

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-399
HOUSE BILL 661**

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

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. – An individual identified by the director as the person who is 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-311 reads as rewritten:

"§ 7B-311. Central ~~registry~~; registry; responsible individuals list.

(a) The Department of Health and Human Services shall maintain a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment that are reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. This data shall be furnished by county directors of social services to the Department of Health and Human Services and shall be confidential, subject to ~~policies~~ rules adopted by the Social Services Commission providing for its use for study and research and for other appropriate disclosure. Data shall not be used at any hearing or court proceeding unless based upon a final judgment of a court of law.

(b) The Department shall also maintain a list of responsible individuals identified by county directors of social services as the result of investigative assessment responses. The Department may provide information from this list to child caring institutions, child

placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.

(c) It is unlawful for any public official or public employee to knowingly and willfully release information from either the central registry or the responsible individuals list to a person who is not authorized to receive the information. It is unlawful for any person who is authorized to receive information from the central registry or the responsible individuals list to release that information to an unauthorized person. It is unlawful for any person who is not authorized to receive information from the central registry or the responsible individuals list to access or attempt to access that information. A person who commits an offense described in this subsection is guilty of a Class 3 misdemeanor.

(d) The Social Services Commission shall adopt rules regarding the operation of the central registry and responsible individuals list, including:

- (1) Procedures for filing data.
- (2) Procedures for notifying a responsible individual of a determination of abuse or serious neglect.
- (3) Procedures for correcting and expunging information.
- (4) Determining persons who are authorized to receive information from the responsible individuals list.
- (5) Releasing information from the responsible individuals list to authorized requestors.
- (6) Gathering statistical information.
- (7) Keeping and maintaining information placed in the registry and on the responsible individuals list.
- (8) A definition of 'serious neglect'."

SECTION 3. Subchapter I of Chapter 7B of the General Statutes is amended by adding a new Article to read:

"Article 3A.

"Expunction; Responsible Individuals List.

"§ 7B-312. Notification to individual responsible for abuse or substantial neglect.

(a) Within five working days after the completion of an investigative assessment response that results in a determination of abuse or serious neglect, the director shall notify the Department of the results of the assessment and shall give personal written notice to the responsible individual of the determination.

(b) If personal written notice is not obtained within 15 days of the determination being made, the director shall send the notice to the responsible individual by registered or certified mail, return receipt requested, and addressed to the responsible individual at the individual's last known address. Only the responsible individual may receive the notice.

(c) The notice shall include all of the following:

- (1) A statement informing the individual of the nature of the investigative assessment response and whether the director determined abuse or serious neglect or both.

- (2) A statement summarizing the substantial evidence supporting the director's determination without identifying the reporter or collateral contacts.
- (3) A statement informing the individual that the individual's name has been placed on the responsible individuals list as provided in G.S. 7B-311, and that the Department of Health and Human Services may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.
- (4) A clear description of the actions the individual must take to have his or her name removed from the responsible individuals list. The description shall include information regarding how to request an expunction by the director of the individual's name from the responsible individuals list and procedures for seeking review by the district attorney and for seeking judicial review of the director's decision not to remove the individual's name from the list.

"§ 7B-313. Requests for expunction; director review.

(a) An individual who has been identified as a responsible individual as the result of an investigative assessment response may, within 30 days after receipt of the notice under G.S. 7B-312(c), request that the director who determined the abuse or serious neglect and identified the individual as a responsible individual expunge the individual's name from the responsible individuals list. A request for expunction under this subsection shall be in writing, addressed to the director who determined the abuse or serious neglect and identified the individual as a responsible individual, and delivered in person or by certified mail, return receipt requested, within 30 days after receipt of notice.

(b) Upon receipt of a timely request for expunction under subsection (a) of this section, the director shall review all records, reports, and other information gathered during the investigative assessment response. The purpose of the review is to determine whether there is substantial evidence to support the determination and the placement of the individual's name on the responsible individuals list. Within 15 working days of receipt of the request for expunction, the director shall proceed as follows:

- (1) If the director decides that there is not substantial evidence in the records, reports, and other information gathered during the investigative assessment response to support a determination of abuse or serious neglect and to support the identification of the individual as a responsible individual, the director shall notify the Department of Health and Human Services to expunge the individual's name from the responsible individuals list. The director shall also prepare a written statement of the director's decision and send the statement to the individual seeking expunction, by personal delivery or first-class mail.
- (2) If the director decides that there is substantial evidence in the records, reports, and other information gathered during the investigative

assessment response to support a determination of abuse or serious neglect and to support the identification of the individual as a responsible individual, the director may uphold or modify the director's prior decision accordingly and refuse the request for an expunction. The director shall prepare a written statement of the director's decision including the reasons for the decision. The statement shall clearly indicate that it is a final decision and include information regarding the amount of time the individual has to request a review by the district attorney or to file a petition for expunction with the district court. The director shall send the statement to the individual seeking expunction by personal delivery or first-class mail. The director shall also include a second notice containing the information required by G.S. 7B-312(c) and a copy of a petition for expunction form.

(c) If the director does not provide a written response to a request for expunction within 15 working days after its receipt, the failure shall be considered a refusal to expunge the individual's name, and the individual may request a review of the decision by the district attorney or file a petition for expunction with the district court.

(d) If the director modifies the prior determination, the director shall notify the Department of Health and Human Services, which shall change its records upon receipt of the notification.

(e) An individual whose request for expunction has been refused by a director under this section may, within 30 days after receipt of the notice of refusal, request a review of the director's decision by the district attorney under G.S. 7B-314 or file a petition requesting expunction with the district court under G.S. 7B-315.

"§ 7B-314. District attorney review expunction request.

