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Short Title: Substantiation Appeal Process/Juv. Abuse/Neg. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A LIST OF INDIVIDUALS RESPONSIBLE FOR ABUSE OR NEGLECT OF A JUVENILE UNDER THE LAWS REGULATING JUVENILE ABUSE, NEGLECT, AND DEPENDENCY AND ESTABLISHING A PROCESS FOR EXPUNCTION FROM THAT LIST.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7B-101 is amended by adding the following new subdivisions to read:

**"§ 7B-101. Definitions.**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

...

(18a) Responsible individual. – The individual identified by the director as the person responsible for rendering a juvenile abused or seriously neglected.

...

(21) Substantial evidence. – Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

(22) Working day. – Any day other than a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions."

**SECTION 2.** G.S. 7B-200(a) reads as rewritten:

**"§ 7B-200. Jurisdiction.**

(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

The court also has exclusive original jurisdiction of the following proceedings:

- 1 (1) Proceedings under the Interstate Compact on the Placement of  
2 Children set forth in Article 38 of this ~~Chapter;~~Chapter.
- 3 (2) Proceedings involving judicial consent for emergency surgical or  
4 medical treatment for a juvenile when the juvenile's parent, guardian,  
5 custodian, or other person who has assumed the status and obligation  
6 of a parent without being awarded legal custody of the juvenile by a  
7 court refuses to consent for treatment to be ~~rendered;~~rendered.
- 8 (3) Proceedings to determine whether a juvenile should be  
9 ~~emancipated;~~emancipated.
- 10 (4) Proceedings to terminate parental ~~rights;~~rights.
- 11 (5) Proceedings to review the placement of a juvenile in foster care  
12 pursuant to an agreement between the juvenile's parents or guardian  
13 and a county department of social ~~services;~~services.
- 14 (6) Proceedings in which a person is alleged to have obstructed or  
15 interfered with an investigation required by ~~G.S. 7B-302;~~G.S. 7B-302.
- 16 (7) Proceedings involving consent for an abortion on an unemancipated  
17 minor pursuant to Article 1A, Part 2 of Chapter 90 of the General  
18 ~~Statutes; and~~Statutes.
- 19 (8) Proceedings by an underage party seeking judicial authorization to  
20 marry, pursuant to Article 1 of Chapter 51 of the General Statutes.
- 21 (9) Proceedings for the expunction of an individual's name from the  
22 responsible individuals list pursuant to G.S. 7B-312."

23 **SECTION 3.** G.S. 7B-302 reads as rewritten:

24 "**§ 7B-302. Investigation by director; access to confidential information;**  
25 **notification of person making the ~~report.~~ report; notification to**  
26 **individual responsible for abuse or neglect.**

27 ...

28 (g1) Within five working days after completion of an investigative assessment  
29 response that results in a determination of abuse or serious neglect, the director shall  
30 give written notice to the responsible individual by delivering the notice to the sheriff of  
31 the county in which the responsible individual is believed to be located for service upon  
32 the individual. Service may only be made upon the individual. If the individual entitled  
33 to notice cannot be served by the sheriff, then the written notice shall be delivered to the  
34 responsible individual by certified mail, return receipt requested. Certified mail notice  
35 may only be received by the responsible individual. The notice shall:

- 36 (1) Inform the individual of the nature of the report and whether the  
37 director determined abuse or serious neglect or both.
- 38 (2) Summarize the substantial evidence underlying the director's  
39 determination without identifying the reporter or collateral contacts.
- 40 (3) Inform the individual that his name has been placed on the responsible  
41 individuals list as provided in G.S. 7B-311, and the effect the listing  
42 could have on the individual's employment involving child care,  
43 applying to be a foster parent, or seeking to adopt a child.

1           (4) Describe clearly what actions the individual must take to request  
2           expunction by the director of the individual's name from the  
3           responsible individuals list and procedures for seeking review by the  
4           District Attorney and for seeking judicial review of the director's  
5           decision not to remove the individual's name from the list.

