

# Social Services

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Having struggled to enact major welfare reform legislation in 1997, the General Assembly in its 1998 session again found welfare reform to be a contentious topic, which was not resolved until the end of the session as part of the state budget process. The 1998 General Assembly made a few changes in the 1997 welfare reform legislation; took additional steps, including designating “electing counties,” to implement the 1997 welfare reform law; and agreed on a plan to administer the new federal Welfare-to-Work program.

In other areas, the General Assembly expanded Medicaid eligibility for elderly and disabled adults, raised the income eligibility limits and the payment levels for the State-County Special Assistance program, and established a requirement for checking the criminal histories of prospective adoptive parents of children in the custody of county departments of social services.

## Appropriations for Social Services Agencies and Programs

### General Fund Appropriations

**Appropriations to the Department of Health and Human Services.** Section 2 of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), increases the General Fund appropriations to the Department of Health and Human Services (DHHS) by \$21.6 million for state fiscal year (SFY) 1998–99. The total 1998–99 General Fund appropriation to DHHS for current operations is approximately \$2.6 billion—more than one-fifth of the total General Fund appropriation for current operations and second only to General Fund appropriations for the Department of Public Instruction.

**Appropriations to the DHHS Division of Social Services.** The 1998 Appropriations Act provides additional funding to the DHHS Division of Social Services (DSS) for criminal records checks on prospective adoptive parents (\$95,399), increased financial assistance for elderly or disabled residents of adult care homes (\$3,765,649), grants to adult care homes to hire staff to meet increased staffing requirements (\$1,000,000), funding for six area food banks and start-up costs for a food bank in eastern North Carolina (\$1,000,000, nonrecurring), and funds for intensive family preservation programs in the six counties that have the highest number of children in foster care (\$400,000, nonrecurring). S.L. 1998-212 also makes a number of reductions in the 1998–99 DSS budget, including elimination of additional funding for the Work First Reserve (\$20 million), elimination of child support reimbursements to counties whose child

support enforcement offices are state operated (\$2.7 million), and reduction of funding for the eight county Families for Kids projects (\$400,000).

**Appropriations to the DHHS Division of Medical Assistance.** The 1998 Appropriations Act provides almost \$27 million in recurring funding to the DHHS Division of Medical Assistance (DMA) to pay the state's share of the cost of providing Medicaid benefits to all elderly and disabled persons whose incomes are at or below the federal poverty level. S.L. 1998-212 decreases DMA's 1998-99 General Fund appropriation for the Medicaid program by approximately \$73.4 million by

- reducing appropriations to reflect more current Medicaid eligibility and utilization information,
- eliminating a 10.5 percent increase in the Medicaid reimbursement rate for physicians,
- using \$13 million of reserved Medicaid "disproportionate-share hospital" funds to support current Medicaid services,
- reducing funding for personal care services in adult care homes, and
- reducing funding for administrative and program expenditures.

### **Federal Social Services Block Grant**

North Carolina will receive approximately \$70 million in federal funding under the Social Services Block Grant (SSBG) for SFY 1998-99, plus an additional \$6 million in federal funds transferred to the SSBG from federal block grant funding for the Temporary Assistance for Needy Families program. The state may use SSBG funds to pay for a variety of social services programs, including child care and child protection programs. Section 5 of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), appropriates North Carolina's SSBG funding to state and local government agencies.

Under the 1998 Appropriations Act, county departments of social services will receive \$30,395,663 in federal SSBG funds for social services programs under the state's Social Services Block Grant plan. Funding for child care subsidies (\$10,971,241) accounts for the next largest allocation of SSBG funds. The 1998 Appropriations Act also appropriates \$2,101,113 in SSBG funds to county departments of social services for in-home services; \$2,255,301 for adult day care services; \$2,211,687 to county departments of social services for child welfare improvements; \$394,841 to county departments of social services for child abuse prevention and permanency planning; \$1.5 million to the DHHS Division of Social Services for child caring institutions; \$238,321 for the child medical evaluation program; \$239,261 for the adolescent pregnancy prevention program; and \$300,000 for the special children adoption program.

### **Low-Income Energy Assistance Block Grant**

Section 5 of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), appropriates \$6,350,240 of federal Low-Income Energy Assistance Block Grant funds for energy assistance programs administered by county departments of social services; \$6,461,000 for the state's heating and cooling crisis intervention program; \$4,171,960 for the state's weatherization program; and \$1,443,572 for administration of these programs.

### **Federal Welfare-to-Work Block Grant**

In 1997, Congress authorized a new, five-year, \$3 billion program to assist families moving from welfare to work. The federal Welfare-to-Work program provides block grants to states for distribution to local governments and community organizations to fund community service or work experience programs; job creation through public or private employment wage subsidies; on-the-job training; job placement, job readiness, or post-employment services; and job retention and support services (including child care). Most of the Welfare-to-Work funding is targeted to welfare recipients who experience serious barriers to employment, including those who are not

job-ready, have not completed high school, require substance abuse treatment, or have little or no work history. Welfare-to-Work funds also may be used to provide to noncustodial parents of needy children services that will increase their ability to pay child support. States that accept federal Welfare-to-Work funds must provide nonfederal matching funds equal to at least 25 percent of the federal funding they receive.

Under the new federal Welfare-to-Work program, North Carolina was eligible to receive approximately \$25.3 million in additional federal funding for SFY 1998–99 but had to request the funding and submit a funding plan to the federal government before October 1, 1998. As the October 1 deadline approached, the Senate included, in its 1998 appropriations bill (S 1366) and in “stop gap” legislation to prevent the loss of federal funding for other programs (Senate committee substitute for House Bill 900), provisions to implement the new Welfare-to-Work program. The House, however, stripped the Welfare-to-Work provisions from both bills, arguing that the state should continue to support its own First Stop employment program for Work First recipients rather than establishing the new Welfare-to-Work program. On September 30, 1998, Governor James B. Hunt and Senate and House leaders reached a compromise with respect to the Welfare-to-Work program (and other welfare reform, tax, and budget issues that had stalemated the General Assembly for months). Under their agreement, North Carolina will provide employment assistance to welfare recipients through two parallel programs:

1. the First Stop employment assistance program enacted by the 1997 state welfare reform law, and
2. the new Welfare-to-Work program, using previously appropriated state or local funds as a match rather than appropriating additional state funding.

Section 4(c) of S.L. 1998-166 (H 900), enacted only minutes before the October 1 deadline, appropriates \$25,332,173 from North Carolina’s federal Welfare-to-Work Block Grant to the Department of Commerce for employment programs for Work First families. S.L. 1998-166 does not appropriate state funds to match the federal Welfare-to-Work funds but authorizes the Office of State Budget and Management (OSBM) to identify state and local funds that may be used to match this federal funding. The act, however, prohibits OSBM from using existing state or local funds to match federal Welfare-to-Work funding if the state or local funds are needed to meet federal TANF maintenance of effort requirements or would reduce funds obligated or appropriated for Work First block grants to counties or for child welfare services.

