundred fifty-two thousand three hundred ninety-one dollars (\$12,452,391) appropriated in this section to the Department of Health and Humans Services, Division of Social Services, in the TANF Block Grant for the 2005-2006 fiscal year for child welfare improvements, shall be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in child protective services cases; to provide foster care and support services; to recruit, train, license, and support prospective foster and adoptive families; and to provide interstate and post adoption services for eligible families.

SECTION 5.1(s) the sum of two million five hundred fifty thousand dollars (\$2,550,000) appropriated in this section in the TANF Block Grant to the Department of Social Services to support various trainings / projects in child welfare.

SECTION 5.1(t) the sum of eight hundred thirty-eight thousand dollars

(\$838,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services shall be used to purchase services at maternity homes throughout the state.

SECTION 5.1(u) the sum of three million dollars (\$3,000,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Special Children Adoption Fund, for the 2005-2006 fiscal year.

SECTION 5.1(v) the sum of two million seven hundred seventeen thousand two hundred ninety-eight dollars (\$2,717,298) in this section appropriated to the Department of Health and Human Services in the TANF Block Grant shall be used to implement N.C. FAST (North Carolina Families Accessing Services through Technology).

SECTION 5.1(z) the sum of five hundred thousand dollars (\$500,000) appropriated in this section to the Department of Health and Human Services, of Social Services, in the TANF Block Grant shall be used to expand after-school programs for at-risk children attending middle school.

SECTION 5.1(z1) in implementing the TANF Block Grant, the Department of Health and Human Services shall review policies, programs, and initiatives to ensure that they support men in their role as fathers and strengthen fathers' involvement in their children's lives. The Department shall encourage county departments of social services to ensure their Work First programs emphasize responsible fatherhood and increased participation by non-custodial fathers.

SECTION 6.24(a) School-Based Child and Family Team Initiative is intended to identify and coordinate appropriate community services and supports for children at risk of school failure or out of home placement in order to address the physical, social, legal, emotional and developmental factors that affect academic performance. The Child and Family Team shall be a school nurse and school social worker. Each local management entity (LME) that has a school in that catchments area shall appoint a Care Coordinator and each Department of Social Service that has a selected school in that catchment area shall appoint a Child and Family Team Facilitator. Leadership responsibility shall be with the agency whose primary function meets the child or their families unmet needs.

SECTION 10.25(a) the Department of Health and Human Services shall continue the Comprehensive Treatment Services Program for children at risk for institutionalization or other out-of-home placement. This section establishes a Children's Services Work Group. This work group will look at the way in which services are provided to children at risk of institutionalization or out of home placement. This work group will include representatives from the following agencies: Department of Health and Human Services, Department of Juvenile Justice and Delinquency Prevention, State Board of Education, Superintendent of Public Instruction, and the Chief Justice. Each of these agencies will also appoint a parent of a child who is at risk for behavioral, social, health or safety problems or academic failure; and a member of a local collaborative and private provider. This work group is to meet monthly to look at ways to better streamline services to children at risk of out of home placement. Its members will explore the possibility of a shared database, and other ways to share information on children involved with multiple agencies. They will explore ways to remove financial

and bureaucratic barriers to service for this population. Program funds shall be targeted for non-Medicaid eligible children. Program funds may also be used to expand a system-of-care approach for services to children and their families statewide this will include mechanisms to ensure that children are not placed in department of social services custody for the purpose of obtaining mental health residential treatment services.

SECTION 10.45. (a) This section allows for the continuation of the Multiple Response system as a family centered approach to child protective services including establishing a system of care with Child and Family Team Meetings. This section also allows the Multiple Response System to expand to all 100 counties and allocates \$2,000,000 to be used by identified counties for the implementation of its seven strategies. The selected counties have been notified of the funds they are eligible to receive, and the parameters for their use.

SECTION 10.51. (a). TANF changes include the elimination of the pay after performance as a benefit delivery method, which will be implemented once the federal two parent work participation rate is eliminated. The new Electing Counties are Beaufort, Caldwell, Catawba, Iredell, Lenoir, Lincoln, Macon, McDowell, Sampson, and Stokes. For programmatic purposes, all counties referred to in this subsection shall remain under their current county designation through September 30, 2005.

