

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

4

SENATE BILL 567
Commerce Committee Substitute Adopted 5/5/09
Third Edition Engrossed 5/6/09
House Committee Substitute Favorable 5/26/10

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 (20a) 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 ...

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

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

34 "§ 7B-311. Central registry; responsible individuals list.



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

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

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

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

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

- 37 (1) ~~Procedures for filing~~Filing data.
- 38 (2) ~~Procedures for notifying~~Notifying an individual that the individual has been
39 determined by the director to be a responsible individual of a determination
40 of abuse or serious neglect.~~individual.~~
- 41 (3) ~~Procedures for correcting~~Correcting and expunging information.
- 42 (4) Determining persons who are authorized to receive information from the
43 responsible individuals list.
- 44 (5) Releasing information from the responsible individuals list to authorized
45 requestors.
- 46 (6) Gathering statistical information.
- 47 (7) Keeping and maintaining information placed in the registry and on the
48 responsible individuals list.
- 49 (8) ~~A definition of "serious neglect".~~

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

"Article 3A.

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

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

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

(b) If personal written notice is not ~~obtained~~ made within 15 days of the ~~determination being made, determination~~, the director shall send the notice to the ~~responsible~~ identified individual by registered or certified mail, restricted delivery, 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.

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

(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 unless the individual petitions for judicial review, the individual's name ~~has been~~ will be 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 to seek~~ judicial review of the director's decision not to remove the individual's name from the list, determination.

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

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

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

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

(a) Within ~~30~~ 15 days of the receipt of notice of the director's ~~decision under G.S. 7B-321(b) or (c), or within 30 days from the date of a determination by the district attorney under G.S. 7B-322, whichever is later, determination~~ under G.S. 7B-320(a) or (b), an individual may file a petition for ~~expunction~~ judicial review 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~~ judicial review 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~~ director who determined the abuse or serious neglect and identified the individual as a responsible individual. The petition for ~~expunction~~ judicial review shall contain the name, date of birth, and address of the individual seeking ~~expunction~~ judicial review, the name of the juvenile who was

1 the subject of the determination of abuse or serious neglect, and facts that invoke the
2 jurisdiction of the court. Failure to timely file a petition for ~~expunction~~ judicial review
3 constitutes a waiver of the individual's right to ~~file a petition for expunction and~~ to a district
4 court ~~hearing~~ hearing and to contest the placement of the individual's name on the responsible
5 individuals list.

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

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

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

28 (d) Within 30 days after completion of the hearing, the court shall enter a ~~signed,~~
29 written order containing findings of fact and conclusions of law. ~~A~~ The clerk shall serve a
30 copy of the order shall be served on each party or the party's attorney of record. If the court
31 concludes that the director has not established by a preponderance of the evidence the
32 correctness of the determination of abuse or serious neglect or the identification of the
33 responsible individual, the court shall reverse the director's ~~decision~~ determination and order
34 the director to notify the Department of Health and Human Services to ~~expunge~~ not to place the
35 individual's name from on the responsible individuals list. If the court concludes that sufficient
36 evidence has not been presented to support a determination of abuse, but there is sufficient
37 evidence to support a determination of the director has established by a preponderance of the
38 evidence abuse or serious neglect and the identification of the individual seeking ~~expunction~~
39 judicial review as a responsible individual, the court shall ~~modify the director's decision and~~
40 order the director to notify the Department of Health and Human Services to change the entry
41 place the individual's name on the responsible individuals list to that of neglect list, consistent
42 with the court's order.

43 (d1) Upon receipt of a notice of hearing for judicial review, the director who identified
44 the individual as a responsible individual may review all records, reports, and other information
45 gathered during the investigative assessment response. If after a review, the director determines
46 that there is not sufficient evidence to support a determination that the individual abused or
47 seriously neglected the juvenile and is a responsible individual, the director shall prepare a
48 written statement of the director's determination and either deliver the statement personally to
49 the individual seeking judicial review or send the statement by first-class mail. The director
50 shall also give written notice of the director's determination to the clerk to be placed in the

1 court file, and the judicial review hearing shall be cancelled with notice of the cancellation
2 given by the clerk to the petitioner.