### **Federal Temporary Assistance for Needy Families Block Grant**

The federal Temporary Assistance for Needy Families (TANF) Block Grant replaces federal funding for the Aid to Families with Dependent Children (AFDC) program. Federal TANF funds may be used to provide temporary cash assistance and other services (including child care, transportation, and employment services) to needy families with children. Federal law allows a state to transfer up to 30 percent of its federal TANF block grant funding to provide services under the state’s Social Services Block Grant or the Child Care and Development Block Grant.

Section 5 of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), transfers approximately \$13.8 million of federal TANF funding to the state’s Social Services Block Grant and transfers an additional \$67.2 million of federal TANF funds to the Child Care and Development Fund Block Grant. The General Assembly appropriated the remaining \$295.3 million in federal TANF funding for

- Work First cash assistance payments (\$202.3 million),
- block grants to counties for Work First services (\$60.1 million),
- operation and expansion of the First Stop employment assistance program (\$20.1 million),
- drug testing and substance abuse services for Work First families (\$4.3 million),
- teen pregnancy prevention (\$2 million),
- reduction of out-of-wedlock births (\$1.6 million),
- job retention and follow-up programs for former Work First recipients (\$1.8 million),

- financial incentives for employers who hire Work First recipients or their spouses (\$1 million),
- evaluation of the Work First program (\$1 million), and
- other programs and services for needy families with children.

### **Welfare Reform Reserve**

In 1997, the General Assembly established a new Work First Reserve Fund (G.S. 143-15.3C) to provide emergency funding for the Work First program when spending for the program is projected to exceed available funding. The Work First Reserve Fund is funded by earmarked General Fund appropriations and one-fourth of the state Work First appropriation that remains unexpended at the end of each fiscal year, up to a maximum of \$50 million.

In 1997, the General Assembly appropriated to the Work First Reserve Fund \$16 million for SFY 1997–98 and an additional \$20 million for 1998–99. In 1998, the General Assembly eliminated the \$20 million 1998–99 appropriation to the Work First Reserve and transferred \$2 million from the Work First Reserve Fund to the Housing Trust Fund for affordable housing for the elderly. [S.L. 1998-212 (S 1366), sec. 12.29F and sec. 12.4(b).]

Section 12.27A(k) of S.L. 1998-212 also amends G.S. 108A-27.16 to revise the conditions under which the Governor may use money from the Work First Reserve to fund Work First assistance. As amended, G.S. 108A-27.16 allows the Governor to use the Work First Reserve to provide Work First assistance in the state, in an individual county, or in a region of the state, if (1) the Governor declares that the state, the county, or the region is in a “state of economic emergency” based on a lack of funds for Work First family assistance due to events beyond the state’s, county’s, or region’s control; (2) other federal funding for Work First assistance is unavailable; and (3) the General Assembly is not in session.

### **State and County Funding for Work First and Needy Families with Children**

**Federal TANF Maintenance of Effort Requirements.** As a condition of receiving federal TANF funding, a state must maintain its financial support for programs and services for needy families with children at a level that is at least 80 percent of the amount of state and local spending for the state’s former AFDC program. If a state fails to meet this federal “maintenance of effort” requirement, the amount of its federal TANF funding is reduced dollar for dollar. In addition, North Carolina’s 1997 welfare reform legislation (G.S. 108A-27.12) requires that state funding for the Work First program and other programs and services for needy families with children (and, in “standard” Work First counties, county funding for these programs) be maintained at 100 percent of the amount budgeted for the AFDC program in 1996–97.

The number of families receiving Work First assistance, and therefore expenditures for Work First cash assistance and services, have declined significantly in the past two to three years. State officials became concerned that the state might not meet the federal TANF maintenance of effort requirement and, as a result, might lose federal TANF funding. In response to this concern, Section 12.27A(r2) of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), requires DHHS to work with counties, area mental health authorities, and other public and private entities that provide services to Work First recipients to identify state and local funds that are being expended for Work First recipients and may be counted in determining whether the state is meeting the federal TANF maintenance of effort requirement. In addition, Section 12.27A(r1) of S.L. 1998-212 requires DHHS to report quarterly, beginning January 1, 1999, to the General Assembly’s Fiscal Research Division, the Joint Legislative Public Assistance Commission, and the House and Senate Human Resources Appropriations Committees, on the extent to which the state and counties are meeting the federal TANF maintenance of effort requirement.

**County Maintenance of Effort.** Section 12.27A(j) of S.L. 1998-212 amends G.S. 108A-27.12 to provide that the financial commitment of “standard” Work First counties is determined with reference to SFY 1996–97 as the base year.

**Federal and State Work First Funding for Counties.** Section 12.27A(i) of S.L. 1998-212 makes two adjustments or corrections to G.S. 108A-27.11 with respect to federal and state Work First funding for counties. As amended, G.S. 108A-27.11 provides that county block grants under the Work First program (other than Work First cash assistance) will be determined by multiplying the state's total certified budget for the Work First program at the county level (except funds for Work First cash assistance) times the percentage of each county's total AFDC and JOBS expenditures (including spending for AFDC emergency assistance, but excluding spending for regular AFDC cash assistance) to statewide AFDC and JOBS expenditures (including spending for AFDC emergency assistance, but excluding spending for regular AFDC cash assistance) in SFY 1995-96. The allocation of each "electing" county for Work First cash assistance will be determined by multiplying the amount of federal TANF funds appropriated for Work First cash assistance times the percentage of the county's total expenditures for AFDC cash assistance to statewide expenditures for AFDC cash assistance in SFY 1995-96. Section 12.27A(j) of S.L. 1998-212 amends G.S. 108A-27.12 to prohibit DHHS from reducing or reallocating state or county funds previously obligated or appropriated for county Work First block grants or child welfare services.

## **Work First (Temporary Assistance for Needy Families)**

### **Welfare Reform in North Carolina**

In 1996, Congress enacted federal welfare reform legislation (Pub. L. 104-193) that replaced the AFDC program with a new federal-state program of Temporary Assistance to Needy Families.

North Carolina implemented the TANF program in October 1996, when the state's Department of Health and Human Services and Governor Hunt submitted a plan to the U.S. Department of Health and Human Services converting North Carolina's AFDC program to a new Work First program for needy families with children.