6           ...."

7           **SECTION 4.** G.S. 7B-311 reads as rewritten:

8           "**§ 7B-311. Central registry.**

9           The Department of Health and Human Services shall maintain a central registry of  
10          abuse, neglect, and dependency cases and child fatalities that are the result of alleged  
11          maltreatment that are reported under this Article in order to compile data for appropriate  
12          study of the extent of abuse and neglect within the State and to identify repeated abuses  
13          of the same juvenile or of other juveniles in the same family. The Department of Health  
14          and Human Services shall also maintain a list of responsible individuals identified by  
15          county directors of social services. This data shall be furnished by county directors of  
16          social services to the Department of Health and Human Services and shall be  
17          confidential, except as specifically provided otherwise by statute or by rules-subject to  
18          policies adopted by the Social Services Commission providing for its use for study and  
19          research and for other appropriate disclosure. Data shall not be used at any hearing or  
20          court proceeding unless based upon a final judgment of a court of law. The Social  
21          Services Commission may adopt rules pertaining to the operation of the central registry  
22          and responsible individuals list, including the following:

- 23               (1) Procedures for filing data.  
24               (2) Procedures for notifying a responsible individual of a determination of  
25               abuse or serious neglect.  
26               (3) Procedures for correcting and expunging information.  
27               (4) Determining persons who are authorized to receive information from  
28               the responsible individuals list.  
29               (5) Releasing information from the responsible individuals list to  
30               authorized requestors.  
31               (6) Gathering statistical information.  
32               (7) Keeping and maintaining information placed in the registry and on the  
33               responsible individuals list.  
34               (8) Development of penalties for unlawful dissemination of the central  
35               registry information."

36          **SECTION 5.** Article 3 of Subchapter I of Chapter 7B of the General Statutes  
37          is amended by adding the following new section to read:

38          "**§ 7B-312. Requests for expunction, review, and appeal.**

39               (a) Any individual who has been identified as a responsible individual in an  
40               abuse or serious neglect case may, within 30 days after receipt of notice pursuant to  
41               G.S. 7B-302(g1) or by any other means, request the director who determined the abuse  
42               or serious neglect and identified the individual as a responsible individual to expunge  
43               the individual's name from the responsible individuals list. The request for expunction  
44               shall be in writing, addressed to the director who determined the abuse or serious

1 neglect and identified the individual as a responsible individual, and delivered in person  
2 or by certified mail, return receipt requested, within 30 days after receipt of notice.

3 (b) After receipt of a timely request for the expunction of an individual's name  
4 from the responsible individuals list, the director shall, within 15 working days, review  
5 all records, reports, and other case documentation pertaining to the determination. The  
6 director shall determine whether there is substantial evidence to support the  
7 determination and the placement of the individual's name on the responsible individuals  
8 list, and proceed as follows:

9 (1) If the director decides that there is not substantial evidence in the  
10 records, reports, or other case documentation of the county department  
11 of social services to support a determination of abuse or serious  
12 neglect and to support the identification of the individual as a  
13 responsible individual, the director shall notify the Department of  
14 Health and Human Services to expunge the individual's name from the  
15 responsible individuals list, and prepare and send the individual  
16 seeking expunction, by personal delivery or first-class mail, a written  
17 statement of the director's decision.

18 (2) If the director decides that there is substantial evidence in the records,  
19 reports, or other case documentation of the county department of social  
20 services to support a determination of abuse or serious neglect and to  
21 support the identification of the individual as a responsible individual,  
22 the director may uphold or modify the director's prior decision  
23 accordingly and shall prepare and send the individual seeking  
24 expunction, by personal delivery or first-class mail, a written statement  
25 of the director's decision, the reasons for the decision, a clear statement  
26 that it is a final decision, and the time by which the individual must file  
27 a petition for expunction with the district court. The director shall also  
28 include a second notice containing the information required by  
29 G.S. 7B-302(g1) and a copy of a petition for expunction form. If the  
30 director modifies the prior decision, the director shall notify the  
31 Department of Health and Human Services, which shall change its  
32 records accordingly.

