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SENATE DRS25179-LU-66 (03/02)

Short Title: Transition Certain Abuse Investigations/DCDEE. (Public)

Sponsors: Senators Barringer, Hise, and Tucker (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO TRANSITION ABUSE AND NEGLECT INVESTIGATIONS IN CHILD CARE
3 FACILITIES TO THE DIVISION OF CHILD DEVELOPMENT AND EARLY
4 EDUCATION WITHIN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 7B-101(3) reads as rewritten:

7 "§ 7B-101. Definitions.

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

10 ...

11 (3) Caretaker. – Any person other than a parent, guardian, or custodian who has
12 responsibility for the health and welfare of a juvenile in a residential setting.
13 A person responsible for a juvenile's health and welfare means a stepparent,
14 foster parent, an adult member of the juvenile's household, an adult relative
15 entrusted with the juvenile's care, any person such as a house parent or
16 cottage parent who has primary responsibility for supervising a juvenile's
17 health and welfare in a residential child care facility or residential
18 educational facility, or any employee or volunteer of a division, institution,
19 or school operated by the Department of Health and Human Services.
20 ~~"Caretaker" also means any person who has the responsibility for the care of~~
21 ~~a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the~~
22 ~~General Statutes and includes any person who has the approval of the care~~
23 ~~provider to assume responsibility for the juveniles under the care of the care~~
24 ~~provider.~~ Nothing in this subdivision shall be construed to impose a legal
25 duty of support under Chapter 50 or Chapter 110 of the General Statutes.
26 The duty imposed upon a caretaker as defined in this subdivision shall be for
27 the purpose of this Subchapter only.

28"

29 SECTION 2. G.S. 7B-300 reads as rewritten:

30 "§ 7B-300. Protective services.

31 The director of the department of social services in each county of the State shall establish
32 protective services for juveniles alleged to be abused, neglected, or dependent.

33 Protective services shall include the screening of reports, the performance of an assessment
34 using either a family assessment response or an investigative assessment response, casework, or
35 other counseling services to parents, guardians, or other caretakers as provided by the director
36 to help the parents, guardians, or other caretakers and the court to prevent abuse or neglect, to



1 improve the quality of child care, to be more adequate parents, guardians, or caretakers, and to
2 preserve and stabilize family life.

3 ~~The provisions of this Article shall also apply to child care facilities as defined in~~
4 ~~G.S. 110-86."~~

5 **SECTION 3.** G.S. 7B-301(a) reads as rewritten:

6 "(a) Any person or institution who has cause to suspect that any juvenile is abused,
7 neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment,
8 shall report the case of that juvenile to the director of the department of social services in the
9 county where the juvenile resides or is found. The report may be made orally, by telephone, or
10 in writing. The report shall include information as is known to the person making it including
11 the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or
12 caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the
13 present whereabouts of the juvenile if not at the home address; the nature and extent of any
14 injury or condition resulting from abuse, neglect, or dependency; and any other information
15 which the person making the report believes might be helpful in establishing the need for
16 protective services or court intervention. If the report is made orally or by telephone, the person
17 making the report shall give the person's name, address, and telephone number. Refusal of the
18 person making the report to give a name shall not preclude the department's assessment of the
19 alleged abuse, neglect, dependency, or death as a result of maltreatment.

20 ~~Upon receipt of any report of sexual abuse of the juvenile in a child care facility, the~~
21 ~~director shall notify the State Bureau of Investigation within 24 hours or on the next workday.~~
22 ~~If sexual abuse in a child care facility is not alleged in the initial report, but during the course of~~
23 ~~the assessment there is reason to suspect that sexual abuse has occurred, the director shall~~
24 ~~immediately notify the State Bureau of Investigation. Upon notification that sexual abuse may~~
25 ~~have occurred in a child care facility, the State Bureau of Investigation may form a task force to~~
26 ~~investigate the report."~~

27 **SECTION 4.** G.S. 7B-302(a) reads as rewritten:

