



SENATE BILL 490: Various Family Law Changes.

2019-2020 General Assembly

Committee: Senate Rules and Operations of the Senate	Date: May 7, 2019
Introduced by: Sen. Britt	Prepared by: Amy Darden
Analysis of: Third Edition	Staff Attorney

OVERVIEW: *Senate Bill 490 would do the following:*

- *Modify the laws pertaining to parenting coordinators.*
- *Modify the laws pertaining to equitable distribution and pension, retirement, and deferred compensation benefits.*
- *Make various changes to the adoption laws.*

[As introduced, this bill was identical to H470, as introduced by Rep. Stevens, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW and BILL ANALYSIS:

Part I.

Article 5 of Chapter 50 of the General Statutes provides the standards for use of a parenting coordinator in family law cases where there is parental conflict. The statutes related to parenting coordinators originally became effective in 2005.

Section 1 of the bill would modify the parenting coordinator statutes as follows:

- Add a definition of the term "party" to include any person granted legal or physical custody rights to a child in a child custody action.
- Allow courts to appoint or reappoint parenting coordinators on or after the entry of a custody order, other than an ex parte order, or upon entry of contempt order involving a custody issues pursuant to any of the following: 1) all the parties consenting to the appointment and scope of the parenting coordinator's authority; 2) upon a motion of a party requesting the appointment; 3) upon the court's own motion.
- Require if the parties do not consent to the appointment of a parenting coordinator, the court must make specific findings of fact that the action is a high-conflict case, that the appointment of the parenting coordinator is in the best interests of any minor child in the case, and that the parties are able to pay for the cost of the parenting coordinator.
- Clarify the court does not have to find a substantial change in circumstances to appoint a parenting coordinator.
- Require the order appointing a parenting coordinator must specify the terms of the appointment and the issues the parenting coordinator is directed to assist the parties in resolving and deciding.
- Clarify the court retains exclusive jurisdiction to determine fundamental issues of custody, visitation, and support, and the authority to exercise management and control of the case.

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- Require the parenting coordinator be selected from a list maintained by the district court.
- Clarify the authority of a parenting coordinator must be specified in the court order appointing the parenting coordinator and must be limited to matters that will aid the parties in complying with the court's custody order, resolving disputes regarding issues that were not specifically addressed in the custody order, or ambiguous or conflicting terms in the custody order.
- Clarify the parenting coordinator will decide any issues within the scope of their authority and the decision is enforceable as an order of the court.
- Clarify any party or attorney for the party may file a motion for the court to review the parenting coordinator's decision. The parties must comply with the parenting coordinator's decision unless the court, after a review hearing, determines that (i) the parenting coordinator's decision is not in the child's best interests or (ii) the decision exceeded the scope of the parenting coordinator's authority. The moving party or the attorney for the moving party shall cause a subpoena to be issued for the parenting coordinator's attendance at the review hearing.
- Clarify the parenting coordinator will not provide any professional services or counseling to either party or any of the minor children.
- Clarify the parenting coordinator will refer financial issues related to the parenting coordinator's decision to the parties or their attorneys.
- Modify the qualifications for parenting coordinators to disallow degrees in "counseling, medicine, or a related subject area and to clarify a North Carolina license is required in the parenting coordinator's area of practice.
- Require the parties, their attorneys, and the proposed parenting coordinator to all attend the appointment conference.
- Clarify no appointment conference is required if (i) the parenting coordinator's term is later extended, (ii) a subsequent parenting coordinator is appointed in the same matter, or (iii) the parties, their attorneys, and the proposed parenting coordinator consent to a waiver of the appointment conference by signing the proposed appointment order. The court shall not enter an order appointing a parenting coordinator or conduct an appointment conference unless a custody order has already been entered or is being simultaneously entered.
- Remove the determination of information each party must provide to the parenting coordinator from a list of court requirements at the appointment conference.
- Clarify if a dispute arises regarding the payment of fees or the retainer, the parenting coordinator may file a fee report and request a hearing. If a party disputes the parenting coordinator's fees or the allocation of those fees, the party may file a motion with the court requesting that the court review the fees.
- Clarify meetings and communications between the parenting coordinator and parties, the attorneys for the parties, or any other person with information that assists the parenting coordinator in the coordinator's duties may be informal and ex parte. Communications between the parties and the parenting coordinator are not confidential. The parenting coordinator and the court will not engage in any ex parte communications.
- Clarify the parenting coordinator may file a report regarding any of the following:
 - The parenting coordinator's belief that the existing custody order is not in the best interests of the child.
 - The parenting coordinator's determination that the parenting coordinator is not qualified to address or resolve certain issues in the case.
 - A party's noncompliance with a decision of the parenting coordinator or the terms of the custody order.
 - The parenting coordinator's fees.

