

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 661 (Fifth Edition)

SHORT TITLE: Resp. Individuals List/Expunction Process.

SPONSOR(S): Representatives Alexander, Barnhart, and Glazier

<b>FISCAL IMPACT</b>					
	<b>Yes ( )</b>	<b>No ( )</b>	<b>No Estimate Available (x)</b>		
	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>
<b>REVENUES:</b>					
<b>EXPENDITURES:</b>					
<b>Department of Health and Human Service</b>		<b>No estimate available; see Assumptions and Methodology</b>			
<b>Judicial Branch</b>		<b>No estimate available; see Assumptions and Methodology</b>			
<b>POSITIONS (cumulative):</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Health and Human Services, Judicial Branch					
<b>EFFECTIVE DATE:</b> October 1, 2005					

**BILL SUMMARY:**

Amends GS 7B-101 to define “substantiated” to mean that at the conclusion of an investigative assessment, the director of a local department of social services (DSS) has found substantial evidence (relevant evidence a reasonable mind would accept as adequate to support a conclusion) that a juvenile is abused, neglected, or dependent. Amends GS 7B-302 to require DSS, within 5 working days after completing an investigative assessment, to give written notice to the person identified in a substantiated case as the alleged person responsible for rendering the juvenile abused or neglected. The notice must inform the person of the nature of the report and whether DSS substantiated abuse or neglect, or both; summarize the substantial evidence without identifying the reporter or collateral contacts; inform the individual that his or her name will be placed on the responsible individual list, and the potential effect that placement might have on employment involving child care, applying to be a foster parent, or seeking to adopt a child; and describe what action the person may take to request expunction of his or her name from the list. Amends GS 7B-311 to require the Department of Health and Human Services to maintain a list of

individuals responsible for rendering a juvenile abused or neglected in substantiated cases in order to exchange information with authorized requesters. Enacts new GS 7B-312 setting out procedure for person identified as alleged responsible individual in a substantiated report of abuse and neglect to request the DSS director who rendered the substantiation to expunge the person's name from the responsible individual list on the grounds that the substantiation of abuse is not supported by substantial evidence in the records, reports, or other case documentation of the local DSS. Requires request for expunction to be delivered in person or posted by US mail within 15 days after receipt of the notice of a substantiated case. Effective for actions or petitions filed on or after October 1, 2005.

House committee substitute makes the following changes to 1st edition. To clarify purpose of act, changes title to 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. Makes several technical changes. Specifies that, before a person's name is added to the responsible person's list, written notice of the determination of abuse or neglect must be personally served upon the responsible person by the sheriff. Certified mail can be used only if the sheriff is unable to serve, and publication is allowed only when both other methods fail to deliver the notice. Clarifies that the Social Services Commission may adopt rules determining persons authorized to receive information from the responsible individuals list. Extends the time for a responsible individual to request expunction of name from list from 15 to 30 days after receipt of notice. If social services director denies request for expunction, allows responsible person 30 days (was 15 days) to seek judicial review of the denial. Original bill required the filing of a juvenile petition when a responsible person requests judicial review of the denial of a request to remove his or her name from the list. Amended bill creates a district court juvenile proceeding to review the expunction request. Provides that the responsible person file a petition for expunction to be served upon the director who determined that petitioner's name should be on the list. At the hearing, the director has the burden of proving the correctness of the director's determination of abuse or neglect and identification of petitioner as the responsible person. Provides that responsible person loses right to seek expunction if (1) the person is criminally convicted as a result of the same incident, (2) the individual is a respondent in a juvenile proceeding resulting from the same incident, (3) the individual fails to make a timely request for expunction or for review of a denial of a request for expunction, or (4) the individual fails to keep the department of social services informed of his or her current address throughout the investigative and review process. Provides that the court must stay an expunction proceeding if the responsible individual becomes a respondent in a juvenile proceeding involving the same incident. Also specifies that the person's name must be removed from the list if a juvenile proceeding results in a finding that the abuse did not occur or that the named person was not responsible, or if the juvenile petition is dismissed. Specifies that the act applies to abuse and neglect reports received by county departments of social services on or after October 1, 2005.

House amendment makes the following changes to 2nd edition. Amends act to change references from "neglect" or "neglected" to "serious neglect" or "seriously neglected," respectively. Modifies proposed GS 7B-302(g1) to delete requirement that notice be made by publication if written notice cannot be served by the sheriff or by certified mail. Modifies proposed GS 7B-312 to provide that

individual seeking expunction may also request a review of the Director's decision by the District Attorney and to set forth procedures for that review. Also amends section to require (was, authorize) court to close hearing on petition for expunction upon a party's request, to require that the prosecutor and director provide the Department of Health and Human Services with information about results of criminal and juvenile proceedings, and to provide that a district court may review a determination of abuse or serious neglect at any time under extraordinary circumstances. Amends GS 7B-311 to require that Social Services Commission also adopt rules concerning the development of penalties for unlawful dissemination of the central registry information. Makes technical and conforming changes.