28 "(a) When a report of abuse, neglect, or dependency is received, the director of the
29 department of social services shall make a prompt and thorough assessment, using either a
30 family assessment response or an investigative assessment response, in order to ascertain the
31 facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order
32 to determine whether protective services should be provided or the complaint filed as a petition.
33 When the report alleges abuse, the director shall immediately, but no later than 24 hours after
34 receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the
35 director shall initiate the assessment within 72 hours following receipt of the report. When the
36 report alleges abandonment, the director shall immediately initiate an assessment, take
37 appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to
38 secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall
39 include a visit to the place where the juvenile resides, ~~except when the report alleges abuse or~~
40 ~~neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes.~~
41 ~~When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter~~
42 ~~110 of the General Statutes, a visit to the place where the juvenile resides is not required.~~
43 ~~resides.~~ When the report alleges abandonment, the assessment shall include a request from the
44 director to law enforcement officials to investigate through the North Carolina Center for
45 Missing Persons and other national and State resources whether the juvenile is a missing child."

46 **SECTION 5.** G.S. 7B-307 reads as rewritten:

47 **"§ 7B-307. Duty of director to report evidence of abuse, neglect; investigation by local law**
48 **enforcement; notification of Department of Health and Human Services and**
49 **State Bureau of Investigation Services.**

50 (a) If the director finds evidence that a juvenile may have been abused as defined by
51 G.S. 7B-101, the director shall make an immediate oral and subsequent written report of the

1 findings to the district attorney or the district attorney's designee and the appropriate local law
2 enforcement agency within 48 hours after receipt of the report. The local law enforcement
3 agency shall immediately, but no later than 48 hours after receipt of the information, initiate
4 and coordinate a criminal investigation with the protective services assessment being conducted
5 by the county department of social services. Upon completion of the investigation, the district
6 attorney shall determine whether criminal prosecution is appropriate and may request the
7 director or the director's designee to appear before a magistrate.

8 If the director receives information that a juvenile may have been physically harmed in
9 violation of any criminal statute by any person other than the juvenile's parent, guardian,
10 custodian, or caretaker, the director shall make an immediate oral and subsequent written report
11 of that information to the district attorney or the district attorney's designee and to the
12 appropriate local law enforcement agency within 48 hours after receipt of the information. The
13 local law enforcement agency shall immediately, but no later than 48 hours after receipt of the
14 information, initiate a criminal investigation. Upon completion of the investigation, the district
15 attorney shall determine whether criminal prosecution is appropriate.

16 If the report received pursuant to G.S. 7B-301 involves abuse or neglect of a juvenile or
17 child maltreatment, as defined in G.S. 110-105.3, in child care, the director shall notify the
18 Department of Health and Human Services within 24 hours or on the next working day of
19 receipt of the report.

20 ~~(b) If the director finds evidence that a juvenile has been abused or neglected as defined~~
21 ~~by G.S. 7B-101 in a child care facility, the director shall immediately so notify the Department~~
22 ~~of Health and Human Services and, in the case of sexual abuse, the State Bureau of~~
23 ~~Investigation, in such a way as does not violate the law guaranteeing the confidentiality of the~~
24 ~~records of the department of social services.~~

25 ~~(c) Upon completion of the assessment, the director shall give the Department written~~
26 ~~notification of the results of the assessment required by G.S. 7B-302. Upon completion of an~~
27 ~~assessment of sexual abuse in a child care facility, the director shall also make written~~
28 ~~notification of the results of the assessment to the State Bureau of Investigation.~~

29 The director of the department of social services shall submit a report of alleged abuse,
30 neglect, or dependency cases or child fatalities that are the result of alleged maltreatment to the
31 central registry under the policies adopted by the Social Services Commission."

32 **SECTION 6.** G.S. 110-105 reads as rewritten:

33 **"§ 110-105. Authority to inspect facilities.**

34 (a) The Department shall have authority to inspect facilities without notice, when it
35 determines there is cause to believe that an emergency situation exists or there is a complaint
36 alleging a violation of licensure law. When the Department is notified by the county director of
37 social services that the director has received a report of child maltreatment in a child care
38 facility, or when the Department is notified by any other person that alleged child maltreatment
39 has occurred in a facility, the Commission's rules shall provide for an inspection conducted
40 without notice to the child care facility to determine whether the alleged child maltreatment has
41 occurred. The inspection shall be conducted within seven calendar days of receipt of the report.
42 Additional visits shall be conducted, as warranted.

