

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS65262-LU-69 (03/10)

Short Title: Final Substantiation Appeal Process.

(Public)

Sponsors: Senator Thomas.

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A SUBSTANTIATION APPEAL PROCESS FOR THOSE INDIVIDUALS ALLEGED TO BE RESPONSIBLE FOR ABUSE OR NEGLECT OF A JUVENILE IN A SUBSTANTIATED REPORT UNDER THE LAWS REGULATING JUVENILE ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101 is amended by adding the following new subdivisions to read:

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

...

(21) Substantial evidence. – Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

(22) Substantiated. – At the conclusion of an investigative assessment, the director has found substantial evidence that a juvenile is abused, neglected, or dependent.

(23) Unsubstantiated. – At the conclusion of an investigative assessment, the director has not found substantial evidence that a juvenile is abused, neglected, or dependent."

SECTION 2. G.S. 7B-302 is amended by adding the following new subsection to read:

"(g1) Within five working days after completing an investigative assessment, the director shall give written notice, by personal delivery or certified mail, return receipt requested, to the person identified in a substantiated case as the alleged individual responsible for rendering a juvenile abused or neglected. In the event the location of the alleged responsible individual is unknown, the notice shall be sent to the alleged

1 responsible individual's last known address. The notice shall provide all of the
2 following:

- 3 (1) Inform the individual of the nature of the report and whether the
4 director substantiated abuse or neglect or both.
- 5 (2) Summarize the substantial evidence underlying the director's
6 determination without identifying the reporter or collateral contacts.
- 7 (3) Inform the individual that his name will be placed on the responsible
8 individual list as provided in G.S. 7B-311, and of the potential effect
9 the placement will have on his employment involving child care,
10 applying to be a foster parent, or seeking to adopt a child.
- 11 (4) Clearly describe what action that individual must take to request an
12 expunction of his name from the responsible individual list and the
13 procedures the director must follow upon the receipt of the request."

14 **SECTION 3.** G.S. 7B-311 reads as rewritten:

15 **"§ 7B-311. Central registry.**

16 The Department of Health and Human Services shall maintain a central registry of
17 abuse, neglect, and dependency cases and child fatalities that are the result of alleged
18 maltreatment that are reported under this Article in order to compile data for appropriate
19 study of the extent of abuse and neglect within the State and to identify repeated abuses
20 of the same juvenile or of other juveniles in the same family. A list of individuals
21 responsible for rendering a juvenile abused or neglected in substantiated cases shall be
22 maintained in order to exchange information with authorized requesters. This data shall
23 be furnished by county directors of social services to the Department of Health and
24 Human Services and shall be confidential, subject to policies adopted by the Social
25 Services Commission providing for its use for study and research and for other
26 appropriate disclosure. Data shall not be used at any hearing or court proceeding unless
27 based upon a final judgment of a court of law. The Social Services Commission may
28 adopt reasonable and necessary rules pertaining to the operation of the central registry
29 and responsible individual list to include the following:

- 30 (1) Procedures for filing data.
- 31 (2) Procedures for notifying an alleged responsible individual of a
32 substantiated report.
- 33 (3) Procedures for correcting and expunging information.
- 34 (4) Releasing information from the responsible individual list to
35 authorized requestors.
- 36 (5) Gathering statistical information.
- 37 (6) Keeping and maintaining information placed in the registry and on the
38 responsible individual list."

39 **SECTION 4.** Article 3 of Subchapter I of Chapter 7B of the General Statutes
40 is amended by adding the following new section to read:

41 **"§ 7B-312. Requests for expunction, review, and appeal.**

42 (a) Any person who has been identified as the alleged responsible individual in a
43 substantiated report of abuse or neglect resulting from an investigative assessment may,
44 within 15 working days after receipt of notice pursuant to G.S. 7B-302(g1), request the

1 director who rendered the substantiation to expunge the alleged responsible individual's
2 name from the responsible individual list on the grounds that the substantiation of abuse
3 or neglect is not supported by substantial evidence in the records, reports, or other case
4 documentation of the local department of social services. The request for expunction
5 shall be in writing and addressed to the director who rendered the substantiation and
6 must be delivered in person or posted in the United States mail within 15 days after
7 receipt of the notice.

8 (b) After receipt of the individual's timely request for expunction from the
9 responsible individual list, the director who rendered the substantiation shall, within 15
10 working days after receipt of the individual's request, review all records, reports, and
11 other case documentation pertaining to the substantiation. The director shall determine
12 whether there is substantial evidence to support the substantiation and proceed as
13 follows:

14 (1) If the director determines that there is not substantial evidence in the
15 records, reports, or other case documentation of the local department
16 of social services to support a substantiation of either abuse or neglect,
17 the director shall contact the Department of Health and Human
18 Services to expunge the individual's name from the responsible
19 individual list and prepare and send the individual seeking the
20 expunction, by personal delivery or certified mail, a written statement
21 of the director's decision.

22 (2) If the director determines that there is substantial evidence in the
23 records, reports, or other case documentation of the local department
24 of social services to support a substantiation of abuse or neglect, the
25 director may uphold or modify the earlier decision of the local
26 department of social services accordingly and shall prepare and send
27 the individual seeking the expunction, by personal delivery or certified
28 mail, a written statement of the director's decision with a second notice
29 pursuant to G.S. 7B-302(g1). If the director modifies the earlier
30 decision of the local department of social services, the director shall
31 contact the Department of Health and Human Services to change the
32 earlier substantiation to appropriately reflect the director's decision. If
33 the director upholds or modifies an earlier decision of the local
34 department of social services, the alleged responsible individual may,
35 within 15 working days after receipt of the second notice, request a
36 judicial hearing. The request for judicial hearing shall be in writing
37 and addressed to the director of the local department of social services
38 who rendered the decision and must be delivered in person or posted in
39 the United States mail within 15 working days after receipt of the
40 second notice. Upon receipt of a timely request, the director who
41 rendered the decision shall file and serve a juvenile petition upon the
42 alleged responsible individual, except when there has been a reciprocal
43 investigative assessment due to a conflict of interest, then the director
44 who rendered the decision shall contact the director of the department

1 of social services in the county where the alleged responsible
2 individual resides, and that county shall file and serve the juvenile
3 petition upon the alleged responsible person. The hearing on the
4 juvenile petition shall proceed in accordance with the provisions of
5 Subchapter I of Chapter 7B of the General Statutes.

6 (c) Any individual alleged to be responsible for rendering a juvenile abused or
7 neglected as the result of an investigative assessment who fails to make a timely request
8 for expunction of his or her name from the responsible individual list after being given
9 an opportunity to do so or fails to keep the local department of social services apprised
10 of his or her location to receive notification of the director's decision shall no longer be
11 entitled to challenge the placement of his or her name on the responsible individual list.
12 If, before or during any proceeding provided in this section, a juvenile court case results
13 from the same substantiation, the director shall delay any further proceedings for the
14 expunction of the individual's name from the responsible individual list until the
15 juvenile court case concludes or is dismissed. If a juvenile court case resulting from the
16 same substantiation is dismissed or concludes without an adjudication of abuse or
17 neglect or with an adjudication that differs from the earlier substantiation, the director
18 who rendered the substantiation shall notify the Department of Health and Human
19 Services to expunge the individual's name from the responsible individual list or modify
20 the earlier decision of the local department of social services accordingly."

21 **SECTION 5.** This act becomes effective October 1, 2005, and applies to
22 actions or petitions filed on or after that date.