

## **Chapter 110.**

### **Child Welfare.**

#### Article 1.

##### Child Labor Regulations.

**§§ 110-1 through 110-20. Repealed by Session Laws 1979, c. 839, s. 2.**

#### Article 1A.

##### Exhibition of Children.

###### **§ 110-20.1. Exhibition of certain children prohibited.**

(a) Except to the extent otherwise provided in subsection (d) of this section, it is unlawful to exhibit publicly for any purpose, or to exhibit privately for the purpose of entertainment, or solely or primarily for the satisfaction of the curiosity of any observer, any child under the age of 18 years who is mentally ill or mentally retarded or who presents the appearance of having any deformity or unnatural physical formation or development, whether or not the exhibiting of the child is in return for a monetary or other consideration.

(b) It is unlawful to employ, use, have custody of, or in any way be associated with any child described in subsection (a) for the purpose of an exhibition forbidden therein, or for one who has the care, custody or control of the child as a parent, relative, guardian, employer or otherwise, to neglect or refuse to restrain the child from participating in the exhibition.

(c) It is unlawful to procure or arrange for, or participate in procuring or arranging for, anything made unlawful by subsections (a) and (b).

(d) This section does not apply to the transmission of an image by television by a duly licensed television station, or to any exhibition by a federal, State, county or municipal government, or political subdivision or agency thereof, or to any exhibition by any corporation, unincorporated association, or other organization organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(e) Any violation of this Article shall be a Class 3 misdemeanor. Each day during which any violation of this Article continues after notice to the violator, from any county social services director, to cease and desist from any violation of this section shall constitute a separate and distinct offense. Any act or omission forbidden by this Article shall, with respect to each child described therein constitute a separate and distinct offense. (1969, c. 457, s. 1; c. 982; 1993, c. 539, s. 821; 1994, Ex. Sess., c. 24, s. 14(c).)

#### Article 2.

##### Juvenile Services.

**§ 110-21: Repealed by Session Laws 1973, c. 1339, s. 2.**

**§ 110-21.1. Repealed by Session Laws 1969, c. 911, s. 1.**

**§ 110-22: Repealed by Session Laws 1979, c. 815, s. 2.**

**§ 110-22.1:** Repealed by Session Laws 1969, c. 911, s. 1.

**§ 110-23: Repealed by Session Laws 1998-202, s. 1(a).**

**§ 110-23.1.** Repealed by Session Laws 1979, c. 815, s. 2.

**§ 110-24: Repealed by Session Laws 1979, c. 815, s. 2.**

**§ 110-25. Repealed by Session Laws 1969, c. 911, s. 1.**

**§ 110-25.1. Transferred to § 130-58.1 by Session Laws 1969, c. 911, s. 3.**

**§§ 110-26 through 110-38. Repealed by Session Laws 1969, c. 911, s. 1.**

**§110-39. Transferred to § 14-316.1 by Session Laws 1969, c. 911, s. 4.**

**§§ 110-40 through 110-44: Repealed by Session Laws 1969, c. 911, s. 1.**

#### Article 2A.

##### Parental Control of Children.

**§§ 110-44.1 through 110-44.4. Repealed by Session Laws 1998-202, s. 5, effective July 1, 1999.**

#### Article 3.

##### Control over Child-Caring Facilities.

**§ 110-45. Institution has authority of parent or guardian.**

Every indigent child which may be placed in any orphanage, children's home, or child-placing institution in this State, which shall be an institution existing under and by virtue of the laws of this State, shall be under the control of the authorities of such institution so long as, under the rules and regulations of such institution, the child is entitled to remain in the same. The authority of the institution shall be the same as that of a parent or guardian before the child was placed in the institution; but such authority shall extend only to the person of the child. (1917, c. 133, s. 1; C.S., s. 5063.)

**§ 110-46. Regulations of institution not abrogated.**

Nothing in this Article shall be construed in any way to abrogate any of the rules and regulations of such institutions insofar as the rules and regulations have for their purpose the welfare and protection of the institutions. (1917, c. 133, s. 2; C.S., s. 5064.)

**§ 110-47. Enticing a child from institution.**

It is unlawful for any person to entice or attempt to entice, persuade, harbor, or conceal, or in any manner induce any indigent child to leave any of the institutions hereinbefore mentioned without the knowledge or consent of the authorities of such institutions. But this Article shall not interfere with a mother's right to her child in case she becomes able to sustain her child; and the county commissioners in the county in which she resides shall in case of doubt have authority to recommend to the institution concerning the child. (1917, c. 133, s. 3; C.S., s. 5065.)

**§ 110-48. Violation a misdemeanor.**

Any person violating any of the provisions of G.S. 110-45, 110-46 and 110-47 shall be guilty of a Class 1 misdemeanor. (1917, c. 133, s. 4; C.S., s. 5066; 1993, c. 539, s. 822; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 110-49: Repealed by Session Laws 1983, c. 637, s. 3.**

Article 4.

Placing or Adoption of Juvenile Delinquents or Dependents.

**§§ 110-50 through 110-57: Repealed by Session Laws 1998, c. 202, s. 5.**

Article 4A.

Interstate Compact on the Placement of Children.

**§§ 110-57.1 through 110-57.7: Repealed by Session Laws 1998, c. 202, s. 5.**

Article 5.

Interstate Compact on Juveniles.

**§§ 110-58 through 110-64.5: Repealed by Session Laws 1979, c. 815, s. 2.**

Article 5A.

Interstate Parole and Probation Hearing Procedures for Juveniles.

**§§ 110-64.6 through 110-64.9: Repealed by Session Laws 1979, c. 815, s. 2.**

Article 6.

Governor's Advocacy Council on Children and Youth.

**§§ 110-65 through 110-66: Repealed by Session Laws 1977, c. 872, s. 7.**

**§§ 110-67 through 110-70. Repealed by Session Laws 1973, c. 476, s. 182.**

**§ 110-71. Repealed by Session Laws 1977, c. 872, s. 7.**

**§ 110-72. Repealed by Session Laws 1973, c. 476, s. 182.**

**§§ 110-73 through 110-84. Reserved for future codification purposes.**

Article 7.

Child Care Facilities.

**§ 110-85. Legislative intent and purpose.**

Recognizing the importance of the early years of life to a child's development, the General Assembly hereby declares its intent with respect to the early care and education of children:

- (1) The State should protect children in child care facilities by ensuring that these facilities provide a physically safe and healthy environment where the developmental needs of these children are met and where these children are cared for by qualified persons of good moral character.
- (2) Repealed by Session Laws 1997-506, s. 2, effective September 16, 1997.
- (3) Achieving this level of protection and early education requires the following elements: mandatory licensing of child care facilities; promotion of higher quality child care through the development of enhanced standards which operators may comply with on a voluntary basis; and a program of education to help operators improve their programs and to deepen public understanding of child care needs and issues. (1971, c. 803, s. 1; 1987, c. 788, s. 1; 1997-506, ss. 1, 2.)

**§ 110-86. Definitions.**

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

- (1) Commission. – The Child Care Commission created under this Article.
- (2) Child care. – A program or arrangement where three or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption. Child care does not include the following:
  - a. Arrangements operated in the home of any child receiving care if all of the children in care are related to each other and no more than two additional children are in care;
  - b. Recreational programs operated for less than four consecutive months in a year;
  - c. Specialized activities or instruction such as athletics, dance, art, music lessons, horseback riding, gymnastics, or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups, or boys and girls clubs;

- d. Drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches;
  - d1. Drop-in or short-term care provided by an employer for its part-time employees where (i) the child is provided care not to exceed two and one-half hours during that day, (ii) the parents are on the premises, and (iii) there are no more than 25 children in any one group in any one room;
  - e. Public schools;
  - f. Nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes that are accredited by national or regional accrediting agencies with early childhood standards and that operate (i) a child care facility as defined in subdivision (3) of this section for less than six and one-half hours per day either on or off the school site or (ii) a child care facility for more than six and one-half hours per day, but do not receive NC Pre-K or child care subsidy funding;
  - g. Bible schools conducted during vacation periods;
  - h. Care provided by facilities licensed under Article 2 of Chapter 122C of the General Statutes;
  - i. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment;
  - j. Any child care program or arrangement consisting of two or more separate components, each of which operates for four hours or less per day with different children attending each component; and
  - k. Track-out programs provided to school-age children when they are out of school on a year-round school calendar.
- (2a) Child care administrator. – A person who is responsible for the operation of a child care facility and is on-site on a regular basis.
- (3) Child care facility. – Includes child care centers, family child care homes, and any other child care arrangement not excluded by G.S. 110-86(2), that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.
- a. A child care center is an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.
  - b. A family child care home is a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care.
- (4) Repealed by Session Laws 1997-506, s. 3.
- (4a) Department. – Department of Health and Human Services.
- (5) Repealed by Session Laws 1975, c. 879, s. 15.

- (5a) Lead teacher. – An individual who is responsible for planning and implementing the daily program of activities for a group of children in a child care facility.
- (6) License. – A permit issued by the Secretary to any child care facility which meets the statutory standards established under this Article.
- (7) Operator. – Includes the owner, director or other person having primary responsibility for operation of a child care facility subject to licensing.
- (8) Secretary. – The Secretary of the Department of Health and Human Services. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 4, ss. 1-3; 1983, c. 46, s. 1; c. 297, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 78; 1985, c. 589, s. 36; c. 757, s. 155(c); 1987, c. 788, s. 2; 1989, c. 234; 1991, c. 273, s. 1; 1991 (Reg. Sess., 1992), c. 904, ss. 1, 2; c. 1024, s. 1; c. 1030, s. 51.12; 1997-443, ss. 11A.118(a), 11A.122; 1997-506, s. 3; 2005-416, s. 1; 2013-360, s. 8.29(b); 2014-49, s. 8; 2016-7, s. 1.)

**§ 110-87. Repealed by Session Laws 1975, c. 879, s. 15.**

**§ 110-88. Powers and duties of the Commission.**

The Commission shall have the following powers and duties:

- (1) To develop policies and procedures for the issuance of a license to any child care facility that meets all applicable standards established under this Article.
- (1a) To adopt applicable rules and standards based upon the capacity of a child care facility.
- (2) To require inspections by and satisfactory written reports from representatives of local or State health agencies, fire and building inspection agencies, and from representatives of the Department prior to the issuance of an initial license to any child care center.
- (2a) To require annually, inspections by and satisfactory written reports from representatives of local or State health agencies and fire inspection agencies after a license is issued.
- (3) Repealed by Session Laws 1997-506, s. 4.
- (4) Repealed by Session Laws 1975, c. 879, s. 15.
- (5) To adopt rules and develop policies for implementation of this Article, including procedures for application, approval, annual compliance visits for centers, and revocation of licenses.
- (6) To adopt rules for the issuance of a provisional license that shall be in effect for no more than 12 consecutive months to a child care facility that does not conform in every respect with the standards established in this Article and rules adopted by the Commission pursuant to this Article but that is making a reasonable effort to conform to the standards.
- (6a) To adopt rules for administrative action against a child care facility when the Secretary's investigations pursuant to G.S. 110-105(a)(3) substantiate that child abuse or neglect did occur in the facility. The rules shall provide for types of sanctions which shall depend upon the severity of the incident and the

probability of reoccurrence. The rules shall also provide for written warnings and special provisional licenses.

