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SENATE BILL 567
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Proposed Conference Committee Substitute S567-PCCS65089-SB-1

Short Title: Responsible Individuals List/Abuse & Neglect.

(Public)

Sponsors:

Referred to:

March 12, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS PERTAINING TO THE RESPONSIBLE INDIVIDUALS
3 LIST AS RELATED TO JUVENILE ABUSE, NEGLECT, AND DEPENDENCY.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 7B-101(18a) reads as rewritten:

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

8 ...

9 (18a) Responsible individual. – ~~An individual identified by the director as the~~
10 ~~person who is responsible for rendering a juvenile abused or seriously~~
11 ~~neglected.~~ A parent, guardian, custodian, or caretaker who abuses or
12 seriously neglects a juvenile.

13"

14 **SECTION 2.** G.S. 7B-101 is amended by adding a new subdivision to read:

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

17 ...

18 (19a) Serious neglect. – Conduct, behavior, or inaction of the juvenile's parent,
19 guardian, custodian, or caretaker that evidences a disregard of consequences
20 of such magnitude that the conduct, behavior, or inaction constitutes an
21 unequivocal danger to the juvenile's health, welfare, or safety, but does not
22 constitute abuse.

23"

24 **SECTION 3.** G.S. 7B-200(a)(9) reads as rewritten:

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

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

29 ...



- 1 (9) Petitions for ~~expunction of an individual's name from the responsible~~
2 ~~individuals list~~ judicial review of a director's determination under Article 3A
3 of this Chapter."

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

5 **"§ 7B-311. Central registry; responsible individuals list.**

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

15 (b) The Department shall also maintain a list of responsible ~~individuals identified by~~
16 ~~county directors of social services as the result of investigative assessment~~
17 ~~responses~~ individuals. The Department may provide information from this list to child caring
18 institutions, child placing agencies, group home facilities, and other providers of foster care,
19 child care, or adoption services that need to determine the fitness of individuals to care for or
20 adopt children. The name of an individual who has been identified as a responsible individual
21 shall be placed on the responsible individuals list only after one of the following:

- 22 (1) The individual is properly notified pursuant to G.S. 7B-320 and fails to file a
23 petition for judicial review in a timely manner.
24 (2) The court determines that the individual is a responsible individual as a
25 result of a hearing either:
26 a. On the individual's petition for judicial review; or
27 b. On a juvenile petition that alleges and seeks a determination that the
28 individual is a responsible person.
29 (3) The individual is criminally convicted as a result of the same incident
30 involved in an investigative assessment response.

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

39 (d) The Social Services Commission shall adopt rules regarding the operation of the
40 central registry and responsible individuals list, ~~including~~ including procedures for each of the
41 following:

- 42 (1) ~~Procedures for filing~~ Filing data.
43 (2) ~~Procedures for notifying~~ Notifying an individual that the individual has been
44 determined by the director to be a responsible individual of a determination
45 of abuse or serious neglect individual.
46 (3) ~~Procedures for correcting~~ Correcting and expunging information.
47 (4) Determining persons who are authorized to receive information from the
48 responsible individuals list.
49 (5) Releasing information from the responsible individuals list to authorized
50 requestors.
51 (6) Gathering statistical information.

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

3 ~~(8) A definition of "serious neglect".~~

4 **SECTION 5.** The title of Article 3A of Chapter 7B of the General Statutes and
5 G.S. 7B-320 read as rewritten:

6 "Article 3A.

7 ~~Expunction; Judicial Review; Responsible Individuals List.~~

8 "**§ 7B-320. Notification to individual determined to be a responsible for abuse or**
9 **substantial neglect individual.**

10 (a) Within five working days after the completion of an investigative assessment
11 response that results in a determination of abuse or serious ~~neglect,~~neglect and the
12 identification of a responsible individual, the director shall ~~notify the Department of the results~~
13 ~~of the assessment and shall give personal~~personally deliver written notice of the determination
14 to the responsible individual of the determination identified individual.

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

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

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

24 (1a) A statement that the individual has been identified as a responsible
25 individual.

26 (2) A statement summarizing the substantial evidence supporting the director's
27 determination without identifying the reporter or collateral contacts.

28 (3) A statement informing the individual that unless the individual petitions for
29 judicial review, the individual's name ~~has been~~will be placed on the
30 responsible individuals list as provided in G.S. 7B-311, and that the
31 Department of Health and Human Services may provide information from
32 this list to child caring institutions, child placing agencies, group home
33 facilities, and other providers of foster care, child care, or adoption services
34 that need to determine the fitness of individuals to care for or adopt children.