SESSION LAW 2005-55(H 277).ESTABLISH CHILD ASSESSMENT RESPONSES

<http://www.ncga.state.nc.us/Sessions/2005/Bills/House/HTML/H277v4.html>

H277 is an act to provide for family assessment responses in cases in which children are reported to be neglected or dependent and for investigative assessment responses in cases in which children are reported to be abused or in special cases of neglect described in MRS policy. In all cases, the final decision regarding which response a valid CPS report will be assigned to is determined by the county DSS director. This law allows all 100 counties to use the Family Assessment Response in cases of neglect and dependency and the Investigative Assessment Response in cases of abuse and select neglect cases as listed in the MRS policy. The law also discontinues the requirement to visit the home of the alleged victim child in cases of abuse and neglect in child care facilities.

It is important to note that while this law goes into effect on October 1, 2005, counties who have not yet implemented MRS should not do so until January 1, 2006. There are two trainings sessions required before social workers can begin to conduct Family Assessments. One is "*Cornerstone III*" which is being offered in several locations around the state at this time, please refer to the 2005 Summer/Fall training schedule. The other is the "*MRS Policy*" training, and it is being scheduled at this time. You will receive another letter outlining dates and locations for these events. Please register staff as needed.

CHANGE IN LAW: Through out N.C.G.S. 7B, the word "investigation" is changed to "assessment." Family Assessment and Investigative Assessment

Responses are defined as they apply to reports of child abuse, neglect and dependency.

POLICY INTERPRETATION: The changes in N.C.G.S. 7B reflect a more family centered, strength based approach to reports of abuse, neglect and dependency. This law goes into effect on 10/01/05 and allows all 100 counties to use the two above mentioned responses to reports of abuse, neglect and dependency.

POLICY INTERPRETATION: Assessment Social Workers are no longer required to visit the home of the victim child in cases of abuse, neglect in child care facilities.

SESSION LAW 2005-114 (H 451) ADOPTIVE FAMILIES/ DHHS/ CRIM. CHECKS

<http://www.ncga.state.nc.us/Sessions/2005/Bills/House/HTML/H451v5.html>

This is an act to require criminal background checks for any individual eighteen years of age or older who resides in the household of a prospective adoptive parent, to expand the persons who are subject to criminal record checks by department of health and human services, and to make other conforming changes.

CHANGE IN LAW: G.S. 48-3-309(a-h); and 48-3-303(d) Requires fingerprint-based criminal records checks for any individual eighteen years of age or older who resides in the household of a prospective adoptive parent. An unfavorable pre-placement assessment shall be issued if based on the criminal histories, the prospective adoptive parent is unfit to have responsibility for the safety and well-being of children or other individuals required to be checked are unfit for an adoptive child to reside with them in the home.

CHANGE IN LAW: G.S.114-19.7 Amended to state that criminal record checks are required prior to placement for adoption of a minor who is in the custody or placement responsibility of a county department of social services.

CHANGE IN LAW: G.S. 114-19.6(a)(1) Amended to include criminal record checks for an independent contractor or an employee of an independent contractor that has contracted to provide services to the Department of Health and Human Services a person who has been approved to perform volunteer services for the Department of Health and Human Services.

POLICY INTERPRETATION: Effective immediately, all pre-placement assessments must include fingerprint-based criminal record checks for all individuals eighteen years of age or older who reside in the household of the prospective adoptive parents in addition to the prospective adoptive parents themselves. A pre-placement assessment cannot be approved until the results of the criminal record checks have been obtained and determination has been made on the household members' ability to provide for the safety and well-being of an

adopted child. A child in the custody or placement responsibility of the department of social services cannot be placed with a family for the purpose of adoption until the pre-placement assessment is approved. Criminal record checks are required for anyone who provides direct care of a child in agency custody or responsibility, an applicant or current employee, contracted agencies or employee, and person who have been approved to provide volunteer services.

Please refer to the Administrative Letter 06-05 dated August 25, 2005 titled “New Legislation Regarding Adoptive Families and Criminal Records Checks.”

SESSION LAW 2005-146 (H97) TERM. PAR. RIGHTS/MURDER OF PARENT BY PARENT.

