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Short Title: Resp. Individuals List/Expunction Process. (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 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

1 repeated abuses of the same juvenile or of other juveniles in the same family. This data  
2 shall be furnished by county directors of social services to the Department of Health and  
3 Human Services and shall be confidential, subject to ~~policies~~ rules adopted by the Social  
4 Services Commission providing for its use for study and research and for other  
5 appropriate disclosure. Data shall not be used at any hearing or court proceeding unless  
6 based upon a final judgment of a court of law.

7 (b) The Department shall also maintain a list of responsible individuals identified  
8 by county directors of social services as the result of investigative assessment responses.  
9 The Department may provide information from this list to child caring institutions, child  
10 placing agencies, group home facilities, and other providers of foster care, child care, or  
11 adoption services that need to determine the fitness of individuals to care for or adopt  
12 children.

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

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

24 (1) Procedures for filing data.

25 (2) Procedures for notifying a responsible individual of a determination of  
26 abuse or serious neglect.

27 (3) Procedures for correcting and expunging information.

28 (4) Determining persons who are authorized to receive information from  
29 the responsible individuals list.

30 (5) Releasing information from the responsible individuals list to  
31 authorized requestors.

32 (6) Gathering statistical information.

33 (7) Keeping and maintaining information placed in the registry and on the  
34 responsible individuals list.

35 (8) A definition of 'serious neglect'."

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

38 "Article 3A.

39 "Expunction; Responsible Individuals List.

40 "**§ 7B-312. Notification to individual responsible for abuse or substantial neglect.**

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

1       (b) The director shall notify the responsible individual of the determination by  
2 delivering the notice to the sheriff of the county in which the responsible individual is  
3 believed to be located. The sheriff shall attempt to serve the notice upon the individual  
4 by delivering the notice to the individual. The sheriff shall not deliver the notice to any  
5 person other than the responsible individual. If the sheriff is not able to deliver the  
6 notice to the responsible individual, the director shall send the notice to the responsible  
7 individual by registered or certified mail, return receipt requested, and addressed to the  
8 responsible individual. Only the responsible individual may receive the notice.

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

- 10       (1) A statement informing the individual of the nature of the investigative  
11 assessment response and whether the director determined abuse or  
12 serious neglect or both.
- 13       (2) A statement summarizing the substantial evidence supporting the  
14 director's determination without identifying the reporter or collateral  
15 contacts.
- 16       (3) A statement informing the individual that the individual's name has  
17 been placed on the responsible individuals list as provided in  
18 G.S. 7B-311, and that the Department of Health and Human Services  
19 may provide information from this list to child caring institutions,  
20 child placing agencies, group home facilities, and other providers of  
21 foster care, child care, or adoption services that need to determine the  
22 fitness of individuals to care for or adopt children.
- 23       (4) A clear description of the actions the individual must take to have his  
24 or her name removed from the responsible individuals list. The  
25 description shall include information regarding how to request an  
26 expunction by the director of the individual's name from the  
27 responsible individuals list and procedures for seeking review by the  
28 district attorney and for seeking judicial review of the director's  
29 decision not to remove the individual's name from the list.

30 **§ 7B-313. Requests for expunction; director review.**

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

40       (b) Upon receipt of a timely request for expunction under subsection (a) of this  
41 section, the director shall review all records, reports, and other information gathered  
42 during the investigative assessment response. The purpose of the review is to determine  
43 whether there is substantial evidence to support the determination and the placement of

1 the individual's name on the responsible individuals list. Within 15 working days of  
2 receipt of the request for expunction, the director shall proceed as follows:

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

12 (2) If the director decides that there is substantial evidence in the records,  
13 reports, and other information gathered during the investigative  
14 assessment response to support a determination of abuse or serious  
15 neglect and to support the identification of the individual as a  
16 responsible individual, the director may uphold or modify the  
17 director's prior decision accordingly and refuse the request for an  
18 expunction. The director shall prepare a written statement of the  
19 director's decision including the reasons for the decision. The  
20 statement shall clearly indicate that it is a final decision and include  
21 information regarding the amount of time the individual has to request  
22 a review by the district attorney or to file a petition for expunction with  
23 the district court. The director shall send the statement to the  
24 individual seeking expunction by personal delivery or first-class mail.  
25 The director shall also include a second notice containing the  
26 information required by G.S. 7B-312(c) and a copy of a petition for  
27 expunction form.