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- The parenting coordinator's request that the parenting coordinator's appointment be modified or terminated.
- Provide if a parenting coordinator alleges a party is not complying with their decision, the terms of a custody order, or not paying the fees, the court may issue an order directing a party to appear at a specified reasonable time and show cause why the party shall not be held in contempt.
- Clarify an expedited hearing will be granted and will occur within four weeks of the filing of the report unless the parenting coordinator requests a longer length of time or the court has already issued an order directing a party to show cause why the party must not be held in contempt.
- Provide a parenting coordinator may release any records held by the parenting coordinator to the parties or the attorneys for the parties.
- Clarify any party may apply to the judge presiding for the issuance of a subpoena to compel production of the parenting coordinator's records.
- Clarify the court may terminate or modify the parenting coordinator appointment for good cause shown upon motion of any party, upon the agreement of the parties, or by the court on its own motion.
- Clarify the court may modify or terminate the parenting coordinator's appointment for good cause shown upon request of the parenting coordinator.

Part II.

G.S. 50-20.1 governs the way pension, retirement, and deferred compensation benefits are treated in equitable distribution matters.

Senate Bill 490 would do the following:

- Amend the title of the statute to add "deferred compensation benefits."
- Make clarifying changes by replacing the term "plan" with "plan, program, system or fund."
- Clarify the benefits are distributed and are marital property.
- Clarify a "participant-spouse" is a spouse who is a participant in the plan, program, system, or fund.
- Clarify the permissible methods for distribution of benefits that are vested and those that are not vested.
- Clarify the court-ordered distribution of benefits cannot violate the terms of the applicable benefits plan.
- Provide the formula to determine the marital portion of the benefits that is subject to distribution by the court and relieve the parties and the court of having to establish present value of monthly pension benefits.
- Require the use of the "separate interest" approach in division of benefits if the applicable plan allows it. If the "separate interest" approach is not available, allow the court to order joint and survivor annuity protection for the nonparticipant spouse.
- Add "domestic relations orders" (DROs) to the permissible orders to divide benefits.
- Allow parties the ability to file a claim solely for the entry of an order enforcing the terms of a valid written agreement providing for the distribution of pension, retirement, or deferred compensation benefits.

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Part III.

Chapter 48 of the General Statutes governs adoptions in North Carolina.

Senate Bill 490 would do the following:

- Expand state court jurisdiction for adoptions in which another state is exercising jurisdiction in substantial conformity with the UCCJEA (Uniform Child-Custody Jurisdiction and Enforcement Act) and place custody of the adoptee in an agency, the petitioner, or another custodian expressly in support of an adoption plan that does not identify a specific prospective adoptive parent other than the petitioner.
- Allow the court to issue any adoption decree in the names of both of the persons who adopted a minor child in a foreign country, even if one of them has died, as long as the two persons were married to one another when they adopted.
- Expand the type information relating to a prospective adoptive parent that can be redacted by an agency in a preplacement assessment to include income, expenditures, assets, and liabilities.
- Require an individual before whom a consent or a relinquishment is executed, to certify in writing the party executing the document has been advised of their right to legal counsel.
- Clarify that DSS must permanently index and file records, without review and transmit a report of each adoption and name change to the State Registrar or to the entity of another state responsible for issuing birth certificates within 40 days after receiving it from the court.
- Provide that nothing in Article 9 – Confidentiality of Records and Disclosure of Information, prevents an employee of a court, agency, or any other person from giving a file-stamped copy of a document to a person, or the legal representative of a person, who has filed a document in an adoption proceeding.
- Provide that whenever a notice or any kind is required to be published in a jurisdiction outside North Carolina where legal notices are customarily published, any form of publication which meets the requirements for legal notices in that locality is deemed sufficient.
- Amend GS 7B-200 to specifically include in the court's exclusive original jurisdiction, proceedings for the return of a juvenile to the State and proceedings to review a refusal or failure of the administrator of the Interstate Compact on the Placement of Children (the Compact) to forward a request for approval of a placement to the receiving state or find a placement that doesn't appear to be contrary to the interests of the child. It would also enact a new GS 7B-3807 to provide for judicial proceedings in the above change.
- Add the DHHS in administering the Compact as an exemption from the contested case provision.
- Make conforming changes.

EFFECTIVE DATE: Part I and Part III of the bill would become effective October 1, 2019. Part II would become effective October 1, 2019, and apply to distributions on or after that date.

Tawanda Foster, Staff Attorney, substantially contributed to this summary.