<http://www.ncga.state.nc.us/Sessions/2005/Bills/House/HTML/H97v4.html>

CHANGE IN LAW: Additional ground added upon which the court may terminate parental rights. The court may terminate parental rights upon a finding that a parent has committed the murder or voluntary manslaughter of the other parent of the child and the petitioner proves the elements of the offense or offers proof that a court of competent jurisdiction has convicted the parent of the offense either by a jury verdict or some type of plea. The court shall consider whether the murder or manslaughter was committed in self-defense, defense of others or if there was substantial evidence of other jurisdiction.

SESSION LAW 2005-166 (H 532).ADJUST ADOPTION PROCEDURE

<http://www.ncleg.net/Sessions/2005/Bills/House/HTML/H532v4.html>

CHANGE IN LAW: G.S.48-2-206 Amends the law to add that if the court determines that the consent of the biological father is not required, that the individual is not entitled to receive notice of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding.

CHANGE IN LAW: G.S. 48-2-207 Law added regarding the necessity of consent post-petition and procedures that must be followed if it is determined by the court that consent is or is not required.

CHANGE IN LAW: G.S.48-2-304(c); G.S.49-2-305(7) These amendments include a provision for the attachment of a statement to the petition describing the circumstances of any noncompliance to the Interstate Compact on the Placement of Children.

CHANGE IN LAW: G.S. 48-2-401 Amendment allowing the clerk to waive the need for notice to a separated and absent spouse when the other spouse has filed an adoption petition.

POLICY INTERPRETATION: This law clarifies the procedures regarding uninvolved fathers of children who are being adopted. The courts have held that

simply being a biological father of a child born out of wedlock does not allow the father to prevent the adoption of that child. In order for the father's consent to an adoption to be necessary, he must actually behave like a father by acknowledging he is the father, providing support for the mother and/or child within his means and visiting or communicating with the mother and/or child. He can also lose any rights he may have by not responding to notice about an adoption of his child. Under present law the court may find his consent is not necessary if he has not behaved like a father or responded to notice of an adoption, either before or after the child to be adopted is born, although pre-birth determinations of a father's rights are only good for three months after the child is born.

This legislation corrects a previous oversight and provides that if there has been a pre-birth determination that the father's consent is not necessary, that father does not get notice of an adoption petition filed within three months of the child's birth and cannot participate in that adoption, since he has no rights to the child if that occurs. If the rights of the father have not been determined prior to the child's birth, and usually they are not, this legislation mandates procedures already occurring in practice a hearing for fathers who respond to notice of an adoption of their child and the entry of an order determining a father's rights whether or not he responds to notice of the adoption. As with pre-birth determinations, a father whose consent has been found to be unnecessary after the child is born will not be able to participate any further in the adoption.

In two unrelated provisions, the legislation allows the clerk in an adoption to waive the need for notice to a separated and absent spouse when the other spouse has filed an adoption petition. Spouses are required to adopt together unless the clerk waives that requirement, and notice is given to the non-adopting spouse. Often the adopting spouse thought she/he was legally divorced, but is not. The absent spouse will have no rights or duties regarding the child to be adopted, and notice to him/her can be unduly burdensome or futile and delay permanence for foster children living with the adopting spouse. Finally, this legislation clarifies that if compliance with the Interstate Compact on Placement of Children is necessary to an adoption, the petitioner must explain any failure to comply with that Compact so the clerk can determine what action to take regarding the adoption.

SESSION LAW 2005-167 (S 806). MEDIATION AMMENDMENTS

<http://www.ncleg.net/Sessions/2005/Bills/Senate/HTML/S806v4.html>

An act to amend the law regarding mediated settlement conferences in superior court, mediation in district court domestic cases, and the regulation of mediators as recommended by the dispute resolution commission. Sections 1 and 3 are effective October 1, 2005.

CHANGE IN LAW: 7A-38.1(1) Makes any statements made or conduct occurring during a mediated settlement conference inadmissible and not subject to

discovery, with exceptions including proceedings involving child abuse and neglect.

POLICY INTERPRETATION Statements made and conduct occurring during a mediated settlement conference can be used in hearings regarding child abuse and neglect, they are also subject to discovery. They are not exempt from reporting allegations of child abuse or testifying regarding the facts learned during a mediation process.