In 1997, disagreement between the Senate and House with respect to state welfare reform was one of the primary obstacles that delayed adoption of the state's 1997-99 budget. Ultimately, the General Assembly enacted welfare reform legislation, as Part XII of the 1997 Appropriations Act (S.L. 1997-443), but delayed implementation of most provisions of the new welfare law. Instead, Section 12.20(b) of S.L. 1997-443 provided that the state's October 16, 1996, Work First plan would remain in effect until the General Assembly, during the 1998 regular session, approved a revised Work First plan and designated "electing" counties (i.e., counties that have greater flexibility to develop and administer their own Work First programs).

During the 1998 legislative session, welfare reform resurfaced as an issue, as the Senate proposed liberalizing the state's time limit on receipt of Work First assistance, while the House proposed removing the cap on the number of counties that could be designated as "electing" counties. As in 1997, differences between the House and Senate with respect to welfare reform proved to be one of the primary obstacles that delayed enactment of the state budget and prolonged the legislative session. The impasse with respect to welfare reform was not broken until September 30, when all-day, three-way negotiations among Governor Hunt and House and Senate leaders finally resolved the standoff. The amendments to North Carolina's 1997 state welfare reform legislation and the state's Work First program, enacted as special provisions in Part XII of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), are described in more detail in the following sections.

### **Designation of "Electing" Work First Counties**

North Carolina's 1997 welfare reform legislation (G.S. 108A-27.3 through 108A-27.5) allows any county, by a three-fifths vote of the county commissioners, to request that the state designate it as an "electing" Work First county, thereby giving the county greater flexibility to

develop and administer its own Work First program. Counties requesting designation as “electing” counties are required to submit a proposed county Work First plan to the state Department of Health and Human Services. DHHS, in turn, is required to make recommendations to the General Assembly’s Joint Legislative Public Assistance Commission with respect to the designation of “electing” Work First counties and the approval of their county Work First plans. The 1997 state welfare reform legislation authorizes the General Assembly to designate one or more counties as “electing” counties but provides that the aggregate Work First caseload in “electing” counties may not exceed 15.5 percent of the statewide Work First caseload.

Following enactment of the 1997 welfare reform legislation, twenty-six North Carolina counties, including approximately 20 percent of the statewide Work First caseload, requested designation as “electing” counties and submitted county Work First plans to DHHS. In May 1998, after evaluating the proposed county plans, DHHS recommended that nineteen counties be designated as “electing” counties. House Republicans proposed removing the 15.5 percent cap and designating all twenty-six counties as “electing” counties, but Senate negotiators opposed any change in the cap.

The budget compromise reached on September 30, 1998, included an agreement to retain the 15.5 percent cap on “electing” counties and allow the House to designate the “electing” counties. Rather than selecting the counties whose Work First plans were ranked highest by DHHS or using their own criteria to select the “electing” counties, the House’s recognized experts on welfare reform, Representatives Cherie Berry (R-Catawba) and Julia Howard (R-Davie), decided to select the “electing” counties at random by drawing county names out of a hat at a press conference on October 7, 1998.

Despite the almost universal negative reaction by the press to this selection process and some misgivings within the House Republican leadership, the General Assembly, in Section 12.27A(g1) of S.L. 1998-212 (S 1366), officially designated the twenty-one counties randomly selected by Reps. Berry and Howard as Work First “electing” counties for 1998–2000. Those counties (serving approximately 9,487 needy families with children) are Alamance, Caldwell, Caswell, Chatham, Cherokee, Davie, Forsyth, Henderson, Iredell, Lincoln, Macon, McDowell, New Hanover, Polk, Randolph, Rutherford, Sampson, Stokes, Surry, Transylvania, and Wilkes. The two counties that were ranked at the top by DHHS’s evaluation process—Catawba and Craven—were not chosen.

Although S.L. 1998-212 leaves in place the 15.5 percent cap with respect to “electing” counties, Section 12.27A(g) of S.L. 1998-212 amends G.S. 108A-27.2(13) to provide that the 15.5 percent cap is determined with reference to the statewide Work First caseload on September 1, rather than October 1, of each year.

### **Approval of North Carolina’s Work First Plan**

Except as otherwise provided by S.L. 1998-212 or other legislation enacted by the General Assembly, Section 12.27A(a) of S.L. 1998-212 approves the DHHS 1998–2000 Work First (TANF) plan presented to the General Assembly on May 15, 1998. The plan contains most of the eligibility requirements, payment amounts, time limits, work requirements, administrative procedures, and other details governing North Carolina’s Work First program and incorporates the provisions of counties’ Work First services plans and the “electing” counties’ Work First plans. The General Assembly directed DHHS to amend the state Work First plan to comply with state welfare reform laws and to implement the legislatively approved Work First plan as soon as it was certified by the U.S. Department of Health and Human Services. A copy of the state’s 1998–2000 Work First plan is available on the Internet at <http://www.dhr.state.nc.us/DHR/DSS/content.htm>.

Section 12.27A(b) of S.L. 1998-212 amends G.S. 108A-27.9(a) to delete the requirement that DHHS follow the procedures established in G.S. 143-16.1 for federal block grant funds when submitting the biennial state Work First plan to the Governor.

### **Biometrics (Fingerprint) Identification System**

North Carolina's 1997 welfare reform legislation (G.S. 108A-25.1) requires DHHS to establish a system, using "multiple biometrics," to ensure the accurate identification of all persons receiving public assistance under the Work First, Medicaid, or Food Stamp programs.

Section 12.26A of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), changes the biometrics identification requirements contained in G.S. 108A-25.1 and the 1997 welfare reform legislation by

- extending the October 1, 1998, date for implementing the biometrics identification system so that DHHS must begin phased-in implementation of the system by October 1, 1999, finish implementing the system by October 1, 2000, and provide quarterly progress reports to the Joint Legislative Public Assistance Commission;
- requiring that the identification system use fingerprint biometrics, rather than multiple biometrics, to identify Work First, Food Stamp, and Medicaid applicants, recipients, and payees;
- expanding the biometrics identification system to include, in addition to Work First, Food Stamp, and Medicaid recipients, persons who are applying for Work First, Food Stamp, or Medicaid benefits and adults who receive cash assistance or services on behalf of a Work First, Food Stamp, or Medicaid recipient;
- excluding from the biometrics identification system Work First, Food Stamp, and Medicaid applicants, recipients, or payees who are (1) institutionalized adults, (2) under the age of eighteen (other than minor parents applying for or receiving assistance), or (3) excluded by federal law or regulation from the identification requirements; and
- making compliance with the biometrics identification requirements a condition of eligibility for Work First, Food Stamp, and Medicaid benefits, and providing that both the individual who is required to participate in the identification system and all persons in the individual's household will be ineligible for Work First, Food Stamp, and Medicaid benefits if the individual fails to comply with the biometrics identification requirements.