- (7) To develop and adopt voluntary enhanced program standards which reflect higher quality child care than the mandatory standards established by this Article. These enhanced program standards must address, at a minimum, staff/child ratios, staff qualifications, parent involvement, operational and personnel policies, developmentally appropriate curricula, and facility square footage.
- (8) To develop a procedure by which the Department shall furnish those forms as may be required for implementation of this Article.
- (9) Repealed by Session Laws 1985, c. 757, s. 156(66).
- (10) To adopt rules for the issuance of a temporary license which shall expire in six months and which may be issued to the operator of a new center or to the operator of a previously licensed center when a change in ownership or location occurs.
- (11) To adopt rules for child care facilities which provide care for children who are mildly sick.
- (12) To adopt rules regulating the amount of time a child care administrator shall be on-site at a child care center.
- (13) To adopt rules for child care facilities that provide care for medically fragile children.
- (14) To adopt rules establishing standards for certification of child care centers providing Developmental Day programs.

The Division and the Commission shall permit individual facilities to make curriculum decisions and may not require the standards, policies, or curriculum of any single accrediting child care organization. If Division inquiries to providers include database fields or questions regarding accreditation, the inquiry shall permit daycare providers to fill in any accrediting organization from which they have received accreditation. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, s. 155(d), (e), 156(a), (z), (aa), (bb); 1987, c. 543, s. 2; c. 788, s. 3; c. 827, s. 232; 1991, c. 273, s. 2; 1993, c. 185, s. 1; 1997-506, ss. 4(a), 28.3; 1999-130, ss. 1, 5; 2004-124, s. 10.35; 2009-187, s. 2.)

**§ 110-88.1. Commission may not interfere with religious training offered in religious-sponsored child care facilities.**

Nothing in this Article shall be interpreted to allow the State to determine the training or curriculum offered in any religious-sponsored child care facility as defined in G.S. 110-106(a). (1999-130, s. 6.)

**§ 110-89. Repealed by Session Laws 1975, c. 879, s. 15.**

**§ 110-90. Powers and duties of Secretary of Health and Human Services.**

The Secretary shall have the following powers and duties under the policies and rules of the Commission:

- (1) To administer the licensing program for child care facilities.
- (1a) To establish a fee for the licensing of child care facilities. The fee does not apply to a religious-sponsored child care facility operated pursuant to a letter of

compliance. The amount of the fee may not exceed the amount listed in this subdivision.

- | <b>Capacity of Facility</b> | <b>Maximum Fee</b> |
|-----------------------------|--------------------|
| 12 or fewer children        | \$ 52.00           |
| 13-50 children              | \$187.00           |
| 51-100 children             | \$375.00           |
| 101 or more children        | \$600.00           |
- (2) To obtain and coordinate the necessary services from other State departments and units of local government which are necessary to implement the provisions of this Article.
- (3) To employ the administrative personnel and staff as may be necessary to implement this Article where required services, inspections or reports are not available from existing State agencies and units of local government.
- (4) To issue a rated license to any child care facility which meets the standards established by this Article. The rating shall be based on the following:
- a. Before January 1, 2008, for any child care facility currently holding a license of two to five stars, the rating shall be based on program standards, education levels of staff, and compliance history of the child care facility. By January 1, 2008, the rating shall be based on program standards and education levels of staff.
  - b. Effective January 1, 2006, for any new license issued to a child care facility with a rating of two to five stars, the rating shall be based on program standards and education levels of staff.
  - c. By January 1, 2008, for any child care facility to maintain a license or Notice of Compliance, the child care facility shall have a compliance history of at least seventy-five percent (75%), as assessed by the Department. When a child care facility fails to maintain a compliance history of at least seventy-five percent (75%) for the past 18 months or during the length of time the facility has operated, whichever is less, as assessed by the Department, the Department may issue a provisional license or Notice of Compliance.
  - d. Effective January 1, 2006, for any new license or Notice of Compliance issued to a child care facility, the facility shall maintain a compliance history of at least seventy-five percent (75%), as assessed by the Department. When a child care facility fails to maintain a compliance history of at least seventy-five percent (75%) for the past 18 months or during the length of time the facility has operated, whichever is less, as assessed by the Department, the Department may issue a provisional license or Notice of Compliance.
  - e. The Department shall provide additional opportunities for child care providers to earn points for program standards and education levels of staff.
- (5) To revoke the license of any child care facility that ceases to meet the standards established by this Article and rules on these standards adopted by the Commission, or that demonstrates a pattern of noncompliance with this Article or the rules, or to deny a license to any applicant that fails to meet the standards



or the rules. These revocations and denials shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.

- (6) To prosecute or defend on behalf of the State, through the office of the Attorney General, any legal actions arising out of the administration or enforcement of this Article.
- (7) To promote and coordinate educational programs and materials for operators of child care facilities which are designed to improve the quality of child care available in the State, using the resources of other State and local agencies and educational institutions where appropriate.
- (8) Repealed by Session Laws 1997-506, s. 5.
- (9) To levy a civil penalty pursuant to G.S. 110-103.1, or an administrative penalty pursuant to G.S. 110-102.2, or to order summary suspension of a license. These actions shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.
- (10) To issue final agency decisions in all G.S. 150B contested cases proceedings filed as a result of actions taken under this Article including, but not limited to the denial, revocation, or suspension of a license or the levying of a civil or administrative penalty.
- (11) To issue a license to any child care arrangement that does not meet the definition of child care facility in G.S. 110-86 whenever the operator of the arrangement chooses to comply with the requirements of this Article and the rules adopted by the Commission and voluntarily applies for a child care facility license. The Commission shall adopt rules for the issuance or removal of the licenses.

Notwithstanding any other provision of law, rules adopted by the Commission regarding a public school that voluntarily applies for a child care facility license shall provide that a classroom that meets the standards set out in G.S. 115C-521.1 shall satisfy child care facility licensure requirements as related to the physical classroom. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, ss. 155(g), 156(cc), (dd); 1987, c. 788, s. 4; c. 827, s. 233; 1991, c. 273, s. 3; 1993, c. 185, s. 2; 1997-443, s. 11A.118(a); 1997-506, s. 5; 2003-284, s. 34.12(a); 2005-36, s. 1; 2009-123, s. 2; 2009-451, s. 10.11.)

**§ 110-90.1: Repealed by Session Laws 1997-506, s. 6.**

**§ 110-90.2. Mandatory child care providers' criminal history checks.**

- (a) For purposes of this section:
  - (1) "Child care", notwithstanding the definition in G.S. 110-86, means any child care provided in child care facilities required to be licensed or regulated under this Article and nonlicensed child care homes approved to receive or receiving State or federal funds for providing child care.
  - (2) "Child care provider" means a person who:
    - a. Is employed by or seeks to be employed by a child care facility providing child care as defined in subdivision (1) of this subsection,

whether in temporary or permanent capacity, including substitute providers;

b. Owns or operates or seeks to own or operate a child care facility or nonlicensed child care home providing child care as defined in subdivision (1) of this subsection; or

c. Is a member of the household in a family child care home, nonlicensed child care home, or child care center in a residence and who is over 15 years old, including family members and nonfamily members who use the home on a permanent or temporary basis as their place of residence.

(3) "Criminal history" means a county, state, or federal criminal history of conviction or pending indictment of a crime or criminal charge, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children. Such crimes include, but are not limited to, the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary; Article 16, Larceny; Article 17, Robbery; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19C, Identity Theft; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 29, Bribery; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 52, Miscellaneous Police Regulations; and Article 59, Public Intoxication. Such crimes also include cruelty to animals in violation of Article 3 of Chapter 19A of the General Statutes, possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(4) "Substitute provider" means a person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months and may or may not be monetarily compensated by the facility.

(5) "Uncompensated provider" means a person who works in a child care facility and is counted in staff/child ratio or has unsupervised contact with children, but who is not monetarily compensated by the facility.

(a1) No person shall be a child care provider or uncompensated child care provider who has been any of the following:

- (1) Convicted of a misdemeanor or a felony crime involving child neglect or child abuse.
- (2) Adjudicated a "responsible individual" under G.S. 7B-311(b).
- (3) Convicted of a "reportable conviction" as defined under G.S. 14-208.6(4).

(b) Effective January 1, 1996, the Department shall ensure that, prior to employment and every three years thereafter, the criminal history of all child care providers is checked and a determination is made of the child care provider's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Department shall ensure that all child care providers are checked for county, State, and federal criminal histories.

(b1) The Department may prevent an individual from being a child care provider if the Department determines that the individual is a habitually excessive user of alcohol, illegally uses narcotic or other impairing drugs, or is mentally or emotionally impaired to an extent that may be injurious to children.

(c) The Department of Public Safety shall provide to the Division of Child Development, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories of any child care provider as requested by the Division.

The Division shall provide to the Department of Public Safety, along with the request, the fingerprints of the provider to be checked, any additional information required by the Department of Public Safety, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories signed by the child care provider to be checked. The fingerprints of the provider shall be forwarded to the State Bureau of Investigation for a search of their criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a federal criminal history record check.

At the time of application the child care provider whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

**NOTICE**

**CHILD CARE PROVIDER  
MANDATORY CRIMINAL HISTORY CHECK**

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY RECORD CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CHILD CARE IN A LICENSED CHILD CARE FACILITY, AND ALL PERSONS PROVIDING CHILD CARE IN NONLICENSED CHILD CARE HOMES THAT RECEIVE STATE OR FEDERAL FUNDS.

"Criminal history" means a county, state, or federal criminal history of conviction, pending indictment of a crime, or criminal charge, whether a misdemeanor or a felony, that bears on an individual's fitness to have responsibility for the safety and well-being of children. Such crimes include, but are not limited to, the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6,

Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary; Article 16, Larceny; Article 17, Robbery; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19C, Identity Theft; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 29, Bribery; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include cruelty to animals in violation of Article 3 of Chapter 19A of the General Statutes, violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this notice, such crimes also include similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you disagree with the determination of the North Carolina Department of Health and Human Services on your fitness to provide child care, you may file a civil lawsuit within 60 days after receiving written notification of disqualification in the district court in the county where you live.

Any child care provider who intentionally falsifies any information required to be furnished to conduct the criminal history record check shall be guilty of a Class 2 misdemeanor.

Refusal to consent to a criminal history record check or intentional falsification of any information required to be furnished to conduct a criminal history record check is grounds for the Department to prohibit the child care provider from providing child care. Any child care provider who intentionally falsifies any information required to be furnished to conduct the criminal history shall be guilty of a Class 2 misdemeanor.