43 (a1) The Commission shall adopt standards and rules under this subsection which
44 provide for the following types of inspections:

- 45 (1) An initial licensing inspection, which shall not occur until the administrator
46 of the facility receives prior notice of the initial inspection visit;
- 47 (2) A plan for visits to all facilities, including announced and unannounced
48 visits, which shall be confidential unless a court orders its disclosure;
- 49 (3) An inspection that may be conducted without notice, if there is ~~probable~~
50 cause to believe that an emergency situation exists or there is a complaint
51 alleging a violation of licensure law. ~~When the Department is notified by the~~

~~county director of social services that the director has received a report of child abuse or neglect in a child care facility, or when the Department is notified by any other person that alleged abuse or neglect has occurred in a facility, the Commission's rules shall provide for an inspection conducted without notice to the child care facility to determine whether the alleged abuse or neglect has occurred. This inspection shall be conducted within seven calendar days of receipt of the report, and when circumstances warrant, additional visits shall be conducted.~~

The ~~Secretary or the Secretary's designee~~Department, upon presenting appropriate credentials to the operator of the child care facility, may perform inspections in accordance with the standards and rules promulgated under this subsection. The ~~Secretary or the Secretary's designee~~Department may inspect any area of a building in which there is reasonable evidence that children are in ~~care~~care or in which the Department has cause to believe that conditions in that area of a building pose a potential risk to the health, safety, or well-being of children in care.

(b) If an operator refuses to allow the Secretary or the Secretary's designee to inspect the child care facility, the Secretary shall seek an administrative warrant in accordance with G.S. 15-27.2."

SECTION 7. G.S. 110-105.2 is repealed.

SECTION 8. Article 7 of Chapter 110 of the General Statutes is amended by adding the following new sections to read:

"§ 110-105.3. Child maltreatment.

(a) The purpose of this section is to assign the authority to investigate instances of child maltreatment in child care facilities to the Department of Health and Human Services, Division of Child Development and Early Education. The General Assembly recognizes that the ability to properly investigate child maltreatment in licensed child care facilities is dependent upon the cooperation of State and local law enforcement agencies, as well as county departments of social services.

(b) The following definitions shall apply in this Article:

(1) Child maltreatment. – Any act or series of acts of commission or omission by a caregiver that results in harm, potential for harm, or threat of harm to a child. Acts of commission include, but are not limited to, physical, sexual, and psychological abuse. Acts of omission include, but are not limited to, failure to provide for the physical, emotional, or medical well-being of a child, and failure to properly supervise children, which results in exposure to potentially harmful environments.

(2) Caregiver. – The operator of a licensed child care facility or religious-sponsored child care facility, a child care provider, as defined in G.S. 110-90.2(a)(2), a volunteer, or any person who has the approval of the provider to assume responsibility for children under the care of the provider.

(3) Child care facilities. – Any of the following:

a. All facilities required to be licensed under this Article.

b. All religious-sponsored facilities operating pursuant to G.S. 110-106 of this Article.

c. All locations where children are being cared for by someone other than their parent or legal guardian that require a license under this Article, but have not been issued a license by the Department.

(c) The Department, local departments of social services, and local law enforcement personnel shall cooperate with the medical community to ensure that reports of child maltreatment in child care facilities are properly investigated.

1 (d) When a report of child maltreatment is received, the Department shall make a
2 prompt and thorough assessment to ascertain the facts of the case, the extent of the
3 maltreatment, and the risk of harm to children enrolled at the child care facility. When the
4 report alleges maltreatment meeting the definition of abuse or neglect as defined in
5 G.S. 14-318.2 and G.S. 14-318.4, the Department shall contact local law enforcement officials
6 to investigate the report.