A provision in the Senate's budget bill (S 1366) would have eliminated the biometrics identification requirements for Medicaid and Food Stamp recipients who do not receive Work First assistance; however, that change was not included in the 1998 Appropriations Act adopted by the General Assembly.

### **Time Limits**

North Carolina's 1997 welfare reform legislation (G.S. 108A-27.1) imposes a twenty-four-month limit on the cumulative length of time a family may receive Work First cash assistance. If a family reaches the twenty-four-month time limit, the family is ineligible for Work First cash assistance for a period of thirty-six months, unless the family is granted an extension of or exemption from the twenty-four-month limit. Families are also subject to a federally mandated, sixty-month cumulative, lifetime limit on receipt of federally funded Work First benefits or services.

The 1998 appropriations bill (S 1366) adopted by the Senate included a provision that would have shortened from thirty-six months to twelve months the period of ineligibility for Work First cash assistance after a family reaches the twenty-four-month limit. House negotiators, however, refused to accept this provision, and it was not included in the welfare reform amendments incorporated in the 1998 Appropriations Act.

### **Individual Development Accounts**

North Carolina's 1997 welfare reform legislation required the state Department of Labor, in consultation with DHHS, to establish a five-year pilot project using individual development accounts to help underemployed and working families accumulate assets; promote investments in education, homeownership, and microenterprise development; and achieve long-term self

sufficiency. Section 12.27A(r) of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), directs DHHS to ensure that the purchase of a vehicle is an allowable use of these individual development accounts.

### **Work First Services**

Section 12.27A(a2) of S.L. 1998-212 provides that support services will be available to Work First (TANF) recipients and to former Work First (TANF) recipients whose incomes do not exceed 150 percent of the federal poverty level. This section also provides that work-related services may be provided under the Work First program to a noncustodial parent of a child who receives assistance under the Work First program if (1) the noncustodial parent's income does not exceed 150 percent of the federal poverty level and (2) providing services to the noncustodial parent will not reduce the assistance or services provided to the child, the child's custodial parent, or the child's caretaker.

Section 5(q) of S.L. 1998-212 allows counties to use federal TANF funds allocated as county Work First block grants to provide direct funding for child care for Work First recipients or transfer these funds to the state's Child Care and Development Fund Block Grant for child care subsidies.

### **Teen Pregnancy Prevention**

Section 5(i) of S.L. 1998-212 appropriates \$2 million in federal TANF funding to the DHHS Division of Women's and Children's Health for local programs, based on model programs that have been proven successful by extensive evaluation, focusing on prevention of teen pregnancy. These include adolescent parenting programs, adolescent pregnancy prevention programs, combination adolescent parenting and adolescent pregnancy prevention programs, teen care coordination projects, and media awareness campaigns targeted to teens and their parents.

### **Substance Abuse Services for Work First Families**

Section 5 of S.L. 1998-212 appropriates approximately \$4.3 million in federal TANF funds to the DHHS Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (MH/DD/SAS) for drug testing, diagnosis, counseling, and treatment of families that apply for or participate in the Work First program and to establish a Work First substance abuse coordinator position in MH/DD/SAS. The act also earmarks \$900,000 in federal TANF funds for start-up costs and support of two or more model substance abuse programs for Work First recipients and \$150,000 to develop a plan for a Next Step substance abuse program that meets the specialized substance abuse services needs of children who receive Work First assistance and the families of these children. DHHS must report its plan for the Next Step program to the House and Senate Human Resources Appropriations Committees by April 1, 1999.

### **First Stop Employment Assistance Program; Welfare-to-Work; Community Service and Work Requirements for Work First Recipients**

**First Stop Employment Assistance Program.** Section 4(a) of S.L. 1998-166 (H 900) directs the Employment Security Commission, in consultation with the Department of Commerce, the Department of Health and Human Services, and the Department of Community Colleges, to continue implementation of the First Stop Employment Assistance program established by G.S. 108A-29. Section 5 of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), appropriates \$20.1 million in federal TANF funds to the Employment Security Commission for implementation and expansion of First Stop Employment Assistance.

Section 12.27A(m) of S.L. 1998-212 amends G.S. 108A-29(a) to place primary responsibility for the First Stop program with the Employment Security Commission (ESC) rather than the Department of Commerce. S.L. 1998-212 also amends G.S. 108A-29 to

- clarify the responsibilities of ESC with respect to employment registration, job search, job preparedness, job development, job referral, and job placement activities under the First Stop program;
- allow county departments of social services to enter into cooperative agreements with the community college system or other entities to operate the job preparedness component of the First Stop program;
- allow county departments of social services, as well as ESC, to refer a Work First participant to the job preparedness component of First Stop; and
- direct each county's Job Service Employer Committee or Workforce Development Board to continue the NC WORKS study of the working poor and report the results of their studies by May 1 of each year to the Joint Legislative Public Assistance Commission, the House and Senate Human Resources Appropriations Committees, and the House and Senate Natural and Economic Resources Appropriations Committees.

**Welfare-to-Work.** North Carolina's Welfare-to-Work program will be administered under the Department of Commerce's TANF Welfare-to-Work plan presented to the General Assembly on July 2, 1998, and approved under Section 12.27A of the 1998 Appropriations Act, S.L. 1998-212 (S 1366). A copy of the state's Welfare-to-Work plan and more information about the Welfare-to-Work program are available on the Internet at <http://www.jtpa.state.nc.us/wtw/default.htm>. Section 12.27A(r4) of S.L. 1998-212 requires the Department of Commerce to submit its 1999–2000 Welfare-to-Work plan to the General Assembly for review before submitting it to the U.S. Department of Labor.

**Coordination of Work First, First Stop, and Welfare-to-Work Programs.** Section 12.27A(r3) of S.L. 1998-212 requires the Department of Commerce, the Department of Community Colleges, DHHS, and the Employment Security Commission to design and implement services under the Work First, First Stop, and Welfare-to-Work programs in a way that maximizes the use of federal TANF and Welfare-to-Work funds in accordance with federal requirements, maximizes the efficiency and effectiveness of these programs, minimizes duplication of services, and helps individuals attain economic self-sufficiency.

**Community Service Work.** G.S. 108A-27.3(a)(7), enacted by the 1997 state welfare reform legislation, required the boards of county commissioners in "electing" counties to provide community service work for any Work First recipient who could not find employment. Section 12.27A(h) of S.L. 1998-212 amends G.S. 108A-27.3(a)(7) to delete this requirement and, instead, directs the county commissioners in "electing" counties to consider providing community service work for any Work First recipient who cannot find employment.