33 (c) If, on review, the director determines that there is substantial evidence to  
34 support a determination of abuse or serious neglect and to support the identification of  
35 the individual as a responsible individual, the individual seeking expunction may,  
36 within 30 days after receipt of notice pursuant to subsection (b) of this section, request a  
37 review of the director's decision by either the District Attorney of the prosecutorial  
38 district or district court of the county in which the abuse or serious neglect report arose  
39 in accordance with subdivisions (1) and (2) of this subsection. If the director fails to act  
40 on the request for expunction within 30 working days after its receipt, this failure will  
41 function as a refusal to expunge the individual's name, and the individual seeking  
42 expunction may request a review of the director's decision not to expunge the  
43 individual's name either by the District Attorney of the prosecutorial district or the

1 district court of the county in which the abuse or serious neglect report arose in  
2 accordance with subdivisions (1) and (2) of this subsection.

3       (1) Within 30 days of the receipt of notice of the director's decision, the  
4 individual may request a review by the District Attorney of the  
5 prosecutorial district in which the abuse or serious neglect report arose.  
6 The request for review by the District Attorney shall be by a letter  
7 directed to the attention of the District Attorney and shall contain the  
8 name, date of birth, address of the individual seeking expunction, and  
9 the name of the juvenile who was the subject of the determination of  
10 abuse or serious neglect. Within 30 days of a request to review, the  
11 District Attorney shall review the director's decision that an  
12 individual's name should not be expunged and the District Attorney  
13 shall make a determination of agreement or disagreement with the  
14 director's decision. The District Attorney shall have access to all  
15 information the director used in making the determination. Failure to  
16 make a timely request to the District Attorney to review the director's  
17 decision shall constitute a waiver of the individual's right to make the  
18 request for review by the District Attorney. If the District Attorney  
19 agrees with the determination of the director, the individual shall have  
20 30 days from the date of the decision by the District Attorney to file a  
21 petition for expunction with the district court as provided in  
22 subdivision (2) of this subsection.

23       (2) Within 30 days of the receipt of notice of the director's decision, or  
24 within 30 days from the date of a determination by the District  
25 Attorney as provided in subdivision (1) of this subsection, whichever  
26 is later, an individual may file a petition for expunction with the  
27 district court of the county in which the abuse or serious neglect report  
28 arose. The request shall be by a petition for expunction filed with the  
29 appropriate clerk of court's office with a copy delivered in person or by  
30 certified mail, return receipt requested, to the director. The petition for  
31 expunction shall contain the name, date of birth, and address of the  
32 individual seeking expunction, the name of the juvenile who was the  
33 subject of the determination of abuse or serious neglect, and facts that  
34 invoke the jurisdiction of the court. Failure to timely file a petition for  
35 expunction constitutes a waiver of the individual's right to file a  
36 petition for expunction and to a district court hearing.

37       (d) The clerk of court shall maintain a separate docket for such expunction  
38 actions and upon receipt of a filed petition for expunction shall calendar the matter for  
39 hearing at a session of district court hearing juvenile matters and send notice of the  
40 hearing to the petitioner and the director. Upon the request of a party, the court shall  
41 close the hearing to all persons, except officers of the court, the parties, and their  
42 witnesses. At the hearing, the director shall have the burden of proving by a  
43 preponderance of the evidence the correctness of the director's decision determining  
44 abuse or serious neglect and identifying the individual seeking expunction as a

1 responsible individual. The hearing shall be before a judge without a jury. The rules of  
2 evidence applicable in civil cases shall apply. However, the court shall have discretion  
3 to permit the admission of any reliable and relevant evidence if the general purposes of  
4 the rules of evidence will be served and the interests of justice will best be served by its  
5 admission. At the hearing, the following rights of the parties shall be preserved:

6 (1) The right to present sworn evidence, law, or rules that bear upon the  
7 case.