35 (4) A clear description of the actions the individual must take ~~to have his or her~~
36 ~~name removed from the responsible individuals list. The description shall~~
37 ~~include information regarding how to request an expunction by the director~~
38 ~~of the individual's name from the responsible individuals list and procedures~~
39 ~~for seeking review by the district attorney and for seeking to seek~~ judicial
40 review of the director's ~~decision not to remove the individual's name from~~
41 ~~the list.~~determination.

42 (d) In addition to the notice, the director shall provide the individual with a copy of a
43 petition for judicial review form and instructions for how to file and serve the petition."

44 **SECTION 6.** G.S. 7B-321 and G.S. 7B-322 are repealed.

45 **SECTION 7.** G.S. 7B-323 reads as rewritten:

46 "**§ 7B-323. Petition for ~~expunction;~~judicial review; district court.**

47 (a) Within ~~30~~15 days of the receipt of notice of the director's ~~decision under~~
48 ~~G.S. 7B-321(b) or (c), or within 30 days from the date of a determination by the district~~
49 ~~attorney under G.S. 7B-322, whichever is later,~~determination under G.S. 7B-320(a) or (b), an
50 individual may file a petition for ~~expunction~~judicial review with the district court of the county
51 in which the abuse or serious neglect report arose. The request shall be by a petition for

1 ~~expunction~~ judicial review filed with the appropriate clerk of court's office with a copy
2 delivered in person or by certified mail, return receipt requested, to the ~~director~~ director who
3 determined the abuse or serious neglect and identified the individual as a responsible
4 individual. The petition for ~~expunction~~ judicial review shall contain the name, date of birth, and
5 address of the individual seeking ~~expunction~~ judicial review, the name of the juvenile who was
6 the subject of the determination of abuse or serious neglect, and facts that invoke the
7 jurisdiction of the court. Failure to timely file a petition for ~~expunction~~ judicial review
8 constitutes a waiver of the individual's right to ~~file a petition for expunction and to a district~~
9 ~~court hearing~~ hearing and to contest the placement of the individual's name on the responsible
10 individuals list.

11 (b) The clerk of court shall maintain a separate docket for ~~expunction actions and upon~~
12 ~~receipt of a filed petition for expunction~~ judicial review actions. Upon the filing of a petition for
13 judicial review, the clerk shall calendar the matter for hearing within 15 days from the date the
14 petition is filed at a session of district court hearing juvenile ~~matters and~~ matters or, if there is
15 no such session, at the next session of juvenile court. The clerk shall send notice of the hearing
16 to the petitioner and to the ~~director~~ director who determined the abuse or serious neglect and
17 identified the individual as a responsible individual. Upon the request of a party, the court shall
18 close the hearing to all persons, except officers of the court, the parties, and their witnesses. At
19 the hearing, the director shall have the burden of proving by a preponderance of the evidence
20 the ~~correctness of the director's decision determining~~ abuse or serious neglect and identifying
21 the identification of the individual seeking expunction judicial review as a responsible
22 individual. The hearing shall be before a judge without a jury. The rules of evidence applicable
23 in civil cases shall apply. However, the ~~court shall have discretion to~~ court, in its discretion,
24 may permit the admission of any reliable and relevant evidence if the general purposes of the
25 rules of evidence and the interests of justice will best be served by its admission.

26 (b1) Upon receipt of a notice of hearing for judicial review, the director who identified
27 the individual as a responsible individual shall review all records, reports, and other
28 information gathered during the investigative assessment response. If after a review, the
29 director determines that there is not sufficient evidence to support a determination that the
30 individual abused or seriously neglected the juvenile and is a responsible individual, the
31 director shall prepare a written statement of the director's determination and either deliver the
32 statement personally to the individual seeking judicial review or send the statement by
33 first-class mail. The director shall also give written notice of the director's determination to the
34 clerk to be placed in the court file, and the judicial review hearing shall be cancelled with
35 notice of the cancellation given by the clerk to the petitioner.

