

# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

## Legislative Fiscal Note

**BILL NUMBER:** House Bill 661 (First Edition)

**SHORT TITLE:** Substantiation Appeal Process/Juv. Abuse/Neg.

**SPONSOR(S):** Representatives Alexander, Barnhart, and Glazier

	FISCAL IMPACT				
	Yes ( x )	No ( )	No Estimate Available ( )		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
<b>REVENUES:</b>	N/A	N/A	N/A	N/A	N/A
<b>EXPENDITURES:</b>					
Department of Health and Human Services	\$338,482	\$206,466	\$137,651	\$137,651	\$137,651
Judicial Branch	No estimate available; see Assumptions and Methodology				
<b>POSITIONS (cumulative):</b>	N/A	N/A	N/A	N/A	N/A
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Health and Human Services, Judicial Branch					
<b>EFFECTIVE DATE:</b> October 1, 2005					

**BILL SUMMARY:** HB 661 authorizes the Department of Health and Human Services (DHHS) to place the name of individuals who have been identified by county departments of social services as responsible in cases of abuse or serious neglect of juveniles on a list and to release those names to providers of child care, foster care, or adoption services that need to determine the fitness of individuals to care for or adopt children. A person whose name is placed on the list is provided with a process to have his or her name expunged from the list if the person is determined to not be a "responsible individual". The bill also makes it a Class 3 misdemeanor for a person to give, pass along, or attempt to access information contained on the central registry or the responsible persons list unless authorized to do so.

The act would become effective October 1, 2005, and would apply to investigative assessment responses initiated on or after that date.

**CURRENT LAW:** G.S. 7B-311 creates the Central Registry of child abuse and neglect cases that is maintained by the Department of Health and Human Services (DHHS). Directors of county social services must report to the Central Registry all cases of child abuse, neglect, and dependency accepted for investigative assessment. The information in the registry is confidential and access to the information is restricted county directors who need the information in order to identify whether a child who has been previously reported abused, neglected or dependent, a member of a family in which a child fatality has occurred if there was a suspicion the death resulted from abuse, neglect or dependency, or whether an adult suspected of abuse, neglect or dependency has had previous substantiations. The director may share certain information from the registry with law enforcement and licensed physicians.

**BILL ANALYSIS:**

**Section 1** adds definitions for "responsible individual," "substantial evidence," and "working day" to G.S. 7B-101. A responsible individual is a person identified by the director as the person who is responsible for rendering a juvenile abused or seriously neglected. Substantial evidence is relevant evidence a reasonable mind would accept as adequate to support a conclusion.

**Section 2** amends G.S. 7B-311 (Central registry) to create a "responsible individuals list" to be maintained by the Department of Health and Human Services (DHHS). County directors would submit the names of individuals to DHHS for placement on the list if the individual is found, during an investigative assessment response<sup>1</sup>, to have rendered a juvenile abused or seriously neglected. The Department may provide information from the 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.

It also makes it a Class 3 misdemeanor for a public official or public employee to release information from the registry or the list to an unauthorized person, for any person to release information obtained from the registry or list to an unauthorized person, and for any unauthorized person to attempt to access or access the information on the registry or the list. The presumptive minimum sentence for a Class 3 misdemeanor for a person with no prior convictions is 1-10 days of community punishment. The court may also impose a fine of not more than \$200.

Finally, the section directs the Social Services Commission to adopt rules regarding the registry and the responsible persons list as well as a definition of "serious neglect"<sup>2</sup>

**Section 3** creates a new Article 3A in Chapter 7B regarding the process for notifying a person that their name has been placed on the responsible individuals list and the procedure for having it expunged.

**G.S. 7B-312** provides for notification by the director of the county social services department to an individual who has been identified as a responsible individual in an abuse or neglect case. Notification must be in writing and delivered by the sheriff to the responsible individual. If the sheriff is not able to deliver the notice in person, the sheriff may send to via certified or registered

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<sup>1</sup> G.S. 7B-101(11c) defines an investigative assessment as a response to reports of child abuse and selected reports of child neglect and dependency as determined by the director using a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent.

<sup>2</sup> The terms "abused juvenile" and "neglected juvenile" are both defined in G.S. 7B-101. "Serious neglect" is not statutorily defined.

mail, but only the responsible individual may receive the notice. The notice must include a summary of the evidence, information that the person has been placed on the responsible individuals list, the effect this might have on employment involving child care and applying as a foster parent or to adopt, and the actions the person must take to seek expunction from the list.

**G.S. 7B-313** creates a process by which the person may request that the director review the determination. The person has 30 days from the receipt of the notice to send a written request to the director. Upon receipt of the notice, the director must review information gathered during the investigative assessment response to determine whether there is substantial evidence to support the determination and the placement of the person's name on the responsible individuals list. The director has 15 days from the receipt of the request to reach a determination. If the director determines that there is not substantial evidence, the director must notify DHHS and the person requesting the review. DHHS must remove the name from the list immediately. If the director finds there is substantial evidence to support the determination, the director must notify the person in writing. The person may then request a review of the director's decision under G.S. 7B-314 or file a petition for expunction with the district court under G.S. 7B-315.