(a) Within 30 days of the receipt of notice of the director's refusal to expunge the individual's name under G.S. 7B-313(b) or (c), the individual may request a review of the director's decision by the district attorney of the prosecutorial district in which the abuse or serious neglect report arose. The district attorney may delegate the review of the director's decision to a designee within the district attorney's office. The individual shall request a review under this section by submitting a letter directed to the attention of the district attorney. The letter shall contain the name, date of birth, address of the individual seeking expunction, and the name of the juvenile who was the subject of the determination of abuse or serious neglect. Failure to make a timely request to the district attorney to review the director's decision shall constitute a waiver of the individual's right of review by the district attorney, but shall not bar the individual from filing a petition for expunction under G.S. 7B-315.

(b) The director shall provide the district attorney all the information the director used in making the determination. The district attorney shall review the director's decision to refuse to expunge the individual's name from the responsible individuals list, and within 30 days' receipt of the request to review, make a determination of agreement or disagreement with the director's decision.

(c) If the district attorney determines that there is not substantial evidence to support a determination of abuse or serious neglect and to support the identification of an individual as a responsible individual, the district attorney shall notify the individual and the director in writing. The director shall notify the Department of Health and Human Services within five working days of the district attorney's determination, and the Department shall change its records upon receipt of the notification.

(d) If the district attorney determines that there is substantial evidence to support a determination of abuse or serious neglect and to support the identification of an individual as a responsible individual, the district attorney shall notify the director, and the individual in writing.

"§ 7B-315. Petition for expunction; district court.

(a) Within 30 days of the receipt of notice of the director's decision under G.S. 7B-313(b) or (c), or within 30 days from the date of a determination by the district attorney under G.S. 7B-314, whichever is later, an individual may file a petition for expunction with the district court of the county in which the abuse or serious neglect report arose. The request shall be by a petition for expunction filed with the appropriate clerk of court's office with a copy delivered in person or by certified mail, return receipt requested, to the director. The petition for expunction shall contain the name, date of birth, and address of the individual seeking expunction, the name of the juvenile who was the subject of the determination of abuse or serious neglect, and facts that invoke the jurisdiction of the court. Failure to timely file a petition for expunction constitutes a waiver of the individual's right to file a petition for expunction and to a district court hearing.

(b) The clerk of court shall maintain a separate docket for expunction actions and upon receipt of a filed petition for expunction shall calendar the matter for hearing at a session of district court hearing juvenile matters and send notice of the hearing to the petitioner and to the director. Upon the request of a party, the court shall close the hearing to all persons, except officers of the court, the parties, and their witnesses. At the hearing, the director shall have the burden of proving by a preponderance of the evidence the correctness of the director's decision determining abuse or serious neglect and identifying the individual seeking expunction as a responsible individual. The hearing shall be before a judge without a jury. The rules of evidence applicable in civil cases shall apply. However, the court shall have discretion to permit the admission of any reliable and relevant evidence if the general purposes of the rules of evidence and the interests of justice will best be served by its admission.

(c) At the hearing, the following rights of the parties shall be preserved:

- (1) The right to present sworn evidence, law, or rules that bear upon the case.
- (2) The right to represent themselves or obtain the services of an attorney at their own expense.
- (3) The right to subpoena witnesses, cross-examine witnesses of the other party, and make a closing argument summarizing the party's view of the case and the law.

(d) Within 30 days after completion of the hearing, the court shall enter a signed, written order containing findings of fact and conclusions of law. A copy of the order shall be served on each party or the party's attorney of record. If the court concludes that the director has not established by a preponderance of the evidence the correctness of the determination of abuse or serious neglect or the identification of the responsible individual, the court shall reverse the director's decision and order the director to notify the Department of Health and Human Services to expunge the individual's name from the responsible individuals list. If the court concludes that sufficient evidence has not been presented to support a determination of abuse, but there is sufficient evidence to support a determination of serious neglect and the identification of the individual seeking expunction as a responsible individual, the court shall modify the director's decision and order the director to notify the Department of Health and Human Services to change the entry on the responsible individuals list to that of neglect.

(e) Notwithstanding any time limitations contained in this section or the provisions of G.S. 7B-316(a)(3) or (4), a district court may review a determination of abuse or serious neglect at any time if the review serves the interests of justice or for extraordinary circumstances.

(f) A party may appeal the district court's decision under G.S. 7A-27(c).

"§ 7B-316. Persons ineligible to request expunction; stay of expunction proceeding pending juvenile court case.

(a) Any individual who has been identified as a responsible individual in an abuse or serious neglect case is not entitled to challenge the placement of the individual's name on the responsible individuals list if any of the following apply:

- (1) The individual is criminally convicted as a result of the same incident. The district attorney shall inform the director of the result of the criminal proceeding, and the director shall immediately notify the Department of Health and Human Services. The Department shall consider this information when determining whether the individual's name should remain on or be expunged from the responsible individuals list.
- (2) The individual is a respondent in a juvenile court proceeding regarding abuse or neglect resulting from the same incident. The director shall immediately notify the Department of Health and Human Services. The Department shall consider this information when determining whether the individual's name should remain on or be expunged from the responsible individuals list.
- (3) That individual fails to make a timely request for expunction with the director who made the determination of abuse or serious neglect and identified the individual as a responsible individual.
- (4) That individual fails to file a petition for expunction with the district court in a timely manner.
- (5) That individual fails to keep the county department of social services informed of the individual's current address during any request for

expunction so that the individual may receive notification of the director's decisions.

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

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

SECTION 5. This act becomes effective October 1, 2005, and applies to investigative assessment responses initiated by county departments of social services on or after that date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:41 p.m. this 14th day of September, 2005