(d) The Department shall notify in writing the child care provider, and the child care provider's employer, if any, or for nonlicensed child care homes the local purchasing agency, of the determination by the Department whether the child care provider is qualified to provide child care based on the child care provider's criminal history. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of the child care provider's criminal history to the child care provider or the child care provider's employer or local purchasing agency. The Department shall also notify the child care provider of the procedure for completing or challenging the accuracy of the

criminal history and the child care provider's right to contest the Department's determination in court.

A child care provider who disagrees with the Department's decision may file a civil action in the district court of the county of residence of the child care provider within 60 days after receiving written notification of disqualification. Review of the Department's determination disqualifying a child care provider shall be de novo. No jury trial is available for appeals to district court under this section.

(e) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(f) There shall be no liability for negligence on the part of an employer of a child care provider, an owner or operator of a child care facility, a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection is waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(g) The child care provider shall pay the cost of the fingerprinting and the federal criminal history record check in accordance with G.S. 143B-934. The Department of Public Safety shall perform the State criminal history record check. The Department of Health and Human Services shall pay for and conduct the county criminal history record check. Child care providers who reside outside the State bear the cost of the county criminal history record check and shall provide the county criminal history record check to the Division of Child Development as required by this section.

(h) Repealed by Session Laws 2013-410, s. 46, effective August 23, 2013. (1995, c. 507, s. 23.25(a); c. 542, s. 25.2; 1997-443, s. 11A.118(a); 1997-506, s. 7; 2012-160, s. 1; 2013-410, s. 46; 2013-413, s. 12; 2014-100, ss. 17.1(o), (pp); 2014-115, s. 17; 2015-181, s. 47; 2015-264, s. 55.)

#### **§ 110-91. Mandatory standards for a license.**

All child care facilities shall comply with all State laws and federal laws and local ordinances that pertain to child health, safety, and welfare. Except as otherwise provided in this Article, the standards in this section shall be complied with by all child care facilities. However, none of the standards in this section apply to the school-age children of the operator of a child care facility but do apply to the preschool-age children of the operator. Children 13 years of age or older may receive child care on a voluntary basis provided all applicable required standards are met. The standards in this section, along with any other applicable State laws and federal laws or local ordinances, shall be the required standards for the issuance of a license by the Secretary under the policies and procedures of the

Commission except that the Commission may, in its discretion, adopt less stringent standards for the licensing of facilities which provide care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

- (1) **Medical Care and Sanitation.** – The Commission for Public Health shall adopt rules which establish minimum sanitation standards for child care centers and their personnel. The sanitation rules adopted by the Commission for Public Health shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; infectious disease control; sleeping facilities; and other items and facilities as are necessary in the interest of the public health. The Commission for Public Health shall allow child care centers to use domestic kitchen equipment, provided appropriate temperature levels for heating, cooling, and storing are maintained. Child care centers that fry foods shall use commercial hoods. These rules shall be developed in consultation with the Department.

The Commission shall adopt rules for child care facilities to establish minimum requirements for child and staff health assessments and medical care procedures. These rules shall be developed in consultation with the Department. Each child shall have a health assessment before being admitted or within 30 days following admission to a child care facility. The assessment shall be done by: (i) a licensed physician, (ii) the physician's authorized agent who is currently approved by the North Carolina Medical Board, or comparable certifying board in any state contiguous to North Carolina, (iii) a certified nurse practitioner, or (iv) a public health nurse meeting the Departments Standards for Early Periodic Screening, Diagnosis, and Treatment Program. However, no health assessment shall be required of any staff or child who is and has been in normal health when the staff, or the child's parent, guardian, or full-time custodian objects in writing to a health assessment on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Organizations that provide prepared meals to child care centers only are considered child care centers for purposes of compliance with appropriate sanitation standards.

- (2) **Health-Related Activities.** –
  - a. through f. Repealed by Session Laws 2012-142, s. 10.1(c1), effective July 1, 2012.
  - g. **Nutrition standards.** – The Commission shall adopt rules for child care facilities to ensure that food and beverages provided by a child care

facility are nutritious and align with children's developmental needs. The Commission shall consult with the Division of Child Development and Early Education of the Department of Health and Human Services to develop nutrition standards to provide for requirements appropriate for children of different ages. In developing nutrition standards, the Commission shall consider the following recommendations:

1. Limiting or prohibiting the serving of sweetened beverages, other than one hundred percent (100%) fruit juice to children of any age.
  2. Limiting or prohibiting the serving of whole milk to children two years of age or older or flavored milk to children of any age.
  3. Limiting or prohibiting the serving of more than six ounces of juice per day to children of any age.
  4. Limiting or prohibiting the serving of juice from a bottle.
- h. Parental exceptions. –
1. Parents or guardians of a child enrolled in a child care facility may (i) provide food and beverages to their child that may not meet the nutrition standards adopted by the Commission and (ii) opt out of any supplemental food program provided by the child care facility. The child care facility shall not provide food or beverages to a child whose parent or guardian has opted out of any supplemental food program provided by the child care facility and whose parent or guardian is providing food and beverages for the child.
  2. The Commission, the Division of Child Development and Early Education of the Department of Health and Human Services, or any State agency or contracting entity with a State agency shall not evaluate the nutritional value or adequacy of the components of food and beverages provided by a parent or guardian to his or her child enrolled in a child care facility as an indicator of environmental quality ratings.
- i. Rest time. – Each child care facility shall have a rest period for each child in care after lunch or at some other appropriate time and arrange for each child in care to be out-of-doors each day if weather conditions permit.
- (3) Location. – Each child care facility shall be located in an area which is free from conditions which are considered hazardous to the physical and moral welfare of the children in care in the opinion of the Secretary.
- (4) Building. – Each child care facility shall be located in a building which meets the appropriate requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Commission specifically for child care facilities, including facilities operated in a private residence. These standards shall be consistent with the provisions of this Article. A local building code enforcement officer shall approve any proposed alternate material, design, or method of construction, provided the building code

enforcement officer finds that the alternate, for the purpose intended, is at least the equivalent of that prescribed in the technical building codes in quality, strength, effectiveness, fire resistance, durability, or safety. A local building code enforcement officer shall require that sufficient evidence or proof be submitted to substantiate any claim made regarding the alternate. The Child Care Commission may request changes to the Building Code to suit the special needs of preschool children. Satisfactorily written reports from representatives of building inspection agencies shall be required prior to the issuance of a license and whenever renovations are made to a child care center, or when the operator requests licensure of space not previously approved for child care.

- (5) Fire Prevention. – Each child care facility shall be located in a building that meets appropriate requirements for fire prevention and safe evacuation that apply to child care facilities as established by the Department of Insurance in consultation with the Department. Except for child care centers located on State property, each child care center shall be inspected at least annually by a local fire department or volunteer fire department for compliance with these requirements. Child care centers located on State property shall be inspected at least annually by an official designated by the Department of Insurance.
- (6) Space and Equipment Requirements. – There shall be no less than 25 square feet of indoor space for each child for which a child care center is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and this floor space shall provide during rest periods 200 cubic feet of airspace per child for which the center is licensed. There shall be adequate outdoor play area for each child under rules adopted by the Commission which shall be related to the size of center and the availability and location of outside land area. In no event shall the minimum required exceed 75 square feet per child. The outdoor area shall be protected to assure the safety of the children receiving child care by an adequate fence or other protection. A center operated in a public school shall be deemed to have adequate fencing protection. A center operating exclusively during the evening and early morning hours, between 6:00 P.M. and 6:00 A.M., need not meet the outdoor play area requirements mandated by this subdivision.

Each child care facility shall provide indoor area equipment and furnishings that are child size, sturdy, safe, and in good repair. Each child care facility that provides outdoor area equipment and furnishings shall provide outdoor area equipment and furnishings that are child size, sturdy, free of hazards that pose a threat of serious injury to children while engaged in normal play activities, and in good repair. The Commission shall adopt standards to establish minimum requirements for equipment appropriate for the size of child care facility. Space shall be available for



proper storage of beds, cribs, mats, cots, sleeping garments, and linens as well as designated space for each child's personal belongings.

The Division of Child Development of the Department of Health and Human Services shall establish and implement a policy that defines any building which is currently approved for school occupancy and which houses a public or private elementary school to include the playgrounds and athletic fields as part of the school building when that building is used to serve school-age children in after-school child care programs. Playgrounds and athletic fields referenced in this section that do not meet licensure standards promulgated by the North Carolina Child Care Commission shall be noted on the program's licensure and rating information.

(7) Staff-Child Ratio and Capacity for Child Care Facilities. – In determining the staff-child ratio in child care facilities, all children younger than 13 years old shall be counted.

a. The Commission shall adopt rules for child care centers regarding staff-child ratios, group sizes and multi-age groupings other than for infants and toddlers, provided that these rules shall be no less stringent than those currently required for staff-child ratios as enacted in Section 156(e) of Chapter 757 of the 1985 Session Laws.

1. Except as otherwise provided in this subdivision, the staff-child ratios and group sizes for infants and toddlers in child care centers shall be no less stringent than as follows:

Age	Ratio Staff/ Children	Group Size
0 to 12 months	1/5	10
12 to 24 months	1/6	12
2 to 3 years	1/10	20.

No child care center shall care for more than 25 children in one group. Child care centers providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel and separate identifiable space for each group.

2. When any preschool-aged child is enrolled in a child care center and the licensed capacity of the center is six through 12 children, the staff-child ratios shall be no less stringent than as follows:

Age	Ratio Staff/ Children
0 to 12 months	1/5 preschool children plus 3 additional school-aged children
12 to 24 months	1/6 preschool children plus 2 additional school-aged children.

The following shall also apply:

I. There is no specific group size.

- II. When only one caregiver is required to meet the staff-child ratio, the operator shall make available to parents the name, address, and phone number of an adult who is nearby and available for emergency relief.
  - III. Children shall be supervised at all times. All children who are not asleep or resting shall be visually supervised. Children may sleep or rest in another room as long as a caregiver can hear them and respond immediately.
- b. Family Child Care Home Capacity. – Of the children present at any one time in a family child care home, no more than five children shall be preschool-aged, including the operator's own preschool-age children.
- (8) Qualifications for Staff. – All child care center administrators shall be at least 21 years of age. All child care center administrators shall have the North Carolina Early Childhood Administration Credential or its equivalent as determined by the Department. All child care administrators performing administrative duties as of the date this act becomes law and child care administrators who assume administrative duties at any time after this act becomes law and until September 1, 1998, shall obtain the required credential by September 1, 2000. Child care administrators who assume administrative duties after September 1, 1998, shall begin working toward the completion of the North Carolina Early Childhood Administration Credential or its equivalent within six months after assuming administrative duties and shall complete the credential or its equivalent within two years after beginning work to complete the credential. Each child care center shall be under the direction or supervision of a person meeting these requirements. All staff counted toward meeting the required staff-child ratio shall be at least 16 years of age, provided that persons younger than 18 years of age work under the direct supervision of a credentialed staff person who is at least 21 years of age. All lead teachers in a child care center shall have at least a North Carolina Early Childhood Credential or its equivalent as determined by the Department. Lead teachers shall be enrolled in the North Carolina Early Childhood Credential coursework or its equivalent as determined by the Department within six months after becoming employed as a lead teacher or within six months after this act becomes law, whichever is later, and shall complete the credential or its equivalent within 18 months after enrollment.