**Job Retention and Follow-Up Programs.** Section 5 of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), appropriates \$1,777,529 in federal TANF funds to the DHHS Division of Social Services to develop and implement pilot job retention and follow-up programs for Work First participants. These pilot job retention and follow-up programs must be developed in consultation with county departments of social services, area mental health programs, the Employment Security Commission, workforce development boards, businesses, institutions of higher education, advocacy groups, and faith communities. They must include a strong evaluation component that focuses on outcomes with respect to the well-being of children and families and the economic progress of families. DHHS must report its progress in developing and implementing these pilot programs to the House and Senate Human Resources Appropriations Committees by April 1, 1999.

**Enhanced Employee Assistance Program.** Section 5 of S.L. 1998-212 appropriates \$1 million in federal TANF funds to the DHHS Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for the Enhanced Employee Assistance program providing financial incentives for private businesses employing former and current Work First recipients. Grants to employers under this program may provide funds to private employers who

agree to hire former or current Work First recipients or their spouses at entry-level positions and wages, and enhanced funding for employers who agree to hire former or current Work First recipients or their spouses at higher than entry-level positions, paying more than minimum wage, including fringe benefits. DHHS is required to report to the House and Senate Human Resources Appropriations Committees by April 1, 1999 on its use of these funds.

### **Work First Sanction, Grievance, and Appeal Procedures**

Section 12.27A of S.L. 1998-212 amends G.S. 108A-27.9(c) to require that the state's Work First plan include provisions (applicable in both standard and "electing" counties) ensuring that (1) Work First recipients who are sanctioned for failing to comply with program requirements are provided with a clear explanation of the sanction and (2) all Work First recipients, including those who are sanctioned or terminated for violating program rules, are informed of their right to be represented (at their own expense) by legal counsel or another representative. It also amends G.S. 108A-27.2 to direct DHHS to ensure that these provisions are uniformly developed and implemented across the state. Section 12.27(h) of S.L. 1998-212 makes conforming amendments to G.S. 108A-27.3, clarifying that the eligibility criteria and appeals processes adopted by "electing" counties must comply with the statewide sanction and appeals procedures under G.S. 108A-27.2 and 108A-27.9(c)(1).

Section 12.27A(b1) of S.L. 1998-212 amends G.S. 108A-27.9(c) to require that the state's Work First (TANF) plan include provisions (applicable in both standard and "electing" counties) ensuring that Work First participants have access to a grievance procedure to resolve complaints regarding workplace discrimination, occupational health and safety, and other work-related issues.

### **Evaluation of the Work First Program**

Section 12.27A(a1) of S.L. 1998-212 amends G.S. 108A-27(a) to provide that the purpose of the Work First program is to provide needy families with short-term assistance to facilitate their becoming self-sufficient through gainful employment, that the mere reduction of welfare rolls is not the primary goal of Work First, that the ultimate goal of the program is the gradual elimination of generational poverty, and that all evaluations of the Work First program must focus on whether the program is meeting these goals.

Section 5(f) of S.L. 1998-212 appropriates \$1 million of federal TANF funds to the DHHS Division of Social Services for evaluation of the Work First program. DSS is required to contract with an independent consultant to evaluate the Work First program, including the program's impact on the economic security and health of children and families, child abuse and neglect, child protective services and foster care caseloads, school attendance, and academic and behavioral performance. DHHS must report the results of this evaluation with respect to the state's 1996-98 Work First program to the House and Senate Human Resources Appropriations Committees by March 1, 1999. The independent consultant must report to these legislative committees by April 1, 1999, on the evaluation design and plan with respect to the state's 1998-2000 Work First program.

### **Transfer of Surplus Government Automobiles to Work First Families**

Effective October 24, 1998, S.L. 1998-195 (S 1202) amends G.S. 160A-279(a) to allow any North Carolina city or county to convey, without compensation and without the requirement that they be used for a public purpose, surplus automobiles to any public or private entity upon the condition that they be reconveyed to persons receiving Work First assistance. Work First participants who receive surplus automobiles under this program will be selected by the county department of social services under rules adopted by the department (it is unclear whether the law's reference to the county social services "department" refers to the county director of social services or the county board of social services). The transfer of a surplus automobile to a Work First recipient by the public or private entity may be with or without compensation by the

recipient. The Work First recipient may be required to pay for the vehicle's license, tag, and title. The public or private entity that reconveys a surplus automobile to a Work First recipient may, but is not required to, arrange for an appropriate security interest (such as a lease or lien) in the vehicle until the recipient satisfactorily completes the requirements of the Work First program.

### **Cabarrus County “Work Over Welfare” Demonstration Program**

S.L. 1998-106 (S 1422) extends from January 1, 1999, until July 1, 2001, the Cabarrus County “Work Over Welfare” program that was first authorized by 1995 N.C. Sess. Laws, Ch. 368. It also changes the pilot program substantively by

- making the pilot program applicable to all able-bodied recipients of Work First and Food Stamp assistance who are required to participate in the Work First employment program;
- deleting the specific provisions governing job search, employment, and job activity requirements for Work First participants; and
- requiring the county to (1) implement a “pay after performance” sanction that terminates Work First assistance for a family if a participant fails to comply with Work First participation requirements and (2) provide monitoring by social workers and direct vendor payments or assistance from other community resources to pay for rent, utilities, or other basic needs of children during the period in which a family is sanctioned for failure to comply with Work First requirements.

The Department of Health and Human Services was required to submit an interim evaluation report on this pilot program to the General Assembly and to the Joint Legislative Public Assistance Commission by September 1, 1998.

## **Other Public Assistance Programs**

### **Expanded Medicaid Coverage for the Elderly and Disabled**

North Carolina's Medicaid program pays for the cost of medical care (hospital, nursing home, doctors, prescription drugs, and so forth) for individuals who are at least sixty-five years old and (1) receive federal Supplemental Security Income (SSI) payments, (2) have incomes that are below the state's “medically needy” income limit, or (3) need all of their income in excess of the medically needy income standard to pay for out-of-pocket medical expenses (a practice known as “spending down”). [Elderly (or disabled) persons who have incomes that are over the SSI or medically needy income limits, but at or below the federal poverty level, are eligible for a limited Medicaid benefit that pays the cost of their Medicare premiums and Medicare deductible or coinsurance payments.] Because the SSI income limit is about 75 to 80 percent of the federal poverty level and North Carolina's medically needy income limit is only 35 percent of the federal poverty level, many poor, elderly North Carolinians were not eligible for full Medicaid benefits. (Although almost all older Americans are covered by Medicare, a 1992 study estimated that only 30 percent of Americans who were at least sixty-five years old and had incomes under the federal poverty level were covered by Medicaid.)