7 (e) During the pendency of an investigation, the Department may issue a protection
8 plan restricting an individual alleged to have maltreated a child from being on the premises of
9 the facility while children are in care. The Department may also suspend activities at a facility
10 under investigation including, but not limited to, transportation, aquatic activities, and field
11 trips.

12 (f) At any time during the pendency of a child maltreatment investigation, the
13 Department may order immediate corrective action as required to protect the health, safety, or
14 welfare of children in care. If the corrective action does not occur within the period specified in
15 the corrective action order, the Department may take administrative action to protect the health,
16 safety, or welfare of the children at the child care facility.

17 (g) The Department may, in accordance with G.S. 150B-3(c), summarily suspend the
18 license of a child care facility if the Department determines that emergency action is required to
19 protect the health, safety, or welfare of the children in a child care facility regulated by the
20 Department.

21 (h) Until an investigation by the Department confirms that child maltreatment did occur
22 in a child care facility, all matters regarding the investigation, including, but not limited to, any
23 complaint, allegation, or inspection or the identity of the reporter, shall be held in strictest
24 confidence by the Department, except under the following circumstances:

25 (1) The Department shall disclose confidential information to any federal, State,
26 or local government entity or its agent in order to protect a juvenile from
27 child maltreatment, abuse, or neglect. Any confidential information
28 disclosed to any federal, State, or local government entity or its agent
29 pursuant to this subdivision shall remain confidential with the other
30 government entity or its agent and shall only be redisclosed for purposes
31 directly connected with carrying out that entity's mandated responsibilities.

32 (2) A district court, superior court, or administrative law judge of this State
33 presiding over a civil matter in which the Department is not a party may
34 order the Department to release confidential information. The court may
35 order the release of confidential information after providing the Department
36 with reasonable notice and an opportunity to be heard and then determining
37 that the information is relevant, necessary to the trial of the matter before the
38 court, and unavailable from any other source.

39 (i) When a report of child maltreatment alleges facts which indicate that a report is
40 required under G.S. 7B-301, the Department shall contact the local department of social
41 services in the county where the juvenile resides or is found, and make the necessary report.

42 (j) In performing any duties related to the assessment of a report of child maltreatment,
43 the Department may consult with any public or private agencies or individuals, including the
44 available State or local law enforcement officers, probation and parole officers, and the director
45 of any county department of social services who shall assist in the assessment and evaluation of
46 the seriousness of any report of child maltreatment when requested by the Department. The
47 Department or the Department's representatives may make a written demand for any
48 information or reports, whether or not confidential, that may in the Department's opinion be
49 relevant to the assessment of the report. Upon the Department or the Department's
50 representative's request and unless protected by attorney-client privilege, any public or private

1 agency or individual shall provide access to and copies of this confidential information and the
2 records required by this subsection, to the extent permitted by federal law and regulations.

3 (k) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules
4 necessary for the implementation of this section. Rules promulgated subject to this section shall
5 be exempt from the provisions of G.S. 150B-19.1(e) and (f).

6 **"§ 110-105.4. Duty to report child maltreatment.**

7 (a) Any person who has cause to suspect that a child in a child care facility has been
8 maltreated, as defined by G.S. 110-105.3, or has died as the result of maltreatment occurring in
9 a child care facility, shall report the case of that child to the Department. The report may be
10 made orally, by telephone, or in writing. The report shall include information as is known to the
11 person making the report, including (i) the name and address of the child care facility where the
12 child was allegedly maltreated, (ii) the name and address of the child's parent, guardian, or
13 caretaker, (iii) the age of the child, (iv) the present whereabouts of the child if not at the home
14 address, (v) the nature and extent of any injury or condition resulting from maltreatment, and
15 (vi) any other information the person making the report believes might assist in the
16 investigation of the report. If the report is made orally or by telephone, the person making the
17 report shall give the person's name, address, and telephone number. Refusal of the person
18 making the report to give a name shall not preclude the Department's assessment of the alleged
19 maltreatment.