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

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

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

39 **"§ 7B-314. District attorney review expunction request.**

40 (a) Within 30 days of the receipt of notice of the director's refusal to expunge the  
41 individual's name under G.S. 7B-313(b) or (c), the individual may request a review of  
42 the director's decision by the district attorney of the prosecutorial district in which the  
43 abuse or serious neglect report arose. The individual shall request a review under this  
44 section by submitting a letter directed to the attention of the district attorney. The letter

1 shall contain the name, date of birth, address of the individual seeking expunction, and  
2 the name of the juvenile who was the subject of the determination of abuse or serious  
3 neglect. Failure to make a timely request to the district attorney to review the director's  
4 decision shall constitute a waiver of the individual's right of review by the district  
5 attorney, but shall not bar the individual from filing a petition for expunction under  
6 G.S. 7B-315.

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

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

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

22 **"§ 7B-315. Petition for expunction; district court.**

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

35 (b) The clerk of court shall maintain a separate docket for expunction actions and  
36 upon receipt of a filed petition for expunction shall calendar the matter for hearing at a  
37 session of district court hearing juvenile matters and send notice of the hearing to the  
38 petitioner and to the director. Upon the request of a party, the court shall close the  
39 hearing to all persons, except officers of the court, the parties, and their witnesses. At  
40 the hearing, the director shall have the burden of proving by a preponderance of the  
41 evidence the correctness of the director's decision determining abuse or serious neglect  
42 and identifying the individual seeking expunction as a responsible individual. The  
43 hearing shall be before a judge without a jury. The rules of evidence applicable in civil  
44 cases shall apply. However, the court shall have discretion to permit the admission of

1 any reliable and relevant evidence if the general purposes of the rules of evidence and  
2 the interests of justice will best be served by its admission.

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

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

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

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

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

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

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

29 **§ 7B-316. Persons ineligible to request expunction; stay of expunction proceeding**  
30 **pending juvenile court case.**

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

34 (1) The individual is criminally convicted as a result of the same incident.  
35 The prosecutor shall inform the director of the result of the criminal  
36 proceeding, and the director shall immediately notify the Department  
37 of Health and Human Services. The Department shall consider this  
38 information when determining whether the individual's name should  
39 remain on or be expunged from the responsible individuals list.

40 (2) The individual is a respondent in a juvenile court proceeding regarding  
41 abuse or neglect resulting from the same incident. The director shall  
42 immediately notify the Department of Health and Human Services.  
43 The Department shall consider this information when determining

1                    whether the individual's name should remain on or be expunged from  
 2                    the responsible individuals list.

3                    (3)            That individual fails to make a timely request for expunction with the  
 4                    director who made the determination of abuse or serious neglect and  
 5                    identified the individual as a responsible individual.

6                    (4)            That individual fails to file a petition for expunction with the district  
 7                    court in a timely manner.

8                    (5)            That individual fails to keep the county department of social services  
 9                    informed of the individual's current address during any request for  
 10                   expunction so that the individual may receive notification of the  
 11                   director's decisions.

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

22            **SECTION 4.** G.S. 7B-200(a) reads as rewritten:

23            "**§ 7B-200. Jurisdiction.**

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

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

28            (1)    Proceedings under the Interstate Compact on the Placement of  
 29            Children set forth in Article 38 of this ~~Chapter;~~Chapter.

30            (2)    Proceedings involving judicial consent for emergency surgical or  
 31            medical treatment for a juvenile when the juvenile's parent, guardian,  
 32            custodian, or other person who has assumed the status and obligation  
 33            of a parent without being awarded legal custody of the juvenile by a  
 34            court refuses to consent for treatment to be ~~rendered;~~rendered.

35            (3)    Proceedings to determine whether a juvenile should be  
 36            ~~emancipated;~~emancipated.

37            (4)    Proceedings to terminate parental ~~rights;~~rights.

38            (5)    Proceedings to review the placement of a juvenile in foster care  
 39            pursuant to an agreement between the juvenile's parents or guardian  
 40            and a county department of social ~~services;~~services.

41            (6)    Proceedings in which a person is alleged to have obstructed or  
 42            interfered with an investigation required by ~~G.S. 7B-302;~~G.S. 7B-302.

- 1           (7) Proceedings involving consent for an abortion on an unemancipated  
2           minor ~~pursuant to~~ under Article 1A, Part 2 of Chapter 90 of the  
3           General ~~Statutes;~~ and Statutes.
- 4           (8) Proceedings by an underage party seeking judicial authorization to  
5           ~~marry, pursuant to~~ marry under Article 1 of Chapter 51 of the General  
6           Statutes.
- 7           (9) Petitions for expunction of an individual's name from the responsible  
8           individuals list under Article 3A of this Chapter."

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