For child care centers licensed to care for 200 or more children, the Department, in collaboration with the North Carolina Institute for Early Childhood Professional Development, shall establish categories to recognize the levels of education achieved by child care center administrators and teachers who perform administrative functions. The Department shall use these categories to establish appropriate staffing based on the size of the center and the individual staff responsibilities.

Effective January 1, 1998, an operator of a licensed family child care home shall be at least 21 years old and have a high school diploma or its equivalent. Operators of a family child care home licensed prior to January 1, 1998, shall be at least 18 years of age and literate. Literate is defined as understanding licensing requirements and having the ability to communicate with the family and relevant emergency personnel. Any operator of a licensed family child care home shall be the person on-site providing child care.

The Commission shall adopt standards to establish appropriate qualifications for all staff in child care centers. These standards shall reflect training, experience, education and credentialing and shall be appropriate for the size center and the level of individual staff responsibilities. It is the intent of this provision to guarantee that all children in child care are cared for by qualified people. Pursuant to G.S. 110-106, no requirements may interfere with the teachings or doctrine of any established religious organization. The staff qualification requirements of this subdivision do not apply to religious-sponsored child care facilities pursuant to G.S. 110-106.

(8a) Expired pursuant to Session Laws 2010-178, s. 2, as amended by Session Laws 2011-145, s. 10.4A, effective July 1, 2011.

(9) Records. – Each child care facility shall keep accurate records on each child receiving care in the child care facility and on each staff member or other person delegated responsibility for the care of children in accordance with a form furnished or approved by the Commission, and shall submit records as required by the Department.

All records of any child care facility, except financial records, shall be available for review by the Secretary or by duly authorized representatives of the Department or a cooperating agency who shall be designated by the Secretary and shall be submitted as required by the Department.

(10) Each operator or staff member shall attend to any child in a nurturing and appropriate manner, and in keeping with the child's developmental needs.

Each child care facility shall have a written policy on discipline, describing the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

The use of corporal punishment as a form of discipline is prohibited in child care facilities and may not be used by any operator or staff member of any child care facility, except that corporal punishment may be used in religious sponsored child care facilities as defined in G.S.

110-106, only if (i) the religious sponsored child care facility files with the Department a notice stating that corporal punishment is part of the religious training of its program, and (ii) the religious sponsored child care facility clearly states in its written policy of discipline that corporal punishment is part of the religious training of its program. The written policy on discipline of nonreligious sponsored child care facilities shall clearly state the prohibition on corporal punishment.

- (11) Staff Development. – The Commission shall adopt minimum standards for ongoing staff development for facilities but limited to the following topic areas:
- a. Planning a safe, healthy learning environment;
  - b. Steps to advance children's physical and intellectual development;
  - c. Positive ways to support children's social and emotional development;
  - d. Strategies to establish productive relationships with families;
  - e. Strategies to manage an effective program operation;
  - f. Maintaining a commitment to professionalism;
  - g. Observing and recording children's behavior;
  - h. Principles of child growth and development; and
  - i. Learning activities that promote inclusion of children with special needs.

These standards shall include annual requirements for ongoing staff development appropriate to job responsibilities. A person may carry forward in-service training hours that are in excess of the previous year's requirement to meet up to one-half of the current year's required in-service training hours.

- (12) Developmentally Appropriate Activities. – Each facility shall have developmentally appropriate activities and play materials. The Commission shall establish minimum standards for developmentally appropriate activities for child care facilities. Each child care facility shall have a planned schedule of developmentally appropriate activities displayed in a prominent place for parents to review and the appropriate materials and equipment available to implement the scheduled activities. Each child care center shall make four of the following activity areas available daily: art and other creative play, children's books, blocks and block building, manipulatives, and family living and dramatic play.
- (13) Transportation. – When a child care facility staff person or a volunteer of a child care facility transports children in a vehicle, each adult and child shall be restrained by an appropriate seat safety belt or restraint device when the vehicle is in motion. Children may never be left unattended in a vehicle.

The ratio of adults to children in child care vehicles may not be less than the staff/child ratios prescribed by G.S. 110-91(7). The Commission shall adopt standards for transporting children under the age of two,

including standards addressing this particular age's staff/child ratio during transportation.

- (14) Any effort to falsify information provided to the Department shall be considered by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the child care facility and shall constitute a cause for revoking or denying a license to such child care facility.
- (15) **Safe Sleep Policy.** – Operators of child care facilities that care for children ages 12 months or younger shall develop and maintain a written safe sleep policy, in accordance with rules adopted by the Commission. The safe sleep policy shall address maintaining a safe sleep environment and shall include the following requirements:
- a. A caregiver in a child care facility shall place a child age 12 months or younger on the child's back for sleeping, unless: (i) for a child age 6 months or younger, the operator of the child care facility obtains a written waiver of this requirement from a health care professional, as defined in rules adopted by the Commission; or (ii) for a child older than 6 months, the operator of the child care facility obtains a written waiver of this requirement from a health care professional, as defined in rules adopted by the Commission, a parent, or a legal guardian.
  - b. The operator of the child care facility shall discuss the safe sleep policy with the child's parent or guardian before the child is enrolled in the child care facility. The child's parent or guardian shall sign a statement attesting that the parent or guardian received a copy of the safe sleep policy and that the policy was discussed with the parent or guardian before the child's enrollment.
  - c. Any caregiver responsible for the care of children ages 12 months or younger shall receive training in safe sleep practices. (1971, c. 803, s. 1; 1973, c. 476, s. 128; 1975, c. 879, s. 15; 1977, c. 1011, s. 4; c. 1104; 1979, c. 9, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1382, ss. 1, 2; 1983, c. 46, s. 2; cc. 62, 277, 612; 1985, c. 757, ss. 155(h), (i), 156(c)-(h); 1987, c. 543, s. 3; c. 788, s. 6; c. 827, s. 234; 1989 (Reg. Sess., 1990), c. 1004, s. 56; 1991, c. 273, s. 5; c. 640, s. 1; 1993, c. 185, s. 3; c. 321, s. 254(c); c. 513, s. 9; c. 553, s. 32; 1995, c. 94, s. 32; 1997-443, s. 11A.44; 1997-456, s. 43.1(a); 1997-506, s. 8(a); 1998-217, s. 11; 1999-130, s. 2; 2003-407, s. 1; 2007-182, s. 2; 2009-64, s. 1; 2009-244, s. 1; 2010-117, s. 1; 2010-178, s. 1; 2011-145, s. 10.4A; 2012-142, 10.1(c1); 2012-160, s. 2.)

#### **§ 110-92. Duties of State and local agencies.**

When requested by an operator of a child care center or by the Secretary, it shall be the duty of local and district health departments to visit and inspect a child care center to determine whether the center complies with the health and sanitation standards required by this Article and with the minimum sanitation standards adopted as rules by the Commission

for Public Health as authorized by G.S. 110-91(1), and to submit written reports on these visits or inspections to the Department on forms approved and provided by the Department of Environmental Quality.

When requested by an operator of a child care center or by the Secretary, it shall be the duty of the building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a child care center for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on these visits or inspections in writing to the Secretary so that these reports may serve as the basis for action or decisions by the Secretary or Department as authorized by this Article. (1971, c. 803, s. 1; 1973, c. 476, ss. 128, 138; 1975, c. 879, s. 15; 1985, c. 757, s. 155(j); 1987, c. 543, s. 4; 1989, c. 727, s. 31; 1989 (Reg. Sess., 1990), c. 1024, s. 21; 1991, c. 273, s. 6; 1997-443, s. 11A.45; 1997-506, s. 9; 2007-182, s. 2; 2015-241, s. 14.30(u).)

#### **§ 110-93. Application for a license.**

(a) Each person who seeks to operate a child care facility shall apply to the Department for a license. The application shall be in the form required by the Department. Each applicant seeking a license shall be responsible for supplying with the application the necessary supporting data and reports to show conformity with rules adopted by the Commission for Public Health pursuant to G.S. 110-91(1) and with the standards established or authorized by this Article, including any required reports from the local and district health departments, local building inspectors, local firemen, voluntary firemen, and others, on forms which shall be provided by the Department.

(b) If an applicant conforms to the rules adopted by the Commission for Public Health pursuant to G.S. 110-91(1) and with the standards established or authorized by this Article as shown in the application and other supporting data, the Secretary shall issue a license that shall remain valid until the Secretary notifies the licensee otherwise pursuant to G.S. 150B-3 or other provisions of this Article, subject to suspension or revocation for cause as provided in this Article. If the applicant fails to conform to the required rules and standards, the Secretary may issue a provisional license under the policies of the Commission. The Department shall notify the applicant in writing by registered or certified mail the reasons the Department issued a provisional license.

(c) Repealed by Session Laws 1997-506, s. 10, effective September 16, 1997.

(d) Repealed by Session Laws 1977, c. 929, s. 1. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 4, s. 4; c. 929, s. 1; 1985, c. 757, s. 155(k), (l); 1987, c. 543, ss. 5, 6; c. 788, s. 7; 1991, c. 273, s. 7; 1997-443, s. 11A.118(a); 1997-506, s. 10; 1999-130, s. 3; 2007-182, s. 2.)

**§ 110-93.1:** Repealed by Session Laws 2006-66, s. 10.2(a), (b), effective July 1, 2006.

#### **§ 110-94. Administrative Procedure Act.**

The provisions of Chapter 150B of the General Statutes shall be applicable to the Commission, to the rules the Commission adopts, and to child care contested cases. However, a child care operator shall have 30 days to file a petition for a contested case pursuant to G.S. 150B-23. The contested case hearing shall be scheduled to be held within 120 days of the date the petition for a hearing is received, pursuant to G.S. 150B-23(a), in any contested case resulting from

administrative action taken by the Secretary to revoke a license or Letter of Compliance or from administrative action taken in a situation in which child abuse or neglect in a child care facility has been substantiated. A request for continuance of a hearing shall be granted upon a showing of good cause by either party. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 929, s. 2; 1985, c. 757, s. 155(m); 1987, c. 788, s. 8; 1989, c. 429; 1991, c. 273, s. 8; 1997-506, s. 11.)

**§§ 110-95 through 110-97. Repealed by Session Laws 1977, c. 929, s. 1.**

**§ 110-98. Mandatory compliance.**

It shall be unlawful for any person to:

- (1) Offer or provide child care without complying with the provisions of this Article; or
- (2) Advertise without disclosing the child care facility's identifying number that is on the license or the letter of compliance. (1971, c. 803, s. 1; 1985, c. 757, s. 156(ee); 1987, c. 788, s. 9; 1997-506, s. 12.)