20 (b) Upon receipt of any report of maltreatment involving sexual abuse of the child in a
21 child care facility, the Department shall notify the State Bureau of Investigation within 24
22 hours or on the next workday. If sexual abuse in a child care facility is not alleged in the initial
23 report, but during the course of the assessment there is reason to suspect that sexual abuse has
24 occurred, the Department shall immediately notify the State Bureau of Investigation. Upon
25 notification that sexual abuse may have occurred in a child care facility, the State Bureau of
26 Investigation may form a task force to investigate the report.

27 **"§ 110-105.5. Child maltreatment registry.**

28 (a) The Department shall establish and maintain a registry containing the names of all
29 caregivers who have been confirmed by the Department of having maltreated a child pursuant
30 to G.S. 110-105.3.

31 (b) The Child Maltreatment Registry shall indicate when a finding is contested and may
32 include a brief statement made by the individual against whom the finding was made.

33 (c) Individuals who wish to contest findings under subsection (a) of this section are
34 entitled to an administrative hearing as provided by the Administrative Procedure Act under
35 Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30
36 days of the mailing of the written notice of the Department's intent to place its findings about
37 the person in the Child Maltreatment Registry.

38 (d) Prior to employment, an operator of a child care facility shall request the
39 Department check the status of a potential employee in the Child Maltreatment Registry, and
40 the Department shall notify the employer of the individual's Registry status.

41 (e) Individuals whose names are listed on the Registry shall not own, operate, or be
42 employed at any licensed child care facility or religious-sponsored child care facility.

43 (f) No person shall be liable for providing any information for the Child Maltreatment
44 Registry if the information is provided in good faith. Neither an employer, potential employer,
45 nor the Department shall be liable for using any information from the Child Maltreatment
46 Registry if the information is used in good faith for the purpose of screening prospective
47 applicants for employment or reviewing the employment status of an employee. The immunity
48 established by this subsection does not extend to malicious conduct or intentional wrongdoing.

49 (g) Upon request, a child care facility, as defined in G.S. 110-105.3, is permitted to
50 provide confidential or other identifying information to the Department, including social

1 security numbers, taxpayer identification numbers, parent's legal surname prior to marriage,
2 and dates of birth, for the purpose of verifying the identity of accused caregiver.

3 (h) With the exception of the names of individuals listed on the Child Maltreatment
4 Registry, appeal status, and a statement made pursuant to subsection (b) of this section, all
5 other information received by or pertaining to the Child Maltreatment Registry shall be
6 confidential and is not a public record under Chapter 132 of the General Statutes.

7 (i) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules
8 necessary for the implementation of this section.

9 **"§ 110-105.6. Penalties for child maltreatment.**

10 (a) For purposes of this Article, child maltreatment occurring in child care facilities is a
11 violation of this Article, licensure standards, and licensure laws.

12 (b) Pursuant to G.S. 110-105.3, when an investigation confirms that child maltreatment
13 did occur in a child care facility, the Department may issue an administrative action up to and
14 including summary suspension and revocation of the facility's child care license.

15 (c) If the facility is permitted to remain open after an administrative action has been
16 issued, the administrative action shall specify any corrective action to be taken by the operator.

17 (d) The Department shall make unannounced visits to determine whether the corrective
18 action has occurred. If the corrective action has not occurred, then the Department may take
19 further action against the facility as necessary to protect the health, safety, or welfare of the
20 children at the child care facility.

21 (e) Administrative actions issued shall include a statement of the reasons for the action,
22 and shall specify corrective action that shall be taken by the operator.

23 (f) Under the terms of the administrative action, the Department may limit enrollment
24 of new children until satisfied the situation giving rise to the confirmation of child maltreatment
25 no longer exists.

26 (g) Specific corrective action required by an administrative action authorized by this
27 Article may include the removal of the individual responsible for child maltreatment from child
28 care pending a final determination or appeal of the individual's placement on the Child
29 Maltreatment Registry.

30 (h) Nothing in this section shall restrict the Department from using any other statutory
31 or administrative remedies available."

32 **SECTION 9.** This act is effective when it becomes law.