SESSION LAW 2005-228 (H 1221): PARENT COORIDINATOR ESTABLISHED

<http://www.ncga.state.nc.us/Sessions/2005/Bills/House/HTML/H1221v7.html>

CHANGE IN LAW: Chapter 50 Adds Article 5, which defines what a parenting coordinator does and when one will be appointed.

POLICY INTERPRETATION: In child custody cases, outside of DSS, whenever there is the presence of any of the following; excessive litigation, anger and distrust, verbal abuse, physical aggression or threat of, difficulty communicating or cooperating a parenting coordinator may be appointed. The parenting coordinator has limited authority

SESSION LAW 2005-130 (H 1209) SEXUAL BATTERY/SEX OFENDER REGISTRY

<http://www.ncga.state.nc.us/Sessions/2005/Bills/House/HTML/H1209v4.html>

CHANGE IN LAW: 14-208.6(5) Adds Sexual Battery to the definition of “Sexually Violent Offenses” which requires registration.

CHANGE IN LAW: 15A-266.4 Adds Sexual Battery to the list of offenses that are required to submit a DNA sample.

POLICY INTERPRETATION: Adds to the list of offenders that must register with the sex offender registry those who have committed sexual battery as well as requiring a DNA sample in these cases.

SESSION LAW 2005-226 (S 776) AMEND INDECENT EXPOSURE LAW

<http://www.ncga.state.nc.us/Sessions/2005/Bills/Senate/HTML/S776v6.html>

CHANGE IN LAW: 14-190.9 Makes indecent exposure, as defined by law, to a person less than 16 years of age, a class H felony and not eligible to be considered a lesser offense.

CHANGE IN LAW: 14-208.6 (5) Adds Indecent Exposure (when convicted of a felony) to the definition of “Sexually Violent Offenses” which requires registration.

POLICY INTERPRETATION: This law adds indecent exposure to the list of felonies that must register with the Sex Offender Registry, it also provides for greater penalties when the victim is under age 16.

SESSION LAW 2005-414 (S1048) IDENTITY THEFT PROTECTION ACT OF 2005.

<http://www.ncga.state.nc.us/Sessions/2005/Bills/Senate/HTML/S1048v5.html>

POLICY INTERPRETATION: This bill allows for the protection of social security numbers by requiring that if one is to be collected that a determination is made that it is imperative for the performance of the duty and that it must be relevant to the purpose for which it is collected. In addition when collecting a social security number from an individual, to provide, at the time of or prior to the actual collection of the social security number that individual, upon request, with a statement of the purpose or purposes for which the social security number is being collected and used.

As a result, the Division will be assessing the continued use of the social worker’s social security number, or if a unique number for the individual social worker will be assigned.

SESSION LAW 2005-398(H1150) EXPEDITE JUV. PROCEEDINGS/GUARDIANS AD LITEM

<http://www.ncleg.net/Sessions/2005/Bills/House/HTML/H1150v2.html>

POLICY INTERPRETATION: This legislation incorporates changes in Chapter 7B of the Juvenile code as recommended by the Juvenile Code Revision Subcommittee of the North Carolina Court Improvement Project. The legislation revises the juvenile code as follows: Should a trial court order DSS to cease reunification efforts, and subsequently the parents’ rights are terminated, the parents may protest the trial court’s decision to cease reunification efforts as an issue in an appeal of the termination of parental rights.

It requires the juvenile clerk to appoint provisional counsel to parents and requires notice of that appointment be served on the parent with the summons and petition.

It clarifies and adds limits to the appointment of Guardians ad Litem for parents when a juvenile petition alleges dependency due to a parent’s incapability that may be the result of substance abuse, mental retardation, mental illness, organic brain disorder, or other similar cause or condition; and in cases in which the parent is a minor.

For adjudicatory hearings, reviews of custody orders, permanency planning hearings, adjudicatory hearings on termination of parental rights, and determinations of the best interests of the juvenile, the legislation provides for an automatic hearing on any delay if the order is not filed within the time period as required by the statute. Presumably parties will draft their orders to avoid a hearing on the issue.

It requires the dispositional hearing to be held no later than 30 days after the adjudication.

It requires notification to the Guardian ad Litem of a juvenile's change in placement.