**§ 110-98.1. Prima facie evidence of existence of child care.**

A child care arrangement providing child care for more than two children for more than four hours per day on two or more consecutive days shall be prima facie evidence of the existence of a child care facility. (1977, c. 4, s. 6; 1987, c. 788, s. 10; 1997-506, s. 13.)

**§ 110-99. Possession and display of license.**

(a) It shall be unlawful for a child care facility to operate without a current license authorized for issuance under G.S. 110-88.

(a1) Each child care facility shall display its current license in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe any rating which may appear on the license. Any license issued to a child care facility under this Article shall remain the property of the State and may be removed by persons employed or designated by the Secretary in the event that the license is revoked or suspended, or in the event that the rating is changed.

(b) A person who provides only drop-in or short-term child care as described in G.S. 110-86(2)d. and G.S. 110-86(2)d1., excluding drop-in or short-term child care provided in churches, shall register with the Department that the person is providing only drop-in or short-term child care. Any person providing only drop-in or short-term child care as described in G.S. 110-86(2)d. and G.S. 110-86(2)d1., excluding drop-in or short-term child care provided in churches, shall display in a prominent place at all times a notice that the child care arrangement is not required to be licensed and regulated by the Department and is not licensed and regulated by the Department. (1971, c. 803, s. 1; 1997-506, s. 14; 1999-130, s. 4; 2003-192, s. 2; 2005-416, s. 2.)

**§ 110-100: Repealed by Session Laws 1997-506, s. 15.**

**§ 110-101: Repealed by Session Laws 1997-506, s. 16.**

**§ 110-101.1. Corporal punishment banned in certain "nonlicensed" homes.**

The use of corporal punishment as a form of discipline is prohibited in those child care homes that are not required to be licensed under this Article but that receive State or federal subsidies for

child care unless this care is provided to children by their parents, stepparents, grandparents, aunts, uncles, step-grandparents, or great-grandparents. Care provided children by their parents, stepparents, grandparents, aunts, uncles, step-grandparents, or great-grandparents is not subject to this section. Religious sponsored nonlicensed homes are also exempt from this section. (1993, c. 268, s. 1; 1997-506, s. 17.)

#### **§ 110-102. Information for parents.**

The Secretary shall provide to each operator of a child care facility a summary of this Article for the parents, guardian, or full-time custodian of each child receiving child care in the facility to be distributed by the operator. Operators of child care facilities shall provide a copy of the summary to each child's parent, guardian, or full-time custodian before the child is enrolled in the child care facility. The child's parent, guardian, or full-time custodian shall sign a statement attesting that he or she received a copy of the summary before the child's enrollment. The summary shall include the name and address of the Secretary and the address of the Commission. The summary shall explain how parents may obtain information on individual child care facilities maintained in public files by the Division of Child Development. The summary shall also include a statement regarding the mandatory duty prescribed in G.S. 7B-301 of any person suspecting child abuse or neglect has taken place in child care, or elsewhere, to report to the county Department of Social Services. The statement shall include the definitions of child abuse and neglect described in the Juvenile Code in G.S. 7B-101 and of child abuse described in the Criminal Code in G.S. 14-318.2 and G.S. 14-318.4. The statement shall stress that this reporting law does not require that the person reporting reveal the person's identity.

The summary of this Article shall be posted with the facility's license in accordance with G.S. 110-99. Religious-sponsored programs operating pursuant to G.S. 110-106 shall post the summary in a prominent place at all times so that it is easily reviewed by parents. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 1011, s. 3; 1985, c. 757, ss. 155(o), 156(v); 1997-443, s. 11A.118(a); 1997-506, s. 18; 1998-202, s. 13(w); 2003-196, s. 1.)

#### **§ 110-102.1. Reporting of missing or deceased children.**

(a) Notwithstanding G.S. 14-318.5, operators and staff, as defined in G.S. 110-86(7), and G.S. 110-91(8), or any adult present with the approval of the care provider in a child care facility as defined in G.S. 110-86(3) and G.S. 110-106, upon learning that a child which has been placed in their care or presence is missing, shall immediately report the missing child to law enforcement. For purposes of this Article, a child is anyone under the age of 16.

(b) If a child dies while in child care, or of injuries sustained in child care, a report of the death must be made by the child care operator to the Secretary within 24 hours of the child's death or on the next working day. (1985, c. 392; 1987, c. 788, s. 12; 1997-506, s. 19; 2013-52, s. 4.)

#### **§ 110-102.1A. Unauthorized administration of medication.**

(a) It is unlawful for an employee, owner, household member, volunteer, or operator of a licensed or unlicensed child care facility as defined in G.S. 110-86, including child care facilities operated by public schools and nonpublic schools as defined in G.S. 110-86(2)(f), to willfully administer, without written authorization, prescription or over-the-counter medication to a child



attending the child care facility. For the purposes of this section, written authorization shall include the child's name, date or dates for which the authorization is applicable, dosage instructions, and signature of the child's parent or guardian. For the purposes of this section, a child care facility operated by a public school does not include kindergarten through twelfth grade classes.

(b) In the event of an emergency medical condition and the child's parent or guardian is unavailable, it shall not be unlawful to administer medication to a child attending the child care facility without written authorization as required under subsection (a) of this section if the medication is administered with the authorization and in accordance with instructions from a bona fide medical care provider. For purposes of this subsection, the following definitions apply:

- (1) A bona fide medical care provider means an individual who is licensed, certified, or otherwise authorized to prescribe the medication.
- (2) An emergency medical condition means circumstances where a prudent layperson acting reasonably would have believed that an emergency medical condition existed.

(c) A violation of this section that results in serious injury to the child shall be punished as a Class F felony.

(d) Any other violation of this section where medication is administered willfully shall be punished as a Class A1 misdemeanor. (2003-406, s. 2.)

#### **§ 110-102.2. Administrative penalties.**

For failure to comply with this Article, the Secretary may:

- (1) Issue a written warning and a request for compliance;
- (2) Issue an official written reprimand;
- (3) Place a licensee upon probation until his compliance with this Article has been verified by the Commission or its agent;
- (4) Order suspension of a license for a specified length of time not to exceed one year;
- (5) Permanently revoke a license issued under this Article.

The issuance of an administrative penalty may be appealed as provided in G.S. 110-90(5) and G.S. 110-90(9). (1985, c. 757, s. 156(ff); 1987, c. 788, s. 13; c. 827, s. 235.)

#### **§ 110-103. Criminal penalty.**

(a) Any person who violates the provisions of G.S. 110-98 shall be guilty of a Class 1 misdemeanor. Violations of G.S. 110-98(2), 110-99(b), 110-99(c), and 110-102 are exempted from the provisions of this subsection.

(b) It shall be a Class I felony for any person who operates a child care facility to:

- (1) Willfully violate the provisions of G.S. 110-99(a), or
- (2) Willfully violate the provisions of this Article while providing child care for three or more children, for more than four hours per day on two consecutive days.

(c) Any person who violates the provisions of this Article and, as a result of the violation, causes serious injury to a child attending the child care facility, shall be guilty of a Class H felony.

(d) Any person who violates subsection (a) of this section, and has a prior conviction for violating subsection (a), shall be guilty of a Class H felony. (1971, c. 803, s. 1; 1983, c. 297, s. 3; 1985, c. 757, s. 156(gg); 1987, c. 788, s. 14; 1993, c. 539, s. 824; 1994, Ex. Sess., c. 24, s. 14(c); 1997-506, s. 20; 2003-192, s. 1.)

**§ 110-103.1. Civil penalty.**

(a) A civil penalty may be levied against any operator of any child care facility who violates any provision of this Article. The penalty shall not exceed one thousand dollars (\$1,000) for each violation documented on any given date. Every operator shall be provided a schedule of the civil penalties established by the Commission pursuant to this Article.

(b) In determining the amount of the penalty, the threat of or extent of harm to children in care as well as consistency of violations shall be considered, and no penalty shall be imposed under this section unless there is a specific finding that this action is reasonably necessary to enforce the provisions of this Article or its rules.

(c) A person who is assessed a penalty shall be notified of the penalty by registered or certified mail. The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the Secretary shall refer the matter to the Attorney General for collection.

(d) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1985, c. 757, s. 156(gg); 1987, c. 788, s. 15; c. 827, s. 236; 1991, c. 273, s. 9; 1997-506, s. 21; 1998-215, s. 75.)

**§ 110-104. Injunctive relief.**

The Secretary or the Secretary's designee may seek injunctive relief in the district court of the county in which a child care facility is located against the continuing operation of that child care facility at any time, whether or not any administrative proceedings are pending. The district court may grant injunctive relief, temporary, preliminary, or permanent, when there is any violation of this Article or of the rules promulgated by the Commission or the Commission for Public Health that threatens serious harm to children in the child care facility, or when a final order to deny or revoke a license has been violated, or when a child care facility is operating without a license, or when a child care facility repeatedly violates the provisions of this Article or rules adopted pursuant to it after having been notified of the violation. (1977, c. 4, s. 5; c. 929, s. 3; c. 1011, s. 1; 1985, c. 757, s. 156(hh); 1987, c. 543, s. 7; c. 788, s. 16; c. 827, s. 237; 1997-506, s. 22; 2007-182, s. 2.)

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

(a) The Department shall have authority to inspect facilities without notice when it determines there is cause to believe that an emergency situation exists or there is a complaint 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 maltreatment in a child care facility, or when the Department is notified by any other person that alleged child maltreatment 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 child maltreatment has occurred. The inspection shall be conducted within seven calendar days of receipt of the report. Additional visits shall be conducted, as warranted.

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

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

The 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 Department may inspect any area of a building in which there is reasonable evidence that children are in 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. (1983, c. 261, s. 1; 1985, c. 757, s. 156(ii); 1987, c. 788, s. 17; c. 827, s. 238; 1991, c. 273, s. 10; 1997-506, s. 23; 2015-123, s. 6.)

**§ 110-105.1: Repealed by Session Laws 1997-506, s. 24.**

**§ 110-105.2:** Repealed by Session Laws 2015-123, s. 7, effective January 1, 2016.

**§ 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) 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.
- (2) 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.
  - 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.

(3) 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.

(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.

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

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

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

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

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

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

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

- (1) The Department shall disclose confidential information, other than the identity of the reporter, to any federal, State, or local government entity or its agent in order to protect a juvenile from child maltreatment, abuse, or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent pursuant to this subdivision shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.
- (2) The Department shall only disclose information identifying the reporter pursuant to a court order, except that the Department may disclose information identifying the reporter without a court order only to a federal, State, or local government entity that demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.
- (3) A district court, superior court, or administrative law judge of this State presiding over a civil matter in which the Department is not a party may order the Department to release confidential information. The court may order the release of confidential information after providing the Department with reasonable notice and an opportunity to be heard and then determining that the information is relevant, necessary to the trial of the matter before the court, and unavailable from any other source.