Senate committee substitute makes the following changes to 3rd edition. Restructures and makes technical and clarifying changes to most of the bill's language. Provides criminal penalties (Class 3 misdemeanor) for knowing and willful release of information from the registry and list to unauthorized persons. Requires the Social Services Commission to adopt rules to implement the registry and list, including a newly required definition of "serious neglect." Collects procedures for expunction in a new article 3A in GS chapter 7B. Reduces the length of time for response by the director of social services to a request for expunction to 15 (was 30) days, after which the failure to respond can be treated as a denial of the request. Clarifies the standard of review (substantial evidence) and process for review by a district attorney of a determination of abuse or serious neglect. Expressly provides for district court review of such a determination at any time, notwithstanding limitations on the time for appeals.

Senate committee substitute makes the following changes to 4th edition. Requires social services director to provide personal, written notice to the individual who is responsible for rendering a juvenile abused or seriously neglected. Provides that if personal written notice is not obtained within 15 days of the determination, the director must send notice to the responsible individual by registered or certified mail, return receipt requested. Provides that district attorney may delegate to designee in district attorney's office the review of the director's denial of expunction request. Requires that district attorney, as well as other specified officials or agencies, stay proceedings for expunction if individual seeking expunction is named as a respondent in a juvenile court case involving the same incident. Makes additional technical changes.

*Source: Bill Digest H.B. 661 (03/16/0200)*

## **ASSUMPTIONS AND METHODOLOGY:**

### *Department of Health and Human Services*

The Department of Health and Human Services (DHHS) already maintains the Central Registry required by the bill. DHHS believes that no additional funding is required to include the "responsible individuals list." There may be a fiscal impact created by the requirement that local departments of social services give written notice to responsible individuals when investigative assessments result in a determination of abuse or serious neglect. However, until the Social Services Commission adopts the procedures to be used to notify a responsible individual, it is not possible to determine how significant that fiscal impact will be. The Department of Health and Human Services estimates that there will be 20,137 substantiated investigative assessment results in State fiscal year 2005-2006 12,283 substantiated investigative assessment results in State fiscal year 2006-2007. Beginning in State fiscal year 2007-2008, the Department anticipates

approximately 8,189 substantiated investigative assessment results each year. DHHS estimates that potentially thirty percent of the notices may need to be sent via certified mail. Based on an eight-ounce package mailed at current postal rates, the total cost for certified mail, return receipt requested, could be \$36,427 in State fiscal year 2005-2006, \$22,221 in State fiscal year 2006-2007, and \$14,816 in subsequent years.

### *Judicial Branch*

The court impact under the bill occurs as a result of persons deemed responsible individuals on the new list being able to request expunction from the list by district attorney review and to petition the district court for expunction within thirty working days of the director's expunction refusal. Under new section G.S. 7B-313, such an individual may request review by the district attorney of the prosecutorial district or district court in which the abuse or serious neglect report arose if the director refuses the expunction request, or if the director fails to act on the expunction request within fifteen working days after its receipt. New section 7B-314 requires the district attorney to notify the director and the individual in writing if the director finds that substantial evidence supports the determination of abuse or serious neglect and the identification of the individual as a responsible individual. In petitioning the district court for expunction under new section G.S. 7B-315, the responsible individual must file a petition for expunction with the clerk. The clerk must maintain a separate docket for such actions, calendar the matter for hearing upon receipt of a filed petition, and send notice of the hearing to the petitioner and the director. This section also clarifies that any appeal of the district court's order shall lie with the Court of Appeals pursuant to G.S. 7A-27(c). It further provides that the district court may review a determination of abuse or serious neglect at any time in the interests of justice or for extraordinary circumstances.

During fiscal year 2003-04, the Guardian ad Litem program served 15,658 abused and neglected children in 26,392 hearings. The Department of Social Services (DSS) reports some 39,000 substantiated allegations of abuse and/or neglect that may result in a person being placed on the listing, but apparently there is no estimate of how many actually will be listed. In any event, with this new procedure, we have no way to estimate the number of individuals eligible for expunction who would seek expunction from DHHS, or then the number of those requests for expunction for which review would be sought by the district attorney or by petitioning the district court.

While specific estimates are not possible, the data do indicate that the listing required by this bill would apply to thousands of individuals, and to the extent that there are requests and petitions for expunction, there would be a substantial impact on the court system. We expect an increase in workload for district attorneys in order to consider these requests, make the necessary determinations, and notify the parties involved. In district court, this expunction process would mean increased workload for both clerks and judges. Furthermore, if appeals result from district court in these matters, the workload of the Court of Appeals would also be affected.

**SOURCES OF DATA:** Department of Health and Human Services, Administrative Office of the Courts Research and Planning, United States Postal Service

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** August 23, 2005

**Signed Copy Located in the NCGA Principal Clerk's Offices**