

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 578
Health Care Committee Substitute Adopted 4/22/15

Short Title: Transition Certain Abuse Investigations/DCDEE.

(Public)

Sponsors:

Referred to:

March 30, 2015

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

29 "§ 7B-300. Protective services.

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

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



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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 reads as rewritten:

6 "**§ 7B-301. Duty to report abuse, neglect, dependency, or death due to maltreatment.**

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

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

28 (b) Any person or institution who knowingly or wantonly fails to report the case of a
29 juvenile as required by subsection (a) of this section, or who knowingly or wantonly prevents
30 another person from making a report as required by subsection (a) of this section, is guilty of a
31 Class 1 misdemeanor.

32 ~~(c) A director of social services who receives a report of sexual abuse of a juvenile in a~~
33 ~~child care facility and who knowingly fails to notify the State Bureau of Investigation of the~~
34 ~~report pursuant to subsection (a) of this section is guilty of a Class 1 misdemeanor."~~

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

36 "(a) When a report of abuse, neglect, or dependency is received, the director of the
37 department of social services shall make a prompt and thorough assessment, using either a
38 family assessment response or an investigative assessment response, in order to ascertain the
39 facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order
40 to determine whether protective services should be provided or the complaint filed as a petition.
41 When the report alleges abuse, the director shall immediately, but no later than 24 hours after
42 receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the
43 director shall initiate the assessment within 72 hours following receipt of the report. When the
44 report alleges abandonment, the director shall immediately initiate an assessment, take
45 appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to
46 secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall
47 include a visit to the place where the juvenile resides, ~~except when the report alleges abuse or~~
48 ~~neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes.~~
49 ~~When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter~~
50 ~~110 of the General Statutes, a visit to the place where the juvenile resides is not required.~~
51 resides. When the report alleges abandonment, the assessment shall include a request from the

1 director to law enforcement officials to investigate through the North Carolina Center for
2 Missing Persons and other national and State resources whether the juvenile is a missing child."

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

4 "**§ 7B-307. Duty of director to report evidence of abuse, neglect; investigation by local law**
5 **enforcement; notification of Department of Health and Human Services and**
6 **State Bureau of Investigation Services.**

7 (a) If the director finds evidence that a juvenile may have been abused as defined by
8 G.S. 7B-101, the director shall make an immediate oral and subsequent written report of the
9 findings to the district attorney or the district attorney's designee and the appropriate local law
10 enforcement agency within 48 hours after receipt of the report. The local law enforcement
11 agency shall immediately, but no later than 48 hours after receipt of the information, initiate
12 and coordinate a criminal investigation with the protective services assessment being conducted
13 by the county department of social services. Upon completion of the investigation, the district
14 attorney shall determine whether criminal prosecution is appropriate and may request the
15 director or the director's designee to appear before a magistrate.

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

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

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

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

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

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

41 "**§ 110-105. Authority to inspect facilities.**

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

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

- 3 (1) An initial licensing inspection, which shall not occur until the administrator
4 of the facility receives prior notice of the initial inspection visit;
- 5 (2) A plan for visits to all facilities, including announced and unannounced
6 visits, which shall be confidential unless a court orders its disclosure;
- 7 (3) An inspection that may be conducted without notice, if there is probable
8 cause to believe that an emergency situation exists or there is a complaint
9 alleging a violation of licensure law. ~~When the Department is notified by the
10 county director of social services that the director has received a report of
11 child abuse or neglect in a child care facility, or when the Department is
12 notified by any other person that alleged abuse or neglect has occurred in a
13 facility, the Commission's rules shall provide for an inspection conducted
14 without notice to the child care facility to determine whether the alleged
15 abuse or neglect has occurred. This inspection shall be conducted within
16 seven calendar days of receipt of the report, and when circumstances
17 warrant, additional visits shall be conducted.~~

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

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

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

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

31 "§ 110-105.3. Child maltreatment.

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

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

- 39 (1) Caregiver. – The operator of a licensed child care facility or
40 religious-sponsored child care facility, a child care provider, as defined in
41 G.S. 110-90.2(a)(2), a volunteer, or any person who has the approval of the
42 provider to assume responsibility for children under the care of the provider.
- 43 (2) Child care facilities. – Any of the following:
 - 44 a. All facilities required to be licensed under this Article.
 - 45 b. All religious-sponsored facilities operating pursuant to G.S. 110-106.
 - 46 c. All locations where children are being cared for by someone other
47 than their parent or legal guardian that require a license under this
48 Article but have not been issued a license by the Department.
- 49 (3) Child maltreatment. – Any act or series of acts of commission or omission
50 by a caregiver that results in harm, potential for harm, or threat of harm to a
51 child. Acts of commission include, but are not limited to, physical, sexual,

1 and psychological abuse. Acts of omission include, but are not limited to,
2 failure to provide for the physical, emotional, or medical well-being of a
3 child, and failure to properly supervise children, which results in exposure to
4 potentially harmful environments.

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

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

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

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

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

28 (h) In the event the Department determines child maltreatment did not occur in a child
29 care facility, nothing in this section shall prevent the Department from citing a violation or
30 issuing an administrative action based upon violations of child care licensure law or rules based
31 upon its investigation. Citations of violations or administrative actions issued pursuant to this
32 subsection shall not be confidential.