Section 12.12D of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), directs North Carolina's DHHS to provide full Medicaid coverage for all elderly (or disabled) persons whose incomes are at or below the federal poverty level (approximately \$671 per month for an individual and \$904 per month for a couple). This means that elderly (or disabled) North Carolinians with incomes over the SSI or medically needy income limits but at or below the federal poverty level will now be eligible for full Medicaid benefits (hospital, nursing home, doctors, prescription drugs, and so forth) without having to spend down to the medically needy income standard. (Elderly or disabled persons with incomes over the federal poverty level still may qualify for Medicaid coverage if they “spend down” to the medically needy income standard.) To qualify for this expanded Medicaid coverage, elderly (or disabled) persons may not

own assets (other than their homes, household goods, or other excluded assets) with a value of more than \$4,000 (or \$6,000 for a couple), and must meet other Medicaid eligibility requirements.

The expanded Medicaid coverage for elderly (or disabled) persons with incomes at or below the federal poverty level will be effective no earlier than January 1, 1999. S.L. 1998-212 appropriates an additional \$26,955,790 in state funding for the expanded coverage. State funds will pay about 30 percent of the cost; federal funding will cover approximately 65 percent of the cost; and counties will be responsible for about 5 percent of the cost.

### **Other Medicaid Provisions**

**Continuous Medicaid Coverage for Needy Families with Children.** North Carolina's Medicaid program provides medical care for children in poor families (and, in some cases, the parents or caretakers of children in needy families). Poor children who are eligible for Medicaid are classified as "categorically needy" if

- they receive, or would be eligible to receive, Work First cash assistance;
- they have lost Work First eligibility because of their family's increased earnings from work, increased child support payments, or loss of earnings deductions under the Work First program;
- they live in families that have incomes below the federal poverty level;
- they meet the 1996 requirements for AFDC; or
- they fall within other specified eligibility categories.

Effective January 28, 1999, Section 12.7 of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), provides that once a "categorically needy" family with children is determined to be eligible for Medicaid, its Medicaid enrollment will be for a continuous period of one year without regard to subsequent changes in the family's income or assets that otherwise might make the family or children ineligible. This section also requires DHHS to study the impact of this provision on the Medicaid program and the new Health Choice program for uninsured children and report its findings to the House and Senate Human Resources Appropriations Committees by October 1, 1999, and January 1, 2000.

**Financial Responsibility of Counties for Medicaid Benefits When a Medicaid Recipient Moves from One County to Another.** Section 12.6 of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), enacts a new statute, G.S. 108A-57.1, governing the financial responsibility of counties when a Medicaid recipient moves from one county to another. Under the new statute, a Medicaid recipient who moves from one county to another will continue to receive Medicaid benefits if he or she remains eligible for Medicaid. The county social services director of the county from which the Medicaid recipient moved must transfer the recipient's Medicaid file to the county social services director in the county to which the recipient has moved. The county from which the recipient moved is responsible for paying the county's portion of the nonfederal share of the cost of Medicaid benefits provided during the month following the recipient's move, and the county to which the recipient moved is responsible for paying the county portion of Medicaid benefits provided to the recipient thereafter.

**Changes in the Medicaid Program.** Section 12.12B of S.L. 1998-212 requires DHHS to report to the General Assembly's Fiscal Research Division, to the House and Senate Human Resources Appropriations Committees, and to the Joint Legislative Health Care Oversight Committee with respect to any proposed change to the state's Medicaid program that requires a change in the state's Medicaid plan or approval of the federal Health Care Financing Administration and affects the type or level of services provided, reimbursement methods, or waiver of federal requirements. Section 12.12B of S.L. 1998-212 also amends G.S. 108A-55(c) to require DHHS to report to the General Assembly's Fiscal Research Division, the House and Senate Human Resources Appropriations Committees, and the Joint Legislative Health Care Oversight Committee on any change in Medicaid reimbursement amounts at the same time it provides public notice of the change pursuant to G.S. 108A-55(c) and the Administrative Procedure Act.

**Medicaid Reimbursement Rate for Physicians.** The 1998 Appropriations Act, S.L. 1998-212 (S 1366), eliminates funding for a proposed 10.5 percent increase in the reimbursement to physicians under the state's Medicaid program. Section 12.13 of the act directs the Joint Legislative Commission on Health Care Oversight to study the need to increase the rate paid to physicians under the Medicaid program to an amount not exceeding the rate paid to physicians under the Medicare program, to identify available Medicaid funding for any proposed increase, and to report the results of its study to the 1999 General Assembly.

**Medicaid Dental Program.** Section 12.12C of S.L. 1998-212 requires DHHS to

1. evaluate and recommend strategies for increasing the level of dentist participation in the Medicaid dental program and improving the provision of preventive dental services to Medicaid recipients while ensuring program integrity and accountability;
2. propose, in consultation with the North Carolina Dental Society, changes to existing laws and rules that will improve the opportunity for quality dental treatment for Medicaid recipients; and
3. report its recommendations and the results of increasing the Medicaid reimbursement rate for dental services to the House and Senate Human Resources Appropriations Committees by April 30, 1999.

**Long-Term Care Pilot Projects.** Section 12.12B of S.L. 1998-212 requires DHHS to report to the Aging Study Commission and to the House and Senate Human Resources Appropriations Committees if DHHS obtains a Medicaid waiver to implement two long-term care pilot projects and prohibits DHHS from expanding this project beyond two initial pilot programs without first notifying the House and Senate Human Resources Appropriations Committees.

**Reduction in Growth of Medicaid Program.** Section 12.5 of S.L. 1998-212 delays from April 1, 1998, until February 1, 1999, the date on which the DHHS Division of Medical Assistance must submit to the House and Senate Human Resources Appropriations Committees a final plan to reduce the annual growth rate of the Medicaid program to 8 percent by 2001.

### **Health Insurance for Uninsured Children in Poor Families (Health Choice)**

North Carolina's new health insurance program for uninsured children in poor families (Health Choice), enacted by S.L. 1998-1 (Ex. Sess.), is discussed in Chapter 11 (Health).

### **Financial Assistance for Elderly or Disabled Residents of Adult Care Homes**

The State-County Special Assistance program (established under pt. 3, art. 2, of G.S. Ch. 108A) provides financial assistance on behalf of elderly or disabled residents of adult care homes whose incomes and resources are insufficient to cover the cost of their room, board, and care.

Effective October 1, 1998, Section 12.16B(b) of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), increases from \$915 to \$956 per month the maximum income limit and maximum payment rate under the State-County Special Assistance program. S.L. 1998-212 also appropriates from the General Fund to the Department of Health and Human Services \$3,765,649 in additional state funding to pay the state's share of the increased State-County Special Assistance payments to adult care homes in SFY 1998-99. Because the state and counties share equally in paying the cost of this assistance, S.L. 1998-212 will require North Carolina counties to provide approximately \$3.7 million in additional county funding for State-County Special Assistance payments for 1998-99.