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

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

(m) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. Rules promulgated subject to this section shall be exempt from the provisions of G.S. 150B-19.1(e) and (f). (2015-123, s. 8.)

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

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

(b) Upon receipt of any report of maltreatment involving sexual abuse of the child in a child care facility, the Department shall notify the State Bureau of Investigation within 24 hours or on the next workday. If sexual abuse in a child care facility is not alleged in the initial report, but during the course of the assessment there is reason to suspect that sexual abuse has occurred, the Department shall immediately notify the State Bureau of Investigation. Upon notification that sexual abuse may have occurred in a child care facility, the State Bureau of Investigation may form a task force to investigate the report. (2015-123, s. 8.)

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

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

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

(c) Individuals whose names are listed on the Registry shall not be a caregiver as defined in G.S. 110-105.3(b)(1) at any licensed child care facility or religious-sponsored child care facility.

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

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

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

(g) In order to determine an individual's fitness to care for or adopt a child, information from the Child Maltreatment Registry may be used by any of the Department's divisions responsible for licensing homes or facilities that care for children, and the Department 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.

(h) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. (2015-123, s. 8; 2015-264, s. 56(a).)

#### **§ 110-105.6. Penalties for child maltreatment.**

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

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

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

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

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

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

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

(h) Nothing in this section shall restrict the Department from using any other statutory or administrative remedies available. (2015-123, s. 8.)

**§ 110-106. Religious sponsored child care facilities.**

(a) The term "religious sponsored child care facility" as used in this section shall include any child care facility or summer day camp operated by a church, synagogue or school of religious charter.

(b) Procedure Regarding Religious Sponsored Child Care Facilities. –

- (1) Religious sponsored child care facilities shall file with the Department a notice of intent to operate a child care facility and the date it will begin operation at least 30 days prior to that date. Within 30 days after beginning operation, the facility shall provide to the Department written reports and supporting data which show the facility is in compliance with applicable provisions of G.S. 110-91. After the religious sponsored child care facility has filed this information with the Department, the facility shall be visited by a representative of the Department to ensure compliance with the applicable provisions of G.S. 110-91.
- (2) Each religious sponsored child care facility shall file with the Department a report indicating that it meets the minimum standards for facilities as provided in the applicable provisions of G.S. 110-91 as required by the Department. The reports shall be in accordance with rules adopted by the Commission. Each religious sponsored child care facility shall be responsible for supplying with its report the necessary supporting data to show conformity with those minimum standards, including reports from the local and district health departments, local building inspectors, local firemen, volunteer firemen, and other, on forms which shall be provided by the Department.
- (3) It shall be the responsibility of the Department to notify the facility if it fails to meet the minimum requirements. The Secretary shall be responsible for carrying out the enforcement provisions provided by the General Assembly in Article 7 of Chapter 110 including inspection to ensure compliance. The Secretary may issue an order requiring a religious sponsored child care facility which fails to meet the standards established pursuant to this Article to cease operating. A religious sponsored child care facility may request a hearing to determine if it is in compliance with the applicable provisions of G.S. 110-91. If the Secretary determines that it is not, the Secretary may order the facility to cease operation until it is in compliance.
- (4) Religious sponsored child care facilities including summer day camps shall be exempt from the requirement that they obtain a license and that the license be displayed and shall be exempt from any subsequent rule or regulatory program not dealing specifically with the minimum standards as provided in the applicable provisions of G.S. 110-91. Nothing in this Article shall be interpreted to allow the State to regulate or otherwise interfere with the religious training offered as a part of any religious sponsored child care program. Nothing in this Article shall prohibit any religious sponsored child care facility from becoming licensed by the State if it so chooses.
- (5) Religious sponsored child care facilities found to be in violation of the applicable provisions of G.S. 110-91 shall be subject to the injunctive provisions of G.S. 110-104, except that they may not be enjoined for operating without a license. The Secretary may seek an injunction against any religious



sponsored child care facility under the conditions specified in G.S. 110-104 with the above exception and when any religious sponsored child care facility operates without submitting the required forms and following the procedures required by this Article.

(c) G.S. 110-91(8), 110-91(11), 110-91(12) do not apply to religious sponsored child care facilities, and these facilities are exempt from any requirements prescribed by subsection (b) of this section that arise out of these provisions.

(d) No person shall be an operator of nor be employed in a religious sponsored child care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is a habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children.

(e) Each religious sponsored child care facility shall be under the direction or supervision of a literate person at least 21 years of age. All staff counted toward meeting the required staff/child ratio shall be at least 16 years old, provided that persons younger than 18 years old work under the direct supervision of a literate staff person at least 21 years old. Effective January 1, 1998, a person operating a religious sponsored child care home must be at least 21 years old and literate. Persons operating religious sponsored child care homes prior to January 1, 1998, shall be at least 18 years old and literate. The definition of literate in G.S. 110-91(8) shall apply to this subsection. (1983, c. 283, ss. 1, 2; 1985, c. 757, ss. 155(p), 156(k); 1987, c. 788, s. 20; 1997-506, s. 26.)

**§ 110-106.1: Repealed by Session Laws 1997-506, s. 27.**

**§ 110-106.2. Department of Defense-certified child care facilities.**

(a) As used in this section, the phrase "Department of Defense-certified child care facility" shall include child development centers, family child care homes, and school-aged child care facilities operated aboard a military installation under the authorization of the United States Department of Defense (Department of Defense) certified by the Department of Defense.

(b) Procedure Regarding Department of Defense-Certified Child Care Facilities. –

(1) Department of Defense-certified child care facilities shall file with the Department a notice of intent to operate a child care facility in a form determined by the Department of Defense.

(2) As part of its notice, each Department of Defense-certified child care facility shall file a report to the Department indicating that it meets the minimum standards for child care facilities as provided by the Department of Defense.

(3) Department of Defense-certified child care facilities that meet all the requirements of this section shall be exempt from all other requirements of this Article and shall not be subject to licensure.

(4) For purposes of the North Carolina Subsidized Child Care Program, Department of Defense-certified child care facilities shall be reimbursed as follows:

a. Department of Defense-certified child care facilities that are accredited by the National Association for the Education of Young Children (NAEYC) shall be reimbursed based on the five-star-rated license rate.

- b. All other Department of Defense-certified child care facilities shall be reimbursed based on the four-star-rated license rate. (2015-241, s. 12B.9(a).)

**§ 110-107. Fraudulent misrepresentation.**

(a) A person, whether a provider or recipient of child care subsidies or someone claiming to be a provider or recipient of child care subsidies, commits the offense of fraudulent misrepresentation when both of the following occur:

- (1) With the intent to deceive, that person makes a false statement or representation regarding a material fact, or fails to disclose a material fact.
- (2) As a result of the false statement or representation or the omission, that person obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person.

(b) If the child care subsidy is not more than one thousand dollars (\$1,000), the person is guilty of a Class 1 misdemeanor. If the child care subsidy is more than one thousand dollars (\$1,000), the person is guilty of a Class I felony.

(c) As used in this section:

- (1) "Child care subsidy" means the use of public funds to pay for day care services for children.
- (2) "Person" means an individual, association, consortium, corporation, body politic, partnership, or other group, entity, or organization. (1999-279, s. 1.)

**§ 110-108:** Repealed by Session Laws 2002-126, s. 10.58, effective July 1, 2002.

**§ 110-109:** Repealed by Session Laws 2001-424, s. 21.73(a).

**§§ 110-110 through 110-114. Reserved for future codification purposes.**

Article 8.

Child Abuse and Neglect.

**§§ 110-115 through 110-123: Repealed by Session Laws 1979, c. 815, s. 2.**

**§§ 110-124 through 110-127. Reserved for future codification purposes.**

Article 9.

Child Support.

**§ 110-128. Purposes.**

The purposes of this Article are to provide for the financial support of dependent children; to enforce spousal support when a child support order is being enforced; to provide that public assistance paid to dependent children is a supplement to the support required to be provided by the responsible parent; to provide that the payment of public assistance creates a debt to the State; to provide that the acceptance of public assistance operates as an assignment of the right to child

support; to provide for the location of absent parents; to provide for a determination that a responsible parent is able to support his children; and to provide for enforcement of the responsible parent's obligation to furnish support and to provide for the establishment and administration of a program of child support enforcement in North Carolina. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 1; 1985, c. 506, s. 2.)

### **§ 110-129. Definitions.**

As used in this Article:

- (1) "Court order" means any judgment or order of the courts of this State or of another state.
- (2) "Dependent child" means any person under the age of 18 who is not otherwise emancipated, married or a member of the Armed Forces of the United States, or any person over the age of 18 for whom a court orders that support payments continue as provided in G.S. 50-13.4(c).
- (3) "Responsible parent" means the natural or adoptive parent of a dependent child who has the legal duty to support said child and includes the father of a child born out-of-wedlock and the parents of a dependent child who is the custodial or noncustodial parent of the dependent child requiring support. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated.
- (4) "Program" means the Child Support Enforcement Program established and administered pursuant to the provisions of this Article and Title IV-D of the Social Security Act.
- (5) "Designated representative" means any person or agency designated by a board of county commissioners or the Department of Health and Human Services to administer a program of child support enforcement for a county or region of the State.
- (6) "Disposable income" means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, unemployment compensation benefits, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement

contributions. However, Supplemental Security Income, Work First Family Assistance, and other public assistance payments shall be excluded from disposable income. For employers, disposable income means "wage" as it is defined by G.S. 95-25.2(16). Unemployment compensation benefits shall be treated as disposable income only for the purposes of income withholding under the provisions of G.S. 110-136.4, and the amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits.

- (7) "IV-D case" means a case in which services have been applied for or are being provided by a child support enforcement agency established pursuant to Title IV-D of the Social Security Act as amended and this Article.
- (8) "Non-IV-D case" means any case, other than a IV-D case, in which child support is legally obligated to be paid.
- (9) "Initiating party" means the party, the attorney for a party, a child support enforcement agency who initiates an action, proceeding, or procedure as allowed or required by law for the establishment or enforcement of a child support obligation.
- (10) "Mistake of fact" means that the obligor:
  - a. Is not in arrears in an amount equal to the support payable for one month; or
  - b. Did not request that withholding begin, if withholding is pursuant to a purported request by the obligor for withholding; or
  - c. Is not the person subject to the court order of support for the child named in the advance notice of withholding; or
  - d. Does not owe the amount of current support or arrearages specified in the advance notice or motion of withholding; or
  - e. Has a rate of withholding which exceeds the amount of support specified in the court order.
- (11) "Obligee", in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of support, whether child support, alimony, or postseparation support, is owed or the individual's legal representative.
- (12) "Obligor" means the individual who owes a duty to make child support payments or payments of alimony or postseparation support under a court order.
- (13) "Payor" means any payor, including any federal, State, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as is defined at 29 USC § 203(d) in the Fair Labor Standards Act. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 2, 3; 1985, c. 592; 1985 (Reg. Sess., 1986), c. 949, s. 1; 1987, c. 764, s. 3; 1989, c. 601, s. 1; 1991, c. 541, s. 3; 1995, c. 518, s. 2; 1997-443, ss. 11A.118(a), 12.27; 1997-465, s. 27; 1998-176, ss. 9, 10; 2010-96, s. 30; 2011-183, s. 75.)