8 (2) The right to represent themselves or obtain the services of an attorney  
9 at their own expense.

10 (3) The right to subpoena witnesses, cross-examine witnesses of the other  
11 party, and make a closing argument summarizing the party's view of  
12 the case and the law.

13 (e) After the hearing, the court shall enter a written order containing findings of  
14 fact and conclusions of law. The order shall be reduced to writing, signed, and entered  
15 no later than 30 days following the completion of the hearing. A copy of the order shall  
16 be served on each party or the party's attorney of record. If the court concludes that the  
17 director has not established by a preponderance of the evidence the correctness of the  
18 determination of abuse or serious neglect or the identification of the responsible  
19 individual, the court shall reverse the director's decision and order the director to notify  
20 the Department of Health and Human Services to expunge the individual's name from  
21 the responsible individual list. If the court concludes that sufficient evidence has not  
22 been presented to support a determination of abuse, but there is sufficient evidence to  
23 support a determination of serious neglect and the identification of the individual  
24 seeking expunction as a responsible individual, the court shall modify the director's  
25 decision and order the director to notify the Department of Health and Human Services  
26 to change the entry on the responsible individuals list to that of neglect. Any appeal  
27 shall be in accordance with G.S. 7A-27(c).

28 (f) Any individual who has been identified as a responsible individual in an  
29 abuse or serious neglect case shall no longer be entitled to challenge the placement of  
30 the individual's name on the responsible individuals list pursuant to this section if:

31 (1) That individual is criminally convicted as a result of the same incident.  
32 The prosecutor shall inform the director of the result of the criminal  
33 proceeding and the director shall immediately notify the Department of  
34 Health and Human Services of this information for consideration by  
35 the Department of Health and Human Services as to whether to  
36 expunge the individual's name from the responsible individuals list.

37 (2) That individual is a respondent in a juvenile court proceeding  
38 regarding abuse or neglect resulting from the same incident. The  
39 director shall immediately notify the Department of Health and Human  
40 Services of this information for consideration by the Department of  
41 Health and Human Services as to whether to expunge the individual's  
42 name from the responsible individuals list.

43 (3) That individual fails to make a timely request to the director who made  
44 the determination of abuse or serious neglect and identified the

1                    individual as a responsible individual for the expunction of the  
2                    individual's name from the responsible individuals list.

3            (4)    That individual fails to file a petition for expunction in a timely  
4                    manner.

5            (5)    That individual fails to keep the county department of social services  
6                    informed of his current address throughout an investigative assessment  
7                    response and any request for expunction so that the individual may  
8                    receive notification of the director's decisions.

9    If prior to or during any proceeding provided for in this section, an individual seeking  
10 expunction is named as a respondent in a juvenile court case resulting from the same  
11 incident, the director, the district court judge, or the Court of Appeals shall stay any  
12 further proceedings for the expunction of that individual's name from the responsible  
13 individuals list until the juvenile court case is concluded or dismissed. If a juvenile court  
14 case resulting from the same determination of abuse or serious neglect is dismissed, or  
15 concludes without an adjudication of abuse or neglect, or with an adjudication that  
16 differs from the prior determination, the director shall notify the Department of Health  
17 and Human Services to expunge the individual's name from the responsible individuals  
18 list or modify the prior decision of the director accordingly.

19        (g)    Notwithstanding any time limitations contained in this section, in the interests  
20 of justice or for extraordinary circumstances, a district court may review a  
21 determination of abuse or serious neglect at any time."

22                    **SECTION 6.** This act becomes effective October 1, 2005, and applies to  
23 abuse or neglect reports received by county departments of social services on or after  
24 that date.