### **Food Bank Funds**

Section 12.24 of S.L. 1998-212 directs that from funds appropriated to the DHHS Division of Social Services for 1998-99, grants-in-aid in the amount of \$160,000 be allocated to each of the following:

- Albemarle Food Bank/Food Pantry, Inc.

- MANNA Food Bank, Inc.
- The Food Bank of Northwest NC, Inc.
- Cumberland County Action/Cape Fear Community Food Bank
- Second Harvest Food Bank of Metrolina, Inc.
- Food Bank, Inc.

In addition, it directs that another \$40,000 be used for start-up costs for a food bank in eastern North Carolina.

### **Other Legislation Affecting Public Assistance Programs**

**Automated Application System for Public Assistance Programs.** Section 12.25 of S.L. 1998-212 requires DHHS to make a final report to the House and Senate Human Resources Appropriations Committees within one week of the convening of the 1999 General Assembly on its progress in developing and implementing a single statewide automated application system for all means-tested public assistance programs.

**Community Service Requirement for Food Stamp Recipients.** Section 12.27(q) of S.L. 1998-212 requires DHHS to ask the U.S. Department of Agriculture for permission to include the value of Food Stamp benefits as compensation for community service work.

**Fraud, Abuse, Waste, and Mismanagement in Public Assistance Programs.** Section 12.27(e) of S.L. 1998-212 amends G.S. 114-41 to require the Inspector General in the Department of Justice to provide county social services directors with a copy of the Inspector General's policies and standards for investigating fraud, abuse, waste, and mismanagement in public assistance programs and to monitor the compliance of county departments of social services with these policies and standards.

## **Child Support Enforcement (IV-D) Program**

### **Implementation of Federal Child Support Requirements**

In 1996, Congress enacted legislation requiring states (as a condition of receiving federal funding for Temporary Assistance for Needy Families and for state child support enforcement programs) to enact a number of specific state laws and procedures to improve the collection of child support. In 1997, the General Assembly enacted legislation (S.L. 1997-433) to implement most of these federal child support requirements. State legislators, however, clearly had misgivings with respect to some of the federal child support requirements and questioned the federal government's authority to impose these child support requirements on North Carolina. Therefore, the 1997 General Assembly (1) directed the Attorney General to explore the feasibility of North Carolina's filing a lawsuit against the United States challenging the federal government's authority to impose the 1996 federal child support requirements on the state and (2) provided that the 1997 amendments to North Carolina's child support laws enacted by S.L. 1997-443 would expire on June 30, 1998, unless they were extended during the 1998 regular session.

After being advised by the Attorney General that North Carolina had little chance of winning a lawsuit challenging the federal child support mandates, the General Assembly, quickly and with little debate, passed legislation (S 1182) to repeal the June 30, 1998, "sunset" on the 1997 child support amendments, and the Governor approved Senate Bill 1182 (S.L. 1998-17) on June 25, 1998. That legislation and other issues involving implementation of the 1996 federal child support requirements are discussed in more detail in Chapter 4 (Children and Families).

### **Collection of Delinquent Child Support from State Income Tax Refunds**

North Carolina's Setoff Debt Collection Act (G.S. Ch. 105A) establishes a legal procedure through which an individual's state income tax refund may be "intercepted" by a state agency

and retained by the state to repay a debt that the individual owes to the agency. The act also expressly allows DHHS to use this state income tax refund setoff procedure to collect child support that a taxpayer owes to a child who is receiving services through DHHS's child support enforcement (IV-D) program. In an October 9, 1998, decision, however, the N.C. Supreme Court held that DHHS could not collect delinquent child support by withholding an obligor's state income tax refund unless the agency first obtained advice from the Attorney General with respect to the validity of the debt, the adequacy of pending, alternative collection methods, and the possible impact of collection on federal funding. *Davis v. N.C. Department of Human Resources*, 349 N.C. 208, 505 S.E.2d 77 (1998).

In response to the *Davis* decision, the General Assembly included a special provision in the 1998 Appropriations Act [S.L. 1998-212 (S 1366), sec. 12.3A] amending the Setoff Debt Collection Act [G.S. 105A-3(b)] to repeal the requirement that state agencies obtain the Attorney General's advice before submitting debts to the Department of Revenue for collection under G.S. Ch. 105A. As amended by S.L. 1998-212, the Setoff Debt Collection Act now requires DHHS and other state agencies to collect debts by intercepting the state income tax refunds of debtors whenever *the agency* (rather than the Attorney General) determines that there is no legitimate dispute regarding the validity of the debt; that pending, alternative collection methods are not adequate; and that collection of the debt would not result in a loss of federal funds.

### **Other Legislation Affecting Child Support Enforcement**

**Collection of Delinquent Child Support by Transfer of Real Property.** Section 1 of S.L. 1998-176 (H 534) amends G.S. 50-13.4(e) to allow a court to order an individual to pay a child support arrearage by transferring to the obligee his or her interest in real property if the net value of the individual's interest in the property does not exceed the amount of the arrearage. The amendment is effective with respect to child support cases pending on or after January 1, 1999.

**Review of Automated Collection and Tracking System (ACTS).** Section 12.29C of S.L. 1998-212 (S 1366) repeals a provision of the 1997 Appropriations Act that required the Information Resource Management Commission to conduct quarterly reviews of the recently implemented IV-D automated collection and tracking system developed by DHHS.

## **Child Welfare**

### **Child Abuse, Neglect, and Dependency**

Several changes in the North Carolina Juvenile Code relating to child abuse, neglect, and dependency and the termination of parental rights laws are effective January 1, 1999. These are described in Chapter 13 (Juvenile Law). That chapter also describes the complete rewrite of the Juvenile Code, which takes effect July 1, 1999.

### **State Child Fatality Review Team**

Section 12.22 of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), codifies as G.S. 143B-150.20 (pt. 4B, art. 3, of G.S. Ch. 143B) provisions establishing and governing the activities of the State Child Fatality Review Team. Unlike the previously uncodified provisions in Section 11.57 of S.L. 1997-443, this new section

- requires that the State Child Fatality Review Team's in-depth review of a case include interviews with any individuals determined to have pertinent information, and examination of any written materials containing pertinent information;
- requires the team to consult with the appropriate district attorney, in accordance with G.S. 7A-675.2(d), before releasing its findings and recommendations publicly; and

- authorizes the team to receive copies of any reviewed materials necessary to conducting a fatality review.

### **Child Fatality Task Force**

Section 12.44 of S.L. 1998-212 removes the sunset on provisions relating to the Child Fatality Task Force. It also amends G.S. 143-573(c) to provide that members of the Task Force serve two-year terms and that the members elect a chair to preside for the duration of that member's term. G.S. 143-577 is amended to require the Task Force to report annually to the Governor and General Assembly, within the first week of the convening or reconvening of the General Assembly, and conforming changes are made in both that section and G.S. 143-574.