**§ 110-129.1. Additional powers and duties of the Department.**

(a) In addition to other powers and duties conferred upon the Department of Health and Human Services, Child Support Enforcement Program, by this Chapter or other State law, the Department shall have the following powers and duties:

- (1) Upon authorization of the Secretary, to issue a subpoena for the production of books, papers, correspondence, memoranda, agreements, or other information, documents, or records relevant to a child support establishment or enforcement proceeding or paternity establishment proceeding. The subpoena shall be signed by the Secretary and shall state the name of the person or entity required to produce the information authorized under this section, and a description of the information compelled to be produced. The subpoena may be served in the manner provided for service of subpoenas under the North Carolina Rules of Civil Procedure. The form of subpoena shall generally follow the practice in the General Court of Justice in North Carolina. Return of the subpoena shall be to the person who issued the subpoena. Upon the refusal of any person to comply with the subpoena, it shall be the duty of any judge of the district court, upon application by the person who issued the subpoena, to order the person subpoenaed to show cause why he should not comply with the requirements, if in the discretion of the judge the requirements are reasonable and proper. Refusal to comply with the subpoena or with the order shall be dealt with as for contempt of court and as otherwise provided by law. Information obtained as a result of a subpoena issued pursuant to this subdivision is confidential and may be used only by the Child Support Enforcement Program in conjunction with a child support establishment or enforcement proceeding or paternity establishment proceeding.
- (2) For the purposes of locating persons, establishing paternity, or enforcing child support orders, the Program shall have access to any information or data storage and retrieval system maintained and used by the Department of Transportation for drivers license issuance or motor vehicle registration, or by a law enforcement agency in this State for law enforcement purposes, as permitted pursuant to G.S. 132-1.4, except that the Program shall have access to information available to the law enforcement agency pertaining to drivers licenses and motor vehicle registrations issued in other states.
- (3) Establish and implement procedures under which in IV-D cases either parent or, in the case of an assignment of support, the State may request that a child support order enforced under this Chapter be reviewed and, if appropriate, adjusted in accordance with the most recently adopted uniform statewide child support guidelines prescribed by the Conference of Chief District Court Judges.

- (4) Develop procedures for entering into agreements with financial institutions to develop and operate a data match system as provided under G.S. 110-139.2.
- (5) Develop procedures for ensuring that when a noncustodial parent providing health care coverage pursuant to a court order changes employers and is eligible for health care coverage from the new employer, the new employer, upon receipt of notice of the order from the Department, enrolls the child in the employer's health care plan.
- (6) Develop and implement an administrative process for paternity establishment in accordance with G.S. 110-132.2.
- (7) Establish and implement administrative procedures to change the child support payee to ensure that child support payments are made to the appropriate caretaker when custody of the child has changed, in accordance with G.S. 50-13.4(d).
- (8) Establish and implement expedited procedures to take the following actions relating to the establishment of paternity or to establishment of support orders, without obtaining an order from a judicial tribunal:
  - a. Subpoena the parties to undergo genetic testing as provided under G.S. 110-132.2;
  - b. Implement income withholding in accordance with this Chapter;
  - c. For the purpose of securing overdue support, increase the amount of monthly support payments by implementation of income withholding procedures established under G.S. 110-136.4, or by notice and opportunity to contest to an obligor who is not subject to income withholding. Increases under this subdivision are subject to the limitations of G.S. 110-136.6;
  - d. For purposes of exerting and retaining jurisdiction in IV-D cases, transfer cases between jurisdictions in this State without the necessity for additional filing by the petitioner or service of process upon the respondent.
- (9) Implement and maintain performance standards for each of the State and county child support enforcement offices across the State. The performance standards shall include the following:
  - a. Cost per collections.
  - b. Consumer satisfaction.
  - c. Paternity establishments.
  - d. Administrative costs.
  - e. Orders established.
  - f. Collections on arrearages.
  - g. Location of absent parents.
  - h. Other related performance measures.

The Department shall monitor the performance of each office and shall implement a system of reporting that allows each local office to review its performance as well as the performance of other local offices. The

Department shall publish an annual performance report that includes the statewide and local office performance of each child support office.

(b) As used in this section, the term "Secretary" means the Secretary of Health and Human Services, the Secretary's designee, or a designated representative as defined under G.S. 110-129(5). (1997-433, s. 2; 1997-443, s. 11A.122; 1998-17, s. 1; 2009-451, s. 10.46.)

**§ 110-129.2. State Directory of New Hires established; employers required to report; civil penalties for noncompliance; definitions.**

(a) Directory Established. – There is established the State Directory of New Hires. The Directory shall be developed and maintained by the Department. The Directory shall be a central repository for employment information to assist in the location of persons owing child support, and in the establishment and enforcement of child support orders.

(b) Employer Reporting. – Every employer in this State shall report to the Directory the hiring of every employee for whom a federal W-4 form is required to be completed by the employee at the time of hiring. The employer shall report the information required under this section not later than 20 days from the date of hire, or, in the case of an employer who transmits new hire reports magnetically or electronically by two monthly transmissions, not less than 12 nor more than 16 days apart. The Department shall notify employers of the information they must report under this section and of the penalties for not reporting the required information. The required forms must be provided by the Department to employers.

(c) Report Contents. – Each report required by this section shall contain the name, address, social security number of the newly hired employee, the date services for remuneration were first performed by the newly hired employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail.

(d) Penalties for Failure to Report. – Upon a finding that an employer has failed to comply with the reporting requirements of this section, the district court shall impose a civil penalty in an amount not to exceed twenty-five dollars (\$25.00). If the court finds that an employer's failure to comply with the reporting requirements is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, then the court shall impose upon the employer a civil penalty in an amount not to exceed five hundred dollars (\$500.00). Penalties collected under this subsection shall be deposited to the General Fund.

(e) Entry of Report Data Into Directory. – Within five business days of receipt of the report from the employer, the Department shall enter the information from the report into the Directory.

(f) Notice to Employer to Withhold. – Within two business days of the date the information was entered into the Directory, the Department or its designated representative as defined under G.S. 110-129(5) shall transmit notice to the employer of the newly hired employee directing the employer to withhold from the income of the employee an amount

equal to the monthly or other periodic child support obligation, including any past-due support obligation of the employee and subject to the limitations of G.S. 110-136.6, unless the employee's income is not subject to withholding.

(g) Other Uses of Directory Information. – The following agencies may access information entered into the Directory from employer reports for the purposes stated:

- (1) The Division of Employment Security for the purpose of administering employment security programs.
- (2) The North Carolina Industrial Commission for the purpose of administering workers' compensation programs.
- (3) The Department of Revenue for the purpose of administering the taxes it has a duty to collect under Chapter 105 of the General Statutes.

(h) Department May Contract for Services. – The Department may contract with other State or private entities to perform the services necessary to implement this section.

(i) Information Confidential. – Except as otherwise provided in this section, information contained in the Directory is confidential and may be used only by the State Child Support Enforcement Program.

(j) Definitions. – As used in this section, unless the context clearly requires otherwise, the term:

- (1) "Business day" means a day on which State offices are open for business.
- (2) "Department" means the Department of Health and Human Services.
- (3) "Employee" means an individual who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986. The term "employee" does not include an employee of a federal or State agency performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting information as required under this section could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.
- (4) "Employer" has the meaning given the term in section 3401(d) of the Internal Revenue Code of 1986 and includes persons who are governmental entities and labor organizations. The term "labor organization" shall have the meaning given that term in section 2(5) of the National Labor Relations Act, and includes any entity which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of the National Labor Relations Act of an agreement between the organization and the employer.
- (5) "Newly hired employee" means (i) an employee who has not previously been employed by the employer and (ii) an employee who was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days. (1997-433, s. 1; 1997-443, s. 11A.122; 1998-17, s. 1; 1999-438, s. 30; 2011-401, s. 3.13; 2012-134, s. 3(a), (b).)

**§ 110-130. Action by the designated representatives of the county commissioners.**



Any county interested in the paternity and/or support of a dependent child may institute civil or criminal proceedings against the responsible parent of the child, or may take up and pursue any paternity and/or support action commenced by the mother, custodian or guardian of the child. Such action shall be undertaken by the designated representative in the county where the mother of the child resides or is found, in the county where the father resides or is found, or in the county where the child resides or is found. Any legal proceeding instituted under this section may be based upon information or belief. The parent of the child may be subpoenaed for testimony at the trial of the action to establish the paternity of and/or to obtain support for the child either instituted or taken up by the designated representative of the county commissioners. The husband-wife privilege shall not be grounds for excusing the mother or father from testifying at the trial nor shall said privilege be grounds for the exclusion of confidential communications between husband and wife. If a parent called for examination declines to answer upon the grounds that his testimony may tend to incriminate him, the court may require him to answer in which event he shall not thereafter be prosecuted for any criminal act involved in the conception of the child whose paternity is in issue and/or for whom support is sought, except for perjury committed in this testimony. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 4; 1985, c. 410.)

**§ 110-130.1. Non-Work First services.**

(a) All child support collection and paternity determination services provided under this Article to recipients of public assistance shall be made available to any individual not receiving public assistance in accordance with federal law and as contractually authorized by the nonrecipient, upon proper application and payment of a nonrefundable application fee of twenty-five dollars (\$25.00). The fee shall be reduced to ten dollars (\$10.00) if the individual applying for the services is indigent. An indigent individual is an individual whose gross income does not exceed one hundred percent (100%) of the federal poverty guidelines issued each year in the Federal Register by the U.S. Department of Health and Human Services. For the purposes of this subsection, the term "gross income" has the same meaning as defined in G.S. 105-134.1.

In the case of an individual who has never received assistance under a State program funded pursuant to Title IV-A of the Social Security Act and for whom the State has collected and disbursed to the family in a federal fiscal year at least five hundred dollars (\$500.00) of support, the State shall impose an annual fee of twenty-five dollars (\$25.00) for each case in which services are furnished. The child support agency shall retain the fee from support collected on behalf of the individual. However, the child support agency shall not retain the fee from the first five hundred dollars (\$500.00) collected. The child support agency shall use the fee to support the ongoing operation of the program.

(b) Repealed by Session Laws 1989, c. 490.

(b1) In cases in which a public assistance debt which accrued pursuant to G.S. 110-135 remains unrecovered, support payments shall be transmitted to the Department of Health and Human Services for appropriate distribution. When services are terminated and all costs and any public assistance debts have been satisfied, the support payment shall be redirected to the client.