33 (i) During the pendency of an investigation, all matters regarding the investigation,
34 including, but not limited to, any complaint, allegation, or documentation regarding inspections
35 or the identity of the reporter, shall be held in strictest confidence as provided by subsection (j)
36 of this section. Following a determination that maltreatment has occurred, the investigation
37 findings shall be made public, as well as the date of any visits made pursuant to the
38 investigation, and any corrective action taken, if applicable. DCDEE shall not post on its
39 Internet Web site that a maltreatment investigation occurred if the allegation of maltreatment
40 was unsubstantiated.

41 (j) Regardless of the Department's final determination regarding child maltreatment, all
42 information received by the Department during the course of its investigation shall be held in
43 the strictest confidence by the Department, except for the following:

44 (1) The Department shall disclose confidential information, other than the
45 identity of the reporter, to any federal, State, or local government entity or its
46 agent in order to protect a juvenile from child maltreatment, abuse, or
47 neglect. Any confidential information disclosed to any federal, State, or local
48 government entity or its agent pursuant to this subdivision shall remain
49 confidential with the other government entity or its agent and shall only be
50 redisclosed for purposes directly connected with carrying out that entity's
51 mandated responsibilities.

1 (2) The Department shall only disclose information identifying the reporter
2 pursuant to a court order, except that the Department may disclose
3 information identifying the reporter without a court order only to a federal,
4 State, or local government entity that demonstrates a need for the reporter's
5 name to carry out the entity's mandated responsibilities.

6 (3) A district court, superior court, or administrative law judge of this State
7 presiding over a civil matter in which the Department is not a party may
8 order the Department to release confidential information. The court may
9 order the release of confidential information after providing the Department
10 with reasonable notice and an opportunity to be heard and then determining
11 that the information is relevant, necessary to the trial of the matter before the
12 court, and unavailable from any other source.

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

16 (l) In performing any duties related to the assessment of a report of child maltreatment,
17 the Department may consult with any public or private agencies or individuals, including the
18 available State or local law enforcement officers, probation and parole officers, and the director
19 of any county department of social services who shall assist in the assessment and evaluation of
20 the seriousness of any report of child maltreatment when requested by the Department. The
21 Department or the Department's representatives may make a written demand for any
22 information or reports, whether or not confidential, that may in the Department's opinion be
23 relevant to the assessment of the report. Upon the Department or the Department's
24 representative's request and unless protected by attorney-client privilege, any public or private
25 agency or individual shall provide access to and copies of this confidential information and the
26 records required by this subsection, to the extent permitted by federal law and regulations.

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

30 **"§ 110-105.4. Duty to report child maltreatment.**

31 (a) Any person who has cause to suspect that a child in a child care facility has been
32 maltreated, as defined by G.S. 110-105.3, or has died as the result of maltreatment occurring in
33 a child care facility, shall report the case of that child to the Department. The report may be
34 made orally, by telephone, or in writing. The report shall include information as is known to the
35 person making the report, including (i) the name and address of the child care facility where the
36 child was allegedly maltreated, (ii) the name and address of the child's parent, guardian, or
37 caretaker, (iii) the age of the child, (iv) the present whereabouts of the child if not at the home
38 address, (v) the nature and extent of any injury or condition resulting from maltreatment, and
39 (vi) any other information the person making the report believes might assist in the
40 investigation of the report. If the report is made orally or by telephone, the person making the
41 report shall give the person's name, address, and telephone number. Refusal of the person
42 making the report to give a name shall not preclude the Department's assessment of the alleged
43 maltreatment.

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

51 **"§ 110-105.5. Child maltreatment registry.**

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

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

9 (c) Individuals whose names are listed on the Registry shall not be a caregiver as
10 defined in G.S. 110-105.3(b)(2) at any licensed child care facility or religious-sponsored child
11 care facility.

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

18 (e) Upon request, a child care facility, as defined in G.S. 110-105.3, is permitted to
19 provide confidential or other identifying information to the Department, including social
20 security numbers, taxpayer identification numbers, parent's legal surname prior to marriage,
21 and dates of birth, for the purpose of verifying the identity of the accused caregiver.

22 (f) With the exception of the names of individuals listed on the Child Maltreatment
23 Registry, all other information received by or pertaining to the Child Maltreatment Registry
24 shall be confidential and is not a public record under Chapter 132 of the General Statutes.

25 (g) In order to determine an individual's fitness to care for or adopt a child, information
26 from the Child Maltreatment Registry may be used by any of the Department's divisions
27 responsible for licensing homes or facilities that care for children, and the Department may
28 provide information from this list to child-caring institutions, child-placing agencies, group
29 home facilities, and other providers of foster care, child care, or adoption services.

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

32 **"§ 110-105.6. Penalties for child maltreatment.**

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

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

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

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

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

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

49 (g) Specific corrective action required by an administrative action authorized by this
50 Article may include the removal of the individual responsible for child maltreatment from child

1 care pending a final determination or appeal of the individual's placement on the Child
2 Maltreatment Registry.

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

5 **SECTION 9.** This act becomes effective January 1, 2016.