### **Supervisor Positions**

Section 12.22 of S.L. 1998-212 amends Section 11.57 of the 1997 Appropriations Act, S.L. 1997-443, which relates to funds allocated to county departments of social services for foster care and adoption worker positions created after July 1, 1997. The amendment provides that (1) the funds also may be used for foster care and adoption supervisor positions created after July 1, 1997, and (2) the formula for allocating the funds must take into account the number of cases and the number of workers and supervisors necessary to meet recommended standards.

Section 12.23 of S.L. 1998-212 amends Section 11.25 of S.L. 1997-443 to require that the formula for allocating funds appropriated for the 1997-99 biennium for child protective services take into account not only the number of cases and the number of child protective services workers required, but also the number of child protective services supervisors required to meet recommended standards.

### **Training Requirements**

Section 12.22 of S.L. 1998-212 amends Section 11.57(d) of S.L. 1997-443 to remove the June 30, 1999, sunset on that subsection's training requirements for child welfare workers and supervisors.

### **Child Placing Agencies' Rate Study**

Section 12.29A of S.L. 1998-212 requires DHHS to contract with an independent consultant for a study of the rate-setting of licensed child-placing agencies. The study must review the agencies' current rate-setting process and determine whether it is resulting in adequate reimbursement. DHHS must report the results of the study and any recommendations to the members of the House and Senate Human Resources Appropriations Committees by May 15, 1999.

### **Child Protection Dual Response Pilots**

Section 12.29D of S.L. 1998-212 requires DHHS, working with county departments of social services, to develop a plan to implement a dual response system of child protection in at least two, but not more than five, demonstration areas in the state. It specifies that the plan should provide for a system in which

- local child protective services and law enforcement work together as co-investigators in serious abuse cases, and
- county departments of social services respond to reports of child abuse or neglect with a family assessment and services approach.

DHHS must plan for the development of data collection processes that would enable the General Assembly to assess the pilots' impact on child safety, the timeliness of responses and services, coordination of local human services, cost effectiveness, and other related issues. By April 1, 1999, DHHS must make a progress report on development of the plan to members of the

House and Senate Human Resources Appropriations Subcommittees. DHHS may proceed to implement the pilot dual response systems if nonstate funds are identified for that purpose.

### **Criminal History Checks of Adoptive Parents**

**Requirement for Criminal History Check.** Effective January 1, 1999, S.L. 1998-229 (H 1720) amends several sections of the adoption law, G.S. Chapter 48, to require that a minor who is in the custody or placement responsibility of a county department of social services be placed with a prospective adoptive parent only after

- an investigation of the adoptive parent’s criminal history is completed, and
- a determination, based on the criminal history, is made as to the individual’s fitness to have responsibility for the safety and well-being of children.

**Definition of “Criminal History.”** For purposes of this requirement, “criminal history” means:

a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual’s fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

**Notice to Prospective Adoptive Parent.** When a prospective adoptive parent requests a preplacement assessment, or at a later time before placement, he or she must be given a statement that sets out the following:

- notice that North Carolina law requires a criminal history check before placement of a minor who is in the custody or placement responsibility of a county department of social services;
- the statutory definition of “criminal history;”
- notice that if, based on the criminal history, the individual is determined to be unfit to be an adoptive parent, he or she will have an opportunity to complete, or challenge the accuracy of, information in state or federal records;
- notice that if the individual is denied a favorable preplacement assessment by a county department of social services as a result of the criminal history check, he or she may request a review of the assessment;
- notice that intentionally falsifying any information required to be furnished to conduct the criminal history check is a Class 2 misdemeanor;
- notice that refusal to consent to the criminal history check is grounds for a county department of social services to issue an unfavorable preplacement assessment.

**Department of Health and Human Services.** New G.S. 48-3-309 makes the state Department of Health and Human Services responsible for ensuring that a prospective adoptive parent’s criminal history is checked and that the required determination as to the individual’s fitness based on that history is made before a child is placed. DHHS must make requests for criminal histories to the Department of Justice (DOJ) and with each request must provide

- the fingerprints of the prospective adoptive parent;

- any additional information required by the DOJ; and
- a form signed by the individual to be checked, consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the state or national repositories.

When DHHS receives the results of a criminal history check, it must notify the appropriate county department of social services in accordance with federal and state law regulating the dissemination of the contents of the criminal history file. DHHS may not release or disclose any portion of the criminal history to the prospective adoptive parent but must ensure that the prospective adoptive parent is notified of

- his or her right to review the criminal history information;
- the procedure for completing, or challenging the accuracy of, the history; and
- his or her right to contest the preplacement assessment of the county department of social services.

The DOJ may charge DHHS a reasonable fee for conducting authorized checks of the national criminal history records. G.S. 48-3-309(h) states that “the Division of Social Services, Department of Health and Human Services, shall bear the costs of implementing this section.”

**Department of Justice and State Bureau of Investigation.** New G.S. 48-3-309 requires the DOJ, when it receives from DHHS a request and the items listed above, to provide to DHHS a prospective adoptive parent’s criminal history obtained from the state and national Repositories of Criminal Histories. The fingerprints must be forwarded to the State Bureau of Investigation (SBI) for a search of the state’s criminal history record file, and the SBI must forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The DOJ must charge DHHS a reasonable fee but only for conducting authorized checks of the national criminal history records. Similar provisions are included in new G.S. 114-19.7.

**County Departments of Social Services.** A county department of social services may issue an unfavorable preplacement assessment if the department determines, based on an individual’s criminal history, that he or she is unfit to have responsibility for the safety and well-being of children.

**Confidentiality of Criminal History Information.** Information that DHHS receives through the checking of a criminal history is privileged and is not a public record. It is for the exclusive use of DHHS and persons authorized by law to receive the information. DHHS may destroy the information after it is used for the authorized purposes after one calendar year.

**Immunity.** New G.S. 48-3-309 provides that a state or local agency and the employees of a state or local agency have immunity for negligent acts or omissions in carrying out responsibilities under the section. The immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing. The immunity is deemed waived to the extent of indemnification by insurance or by statute (G.S. Ch. 143, art. 31A) and to the extent that sovereign immunity is waived under the Tort Claims Act (G.S. Ch. 143, art. 31).

### **Adoption Services Study**

Section 5(k) of S.L. 1998-212 (S 1366) requires the DHHS Division of Social Services to evaluate the cost-effectiveness of county departments of social services and licensed public and private adoption agencies in placing children who are in the custody of county departments of social services. The division must report the results of the evaluation to the House and Senate Human Resources Appropriations Committees by May 1, 1999.

*Janet Mason*

*John L. Saxon*