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

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

43 (d) Within 30 days after completion of the hearing, the court shall enter a ~~signed,~~
44 written order containing findings of fact and conclusions of law. ~~A~~ The clerk shall serve a
45 copy of the order shall be served on each party or the party's attorney of record. If the court
46 concludes that the director has not established by a preponderance of the evidence ~~the~~
47 ~~correctness of the determination~~ of abuse or serious neglect or the identification of the
48 responsible individual, the court shall reverse the director's ~~decision~~ determination and order
49 the director to ~~notify the Department of Health and Human Services to expunge~~ not to place
50 the individual's name ~~from~~ on the responsible individuals list. If the court concludes that sufficient
51 evidence has not been presented to support a determination of abuse, but there is sufficient

1 ~~evidence to support a determination of the director has established by a preponderance of the~~
 2 ~~evidence abuse or serious neglect and the identification of the individual seeking expunction~~
 3 ~~judicial review as a responsible individual, the court shall modify the director's decision and~~
 4 ~~order the director to notify the Department of Health and Human Services to change the entry~~
 5 ~~place the individual's name on the responsible individuals list to that of neglect list, consistent~~
 6 ~~with the court's order.~~

7 (e) Notwithstanding any time limitations contained in this section or the provisions of
 8 ~~G.S. 7B-324(a)(3) or (4), G.S. 7B-324(a)(4), upon the filing of a petition for judicial review by~~
 9 ~~an individual identified by a director as a responsible individual, the a district court of the~~
 10 ~~county in which the abuse or neglect report arose may review a director's determination of~~
 11 ~~abuse or serious neglect at any time if the review serves the interests of justice or for~~
 12 ~~extraordinary circumstances. If the district court undertakes such a review, a hearing shall be~~
 13 ~~held pursuant to this section at which the director shall have the burden of establishing by a~~
 14 ~~preponderance of the evidence abuse or serious neglect and the identification of the individual~~
 15 ~~seeking judicial review as a responsible individual. If the court concludes that the director has~~
 16 ~~not established by a preponderance of the evidence abuse or serious neglect or the identification~~
 17 ~~of the responsible individual, the court shall reverse the director's determination and order the~~
 18 ~~director to expunge the individual's name from the responsible individuals list.~~

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

20 **SECTION 8.** G.S. 7B-324 reads as rewritten:

21 "**§ 7B-324. Persons ineligible to ~~request expunction;~~ petition for judicial review; stay of**
 22 **~~expunction-judicial review proceeding pending juvenile court case.~~**

23 (a) ~~Any~~ An individual who has been identified by a director as a responsible individual
 24 ~~in an abuse or serious neglect case is not entitled to challenge the placement of the individual's~~
 25 ~~name on the responsible individuals list may not petition for judicial review if any of the~~
 26 following apply:

27 (1) The individual is criminally convicted as a result of the same incident. The
 28 district attorney shall inform the director of the result of the criminal
 29 proceeding, and the director shall immediately notify the Department of
 30 Health and Human Services. The Department shall consider this information
 31 when determining whether the individual's name should remain on or be
 32 expunged from the responsible individuals list. ~~proceeding.~~

33 (2) The individual is a respondent in a juvenile court proceeding regarding
 34 abuse or neglect resulting from the same incident. The director shall
 35 immediately notify the Department of Health and Human Services. The
 36 Department shall consider this information when determining whether the
 37 individual's name should remain on or be expunged from the responsible
 38 individuals list. ~~incident that concludes with an adjudication of abuse or~~
 39 ~~neglect and a determination that the individual has abused or seriously~~
 40 ~~neglected the juvenile and is a responsible individual.~~

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

44 (4) ~~That~~ After proper notice, the individual fails to file a petition for ~~expunction~~
 45 ~~judicial review with the district court in a timely manner.~~

46 (5) ~~That individual fails to keep the county department of social services~~
 47 ~~informed of the individual's current address during any request for~~
 48 ~~expunction so that the individual may receive notification of the director's~~
 49 ~~decisions.~~

50 (b) ~~If, prior to or during any proceeding provided for in this section,~~ If an individual
 51 seeking ~~expunction-judicial review~~ is named as a respondent in a juvenile court case resulting

1 from the same incident, ~~the director, the district attorney, the district court judge, or the Court~~
 2 ~~of Appeals shall stay any further proceedings for the expunction of that individual's name from~~
 3 ~~the responsible individuals list until the juvenile court case is concluded or dismissed.~~the
 4 district court judge may stay the judicial review proceeding or consolidate the proceeding with
 5 the juvenile court case. If a the juvenile court case resulting from the same determination of
 6 abuse or serious neglect is involuntarily dismissed, or concludes without an adjudication of
 7 abuse or neglect, or with an adjudication that differs from the prior determination, neglect and a
 8 determination that the individual has abused or seriously neglected a juvenile and is a
 9 responsible individual, the director shall notify the Department of Health and Human Services
 10 to expunge not place the individual's name from on the responsible individuals list or modify
 11 the prior decision of the director accordingly list. If a juvenile court case concludes with an
 12 adjudication of abuse or neglect and a determination that the individual has abused or seriously
 13 neglected a juvenile and is a responsible individual, the director shall place that individual's
 14 name on the responsible individuals list, consistent with the court's order."