3 (e) Notwithstanding any time limitations contained in this section or the provisions of
4 ~~G.S. 7B-324(a)(3) or (4),~~G.S. 7B-324(a)(4), a district court may review a determination of
5 abuse or serious neglect at any time if the review serves the interests of justice or for
6 extraordinary circumstances.

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

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

9 **"§ 7B-324. Persons ineligible to request expunction;petition for judicial review; stay of**
10 **expunction-judicial review proceeding pending juvenile court case.**

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

15 (1) The individual is criminally convicted as a result of the same incident. The
16 district attorney shall inform the director of the result of the criminal
17 proceeding, and the director shall immediately notify the Department of
18 Health and Human Services. The Department shall consider this information
19 when determining whether the individual's name should remain on or be
20 expunged from the responsible individuals list.proceeding.

21 (2) The individual is a respondent in a juvenile court proceeding regarding
22 abuse or neglect resulting from the same incident. The director shall
23 immediately notify the Department of Health and Human Services. The
24 Department shall consider this information when determining whether the
25 individual's name should remain on or be expunged from the responsible
26 individuals list.incident that concludes with an adjudication of abuse or
27 neglect and a determination that the individual has abused or seriously
28 neglected the juvenile and is a responsible individual.

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

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

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

38 (b) ~~If, prior to or during any proceeding provided for in this section,~~If an individual
39 seeking expunction-judicial review is named as a respondent in a juvenile court case resulting
40 from the same incident, ~~the director, the district attorney, the district court judge, or the Court~~
41 ~~of Appeals shall stay any further proceedings for the expunction of that individual's name from~~
42 ~~the responsible individuals list until the juvenile court case is concluded or dismissed.~~the
43 district court judge may stay the judicial review proceeding or consolidate the proceeding with
44 the juvenile court case. If a~~the~~ juvenile court case resulting from the same determination of
45 ~~abuse or serious neglect is involuntarily dismissed, or concludes without an adjudication of~~
46 ~~abuse or neglect, or with an adjudication that differs from the prior determination,~~neglect and a
47 determination that the individual has abused or seriously neglected a juvenile and is a
48 responsible individual, the director shall ~~notify the Department of Health and Human Services~~
49 ~~to expunge~~not place the individual's name ~~from~~on the responsible individuals list ~~or modify~~
50 ~~the prior decision of the director accordingly~~list. If a juvenile court case concludes with an
51 adjudication of abuse or neglect and a determination that the individual has abused or seriously

1 neglected a juvenile and is a responsible individual, the director shall place that individual's
2 name on the responsible individuals list, consistent with the court's order."

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

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

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

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

- 15 (1) Notice of the nature of the ~~proceeding~~proceeding.
16 (2) Notice of any right to counsel and information about how to seek the
17 appointment of counsel prior to a ~~hearing~~hearing.
18 (2a) Notice that, if the petition alleges and the court determines that the
19 respondent is a responsible individual, the respondent's name will be placed
20 on the responsible individuals list as provided in G.S. 7B-311, and that the
21 Department of Health and Human Services may provide information from
22 the list to child caring institutions, child placing agencies, group home
23 facilities, and other providers of foster care, child care, or adoption services
24 that need to determine the fitness of individuals to care for or adopt children.
25 (3) Notice that, if the court determines at the hearing that the allegations of the
26 petition are true, the court will conduct a dispositional hearing to consider
27 the needs of the juvenile and enter an order designed to meet those needs and
28 the objectives of the ~~State~~and State.
29 (4) Notice that the dispositional order or a subsequent order:
30 a. May remove the juvenile from the custody of the parent, guardian, or
31 custodian.
32 b. May require that the juvenile receive medical, psychiatric,
33 psychological, or other treatment and that the parent participate in the
34 treatment.
35 c. May require the parent to undergo psychiatric, psychological, or
36 other treatment or counseling for the purpose of remedying the
37 behaviors or conditions that are alleged in the petition or that
38 contributed to the removal of the juvenile from the custody of that
39 person.
40 d. May order the parent to pay for treatment that is ordered for the
41 juvenile or the parent.
42 e. May, upon proper notice and hearing and a finding based on the
43 criteria set out in G.S. 7B-1111, terminate the parental rights of the
44 respondent parent."

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

46 **"§ 7B-800. Amendment of petition.**

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

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

1 **"§ 7B-805. Quantum of proof in adjudicatory hearing.**

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

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

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

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