Parents are no longer parties to a court review after parental rights have been terminated and may not participate unless the decision is stayed while pending appeal. This is also true in situations where both parents have surrendered rights to a child to a local DSS.

It expands and clarifies the types of court orders that may be appealed and who may appeal. Only the following juvenile matters may be appealed:

1. Any order finding absence of jurisdiction.
2. Any order, including the involuntary dismissal of a petition, which in effect determines the action and prevents a judgment from which appeal might be taken.
3. Any initial order of disposition and the adjudication order upon which it is based.
4. Any order, other than a non-secure custody order, that changes legal custody of a juvenile.
5. An order entered under G.S. 7B-507(c) with rights to appeal properly preserved as provided in that subsection, as follows:
 - a. The Court of Appeals shall review the order to cease reunification together with an appeal of the termination of parental rights order if all of the following apply:
 - 1) A motion or petition to terminate the parent's rights is heard and granted.
 - 2) The order terminating parental rights is appealed in a proper and timely manner.
 - 3) The order to cease reunification is assigned as an error in the record on appeal of the termination of parental rights.
 - b. A party who is a parent shall have the right to appeal the order if no termination of parental rights petition or motion is filed within 180 days of the order.
 - c. A party who is a custodian or guardian shall have the right to immediately appeal the order.

6. Any order that terminates parental rights or denies a petition or motion to terminate parental rights.

Appeal may be taken by the following:

1. A juvenile acting through the juvenile's guardian ad litem previously appointed under G.S. 7B-601.
2. A juvenile for whom no guardian ad litem has been appointed under G.S. 7B-601. If such appeal is made, the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17 for the juvenile for the purposes of that appeal.
3. A county department of social services.
4. A parent, a guardian appointed under G.S. 7B-600 or Chapter 35A of the General Statutes, or custodian as defined in G.S. 7B-101 who is a nonprevailing party.
5. Any party that sought but failed to obtain termination of parental rights.

It also clarifies that after a trial court has determined that grounds exist to terminate parental rights, it must then separately consider whether doing so would be in the juvenile's best interest and provides specific criteria for making that decision.

SESSION LAW 2005- 302 (H 801) CHILD CUSTODY/GUARDIANSHIP JURISDICTION.

<http://www.ncleg.net/Sessions/2005/Bills/House/HTML/H801v2.html>

POLICY INTERPRETATION: This legislation establishes a procedure to resolve the issue of conflicting child custody orders resulting from juvenile court proceedings and civil court proceedings. When the court in a juvenile proceeding obtains jurisdiction as a result of a petition alleging abuse, neglect or dependency, any civil action concerning custody of the juvenile is automatically stayed as to that issue unless the court in the juvenile proceeding consolidates the two court actions or enters an order dissolving the stay. If an order entered in the juvenile proceedings conflicts with an order of the civil proceedings, the order of the juvenile proceeding controls as long as the court continues to exercise jurisdiction. This legislation also clarifies the procedure and effect of terminating jurisdiction in certain juvenile cases and gives the court authority to convert a juvenile court custody order into a permanent custody order under Chapter 50 of the general statutes. It makes technical and conforming changes to both G.S. 7B and G.S. 50.

SESSION LAW 2005-399 (H 661) RESP. INDIVIDUALS LIST/EXPUNCTION PROCESS

<http://www.ncleg.net/Sessions/2005/Bills/House/HTML/H661v4.html>

2005 Administrative Letter Legislative Summary

This is an act authorizing the Department of Health and Human Services to establish a list of individuals responsible for abuse or serious neglect of a juvenile under the laws regulating juvenile abuse, neglect, and dependency and establishing a process for expunction from that list. Allows for information on the Responsible Individuals list to be provided to child caring institutions, child placing agencies, group home facilities and other provides to determine the fitness of individuals to care for or adopt children. Please note: the right to petition for expunction from a responsible individuals' list cannot arise until the creation of that list, which will occur once the Social Services Commission establishes rules for doing so under the authority granted in House Bill 661, section 2. NCGS 7B-311(d) as it will read October 1,2005. The Division has established a workgroup consisting of its staff as well as representatives of the North Carolina Association of County Directors of Social Services to develop policy and the information to submit to the Commission.