15 **SECTION 9.** G.S. 7B-402(a) reads as rewritten:

16 "(a) The petition shall contain the name, date of birth, address of the juvenile, the name
 17 and last known address of the juvenile's parent, guardian, or custodian, and allegations of facts
 18 sufficient to invoke jurisdiction over the juvenile. A petition alleging that a juvenile is abused
 19 or neglected may also allege and seek a determination that a respondent is a responsible
 20 individual as defined in G.S. 7B-101(18a). A person whose actions resulted in a conviction
 21 under G.S. 14-27.2 or G.S. 14-27.3 and the conception of the juvenile need not be named in the
 22 petition. The petition may contain information on more than one juvenile when the juveniles
 23 are from the same home and are before the court for the same reason."

24 **SECTION 10.** G.S. 7B-406(b) reads as rewritten:

25 "(b) A summons shall be on a printed form supplied by the Administrative Office of the
 26 Courts and shall ~~include~~include each of the following:

- 27 (1) Notice of the nature of the ~~proceeding~~proceeding.
 28 (2) Notice of any right to counsel and information about how to seek the
 29 appointment of counsel prior to a ~~hearing~~hearing.
 30 (2a) Notice that, if the petition alleges and the court determines that the
 31 respondent is a responsible individual, the respondent's name will be placed
 32 on the responsible individuals list as provided in G.S. 7B-311, and that the
 33 Department of Health and Human Services may provide information from
 34 the list to child caring institutions, child placing agencies, group home
 35 facilities, and other providers of foster care, child care, or adoption services
 36 that need to determine the fitness of individuals to care for or adopt children.
 37 (3) Notice that, if the court determines at the hearing that the allegations of the
 38 petition are true, the court will conduct a dispositional hearing to consider
 39 the needs of the juvenile and enter an order designed to meet those needs and
 40 the objectives of the ~~State~~State.
 41 (4) Notice that the dispositional order or a subsequent order:
 42 a. May remove the juvenile from the custody of the parent, guardian, or
 43 custodian.
 44 b. May require that the juvenile receive medical, psychiatric,
 45 psychological, or other treatment and that the parent participate in the
 46 treatment.
 47 c. May require the parent to undergo psychiatric, psychological, or
 48 other treatment or counseling for the purpose of remedying the
 49 behaviors or conditions that are alleged in the petition or that
 50 contributed to the removal of the juvenile from the custody of that
 51 person.

- 1 d. May order the parent to pay for treatment that is ordered for the
2 juvenile or the parent.
3 e. May, upon proper notice and hearing and a finding based on the
4 criteria set out in G.S. 7B-1111, terminate the parental rights of the
5 respondent parent."

6 **SECTION 11.** G.S. 7B-800 reads as rewritten:

7 **"§ 7B-800. Amendment of petition.**

8 ~~The court court, in its discretion, may permit a petition to be amended when the amendment~~
9 ~~does not change the nature of the conditions upon which the petition is based.~~ amended. The
10 court shall direct the manner in which an amended petition shall be served and the time allowed
11 for a party to prepare after the petition has been amended."

12 **SECTION 12.** G.S. 7B-805 reads as rewritten:

13 **"§ 7B-805. Quantum of proof in adjudicatory hearing.**

14 ~~The allegations in a petition alleging abuse, neglect, or dependency that a juvenile is abused,~~
15 neglected, or dependent shall be proved by clear and convincing evidence. Allegations in a
16 petition alleging that a respondent is a responsible individual who has abused or seriously
17 neglected a juvenile shall be proved by a preponderance of the evidence."

18 **SECTION 13.** G.S. 7B-807 is amended by adding a new subsection to read:

19 "(a1) After an adjudication that a juvenile is abused or neglected, if the petition alleges
20 and the court determines by a preponderance of the evidence that a respondent has abused or
21 seriously neglected a juvenile and is a responsible individual, the court shall order the
22 placement of that individual's name on the responsible individuals list as provided in
23 G.S. 7B-311."

24 **SECTION 14.** This act is effective when it becomes law.