**G.S. 7B-314** gives the person 30 days after receipt of the director's determination to request that the district attorney review the director's decision. The director must provide the DA with all information the director reviewed. The DA has 30 days to review the information and make a finding. If the DA finds there is not substantial evidence to support the director's determination, the DA must notify the director and the person, and the director must notify DHHS to remove the person's name from the responsible individuals list. If the DA agrees with the director's determination, the DA must notify the director and the person in writing.

**G.S. 7B-315** provides the process for a person to file a petition for expunction with the district court. The person may proceed directly to the district court after the director's review, or after the DA's review. The clerk would schedule the hearing at a session of district court hearing juvenile matters. Both parties would have the right to present sworn evidence, be represented by an attorney, subpoena and cross examine witnesses, and make closing arguments. The director would have the burden of proving by a preponderance of the evidence the correctness of the determination. If the court finds that the director did have sufficient evidence to make the determination, the court will order the name expunged, and the director will notify DHHS of the same. If the court finds that the director had sufficient evidence to support the determination, the person may appeal the decision to the Court of Appeals.

**G.S. 7B-316** lists the grounds that would preclude a person from requesting an expunction. These include if the individual is criminally convicted of the behavior that was the basis of the finding, if the individual is the respondent in a criminal proceeding that arises out of the same circumstances, if the person does not request the various reviews in a timely manner, or if the person does not keep the director informed of the person's address during the investigative assessment response or the expunction process. Any expunction process will be stayed if the person requesting the expunction is the respondent in a juvenile court case resulting from the same incidents until that case is resolved.

**Section 4** gives the district court exclusive jurisdiction over petitions for expunctions.

## **ASSUMPTIONS AND METHODOLOGY:**

### *Department of Health and Human Services*

The Department of Health and Human Services (DHHS) already maintains the Central Registry required by the bill. DHHS believes that no additional funding is required to include the “responsible individuals list.” However, there is a fiscal impact created by the requirement that local departments of social services give written notice to responsible individuals when investigative assessments result in a determination of abuse or serious neglect. The notice must be delivered to the sheriff of the county in which the responsible individual is believed to be located for service upon the individual. There is a \$15.00 service fee for each item of civil process served by a county sheriff. The Department of Health and Human Services estimates that there will be 20,137 substantiated investigative assessment results in State fiscal year 2005-2006 for a total cost of \$302,055, and 12,283 substantiated investigative assessment results in State fiscal year 2006-2007 for a total cost of \$184,245. Beginning in State fiscal year 2007-2008, the Department anticipates approximately 8,189 substantiated investigative assessment results each year, with an annual cost of \$122,835. Additionally, DHHS estimates that potentially thirty percent of the notices may need to be sent via certified mail. Based on an eight-ounce package mailed at current postal rates, the total cost for certified mail, return receipt requested, could be \$36,427 in State fiscal year 2005-2006, \$22,221 in State fiscal year 2006-2007, and \$14,816 in subsequent years.

### *Judicial Branch*

The court impact under the bill occurs as a result of persons deemed responsible individuals on the new list being able to request expunction from the list by district attorney review and to petition the district court for expunction within thirty working days of the director’s expunction refusal. Under new section G.S. 7B-313, such an individual may request review by the district attorney of the prosecutorial district or district court in which the abuse or serious neglect report arose if the director refuses the expunction request, or if the director fails to act on the expunction request within fifteen working days after its receipt. New section 7B-314 requires the district attorney to notify the director and the individual in writing if the director finds that substantial evidence supports the determination of abuse or serious neglect and the identification of the individual as a responsible individual. In petitioning the district court for expunction under new section G.S. 7B-315, the responsible individual must file a petition for expunction with the clerk. The clerk must maintain a separate docket for such actions, calendar the matter for hearing upon receipt of a filed petition, and send notice of the hearing to the petitioner and the director. This section also clarifies that any appeal of the district court’s order shall lie with the Court of Appeals pursuant to G.S. 7A-27(c). It further provides that the district court may review a determination of abuse or serious neglect at any time in the interests of justice or for extraordinary circumstances.

During fiscal year 2003-04, the Guardian ad Litem program served 15,658 abused and neglected children in 26,392 hearings. The Department of Social Services (DSS) reports some 39,000 substantiated allegations of abuse and/or neglect that may result in a person being placed on the listing, but apparently there is no estimate of how many actually will be listed. In any event, with this new procedure, we have no way to estimate the number of individuals eligible for expunction who would seek expunction from DHHS, or then the number of those requests for

expunction for which review would be sought by the district attorney or by petitioning the district court.

While specific estimates are not possible, the data do indicate that the listing required by this bill would apply to thousands of individuals, and to the extent that there are requests and petitions for expunction, there would be a substantial impact on the court system. We expect an increase in workload for district attorneys in order to consider these requests, make the necessary determinations, and notify the parties involved. In district court, this expunction process would mean increased workload for both clerks and judges. Furthermore, if appeals result from district court in these matters, the workload of the Court of Appeals would also be affected

**SOURCES OF DATA:** Department of Health and Human Services, Administrative Office of the Courts Research and Planning, United States Postal Service

**TECHNICAL CONSIDERATIONS:** None

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**Signed Copy Located in the NCGA Principal Clerk's Offices**

**DATE:** July 21, 2005