(c) Actions or proceedings to establish, enforce, or modify a duty of support or establish paternity as initiated under this Article shall be brought in the name of the county

or State agency on behalf of the public assistance recipient or nonrecipient client. Collateral disputes between a custodial parent and noncustodial parent, involving visitation, custody and similar issues, shall be considered only in separate proceedings from actions initiated under this Article. The attorney representing the designated representative of programs under Title IV-D of the Social Security Act shall be deemed attorney of record only for proceedings under this Article, and not for the separate proceedings. No attorney/client relationship shall be considered to have been created between the attorney who represents the child support enforcement agency and any person by virtue of the action of the attorney in providing the services required.

(c1) The Department is hereby authorized to use the electronic and print media in attempting to locate absent and deserting parents. Due diligence must be taken to ensure that the information used is accurate or has been verified. Print media shall be under no obligation or duty, except that of good faith, to anyone to verify the correctness of any information furnished to it by the Department or county departments of social services.

(d) Any fee imposed by the North Carolina Department of Revenue or the Secretary of the Treasury to cover their costs of withholding for non-Work First arrearages certified for the collection of past due support from State or federal income tax refunds or administrative offsets, as defined by 31 C.F.R. § 285.1(a), shall be borne by the client by deducting the fee from the amount collected.

Any income tax refund offset amounts or administrative offsets, as defined by 31 C.F.R. § 285.1(a), which are subsequently determined to have been incorrectly withheld and distributed to a client, and which must be refunded by the State to a responsible parent or the nondebtor spouse, shall constitute a debt to the State owed by the client. (1983, c. 527, s. 1; 1985, c. 781, ss. 1-5; 1985 (Reg. Sess., 1986), c. 931, ss. 1-3; 1989, c. 490; 1995, c. 538, s. 3; 1997-223, s. 2; 1997-443, ss. 11A.118(a), 12.28; 2007-460, s. 1; 2015-62, s. 2(a); 2015-117, s. 3.)

#### **§ 110-130.2. Collection of spousal support.**

Spousal support shall be collected for a spouse or former spouse with whom the absent parent's child is living when a child support order is being enforced under this Article. However, the spousal support shall be collected: (i) only if there is an order establishing the support obligation with respect to such spouse; and (ii) only if an order establishing the support obligation with respect to the child is being enforced under this Article. The Child Support Enforcement Program is not authorized to assist in the establishment of a spousal support obligation. (1985, c. 506, s. 1.)

#### **§ 110-131. Compelling disclosure of information respecting the nonsupporting responsible parent of a child receiving public assistance.**

(a) If a parent of any dependent child receiving public assistance fails or refuses to cooperate with the county in locating and securing support from a nonsupporting responsible parent, this parent may be cited to appear before any judge of the district court and compelled to disclose such information under oath and/or may be declared ineligible for public assistance by the county department of social services for as long as he fails to cooperate.

(b) Any parent who, having been cited to appear before a judge of the district court pursuant to subsection (a), fails or refuses to appear or fails or refuses to provide the information

requested may be found to be in contempt of said court and may be fined not more than one hundred dollars (\$100.00) or imprisoned not more than six months or both.

(c) Any parent who is declared ineligible for public assistance by the county department of social services shall have his needs excluded from consideration in determining the amount of the grant, and the needs of the remaining family members shall be met in the form of a protective payment in accordance with G.S. 108-50. (1975, c. 827, s. 1.)

**§ 110-131.1. Notice; due process requirements met.**

In any child support enforcement proceeding the trial court may deem State due process requirements for notice and service of process to be met with respect to the nonmoving party, upon delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure with respect to all pleadings subsequent to the original complaint. (1997-433, s. 2.3; 1998-17, s. 1.)

**§ 110-132. Affidavit of parentage and agreement to motion to set aside affidavit of parentage.**

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written affidavits of parentage executed by the putative father and the mother of the dependent child shall constitute an admission of paternity and shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to the right of either signatory to rescind within the earlier of:

- (1) 60 days of the date the document is executed, or
- (2) The date of entry of an order establishing paternity or an order for the payment of child support.

In order to rescind, a challenger must request the district court to order the rescission and to include in the order specific findings of fact that the request for rescission was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders rescission and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of rescission to the State Registrar of Vital Statistics. Upon receipt of an order of rescission, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

(a1) Paternity established under subsection (a) of this section may be set aside in accordance with subsection (a2) of this section or in accordance with G.S. 50-13.13.

(a2) Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an affidavit of parentage may be set aside by a trial court after 60 days have elapsed if each of the following applies:

- (1) The affidavit of parentage was entered as the result of fraud, duress, mutual mistake, or excusable neglect.
- (2) Genetic tests establish that the putative father is not the biological father of the child.

The burden of proof in any motion to set aside an affidavit of parentage after 60 days allowed for rescission shall be on the moving party. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court shall order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to G.S. 8-50.1(b1). If the court determines, as a result of genetic testing, the putative father is not the biological father of the child and the affidavit of parentage was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set aside the affidavit of parentage. Nothing in this subsection shall be construed to affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage.

(a3) A written agreement to support the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. The written affidavit shall contain the social security number of the person executing the affidavit. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affidavits and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an affidavit of parentage and of any alternatives to the execution of an affidavit of parentage. The mother shall not be excused from making the affidavit on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she attests.

(b) At any time after the filing with the district court of an affidavit of parentage, upon the application of any interested party, the court or any judge thereof shall cause a summons signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter an order for the support of the child by periodic payments, which order may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action under this subsection on the affidavit of parentage previously filed with said court. The court may order the responsible parents in a IV-D establishment case to perform a job search, if the responsible parent is not incapacitated. This includes IV-D cases in which the responsible parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been filed with the court or when paternity is not at issue for the child. The court may further order the responsible parent to

participate in the work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate. The amount of child support payments so ordered shall be determined as provided in G.S. 50-13.4(c). The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 5, 6; 1981, c. 275, s. 8; 1989, c. 529, s. 8; 1997-433, s. 4.7; 1998-17, s. 1; 1999-293, s. 1; 2001-237, s. 2; 2011-328, s. 2.)

**§ 110-132.1. Paternity determination by another state entitled to full faith and credit.**

A paternity determination made by another state:

- (1) In accordance with the laws of that state, and
- (2) By any means that is recognized in that state as establishing paternity shall be entitled to full faith and credit in this State. (1993 (Reg. Sess., 1994), c. 733, s. 2.)

**§ 110-132.2. Expedited procedures to establish paternity in IV-D cases.**

(a) In a IV-D court action, a local child support enforcement office may, without obtaining a court order, subpoena a minor child, the minor child's mother, and the putative father of the minor child (including the mother's husband, if different from the putative father) to appear for the purpose of undergoing blood or genetic testing to establish paternity. A subpoena issued pursuant to this section must be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to comply with a subpoena may be dealt with as for contempt of court, and as otherwise provided under law. A party may contest the results of the genetic or blood test. If the results are contested, the agency shall, upon request and advance payment by the contestant, obtain additional testing.

(b) A person subpoenaed to submit to testing pursuant to subsection (a) of this section may contest the subpoena. To contest the subpoena, a person must, within 15 days of receipt of the subpoena, request a hearing in the county where the local child support enforcement office that issued the subpoena is located. The hearing shall be before the district court and notice of the hearing must be served by the petitioner on all parties to the proceeding. Service shall be in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The hearing shall be held and a determination made within 30 days of the petitioner's request for hearing as to whether the petitioner must comply with the subpoena to undergo testing. If the trial court determines that the petitioner must comply with the subpoena, the determination shall not prejudice any defenses the petitioner may present at any future paternity litigation. (1997-433, s. 4.11; 1998-17, s. 1.)

**§ 110-133. Agreements of support.**

In lieu of or in conclusion of any legal proceeding instituted to obtain support from a responsible parent for a dependent child born of the marriage, a written agreement to support the child by periodic payments executed by the responsible parent when acknowledged before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the acknowledgment is made and filed with and approved by a judge of the district court in the county where the custodial parent of the child resides or is found, or in the county where the noncustodial parent resides or is found, or in the county where the child resides or is found shall have the same force and effect, retroactively and prospectively, in accordance with the terms of the agreement, as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. A responsible parent executing a written agreement under this section shall

provide on the agreement the responsible parent's social security number. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 7; 1995, c. 538, s. 5; 1997-433, s. 4.8; 1998-17, s. 1.)

**§ 110-134. Filing of affidavits, agreements, and orders; fees.**

All affidavits, agreements, and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110-133 shall be filed by the clerk of superior court in the county in which they are entered. The filing fee for the institution of an action through the entry of an order under either of these provisions shall be in an amount equal to that provided in G.S. 7A-308(a)(18). (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 8; 2001-237, s. 3; 2010-31, s. 15.6.)

**§ 110-135. Debt to State created.**

Acceptance of public assistance by or on behalf of a dependent child creates a debt, in the amount of public assistance paid, due and owing the State by the responsible parent or parents of the child. Provided, however, that in those cases in which child support was required to be paid incident to a court order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such court order. This liability shall attach only to public assistance granted subsequent to June 30, 1975, and only with respect to the period of time during which public assistance is granted, and only if the responsible parent or parents were financially able to furnish support during this period.

The United States, the State of North Carolina, and any county within the State which has provided public assistance to or on behalf of a dependent child shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance. The county attorney or an attorney retained by the county and/or State shall represent the State in all proceedings brought under this section.

A past-due public assistance debt as described in this section may be deemed negotiable and subject to reduction if the public assistance debt is not less than fifteen thousand dollars (\$15,000) and the responsible parent continues to be obligated to pay current child support. Upon agreement between the State and the responsible parent, and upon approval of the court upon an inquiry into the financial status of the obligor, the responsible parent shall pay all child support payments, including payments due on child support arrears, entered by a valid court order for a 24-month period of time. Upon the timely payment of each court-ordered child support obligation during the full 24-month period, including payments due on child support arrears, the State shall reduce the responsible parent's public assistance debt by two-thirds. If the responsible parent is late or defaults on any single payment during the 24-month period, no portion of the public assistance debt shall be reduced. The responsible parent may attempt to achieve 24 consecutive months of child support payments as often as possible in order to reduce his or her public assistance debt. However, once the responsible parent's public assistance debt has been reduced by two-thirds because of the successful completion of this agreement, the responsible parent shall no longer be eligible for this program. The reduction of public assistance debt as set forth in this section shall be in addition to all other remedies available to the State for the retirement of the debt. This program shall not prevent the State from taking any and all other measures available by law.

Upon the termination of a child support obligation due to the death of the obligor, the Department shall determine whether the obligor's estate contains sufficient assets to satisfy any

child support arrearages. If sufficient assets are available, the Department shall attempt to collect the arrearage. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 9, 10; 2003-288, s. 1.1; 2005-389, s. 2.)

**§ 110-136. Garnishment for enforcement of child-support obligation.**

(a) Notwithstanding any other provision of the law, in any case in which a responsible parent is under a court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, a judge of the district court in the county where the mother of the child resides or is found, or in the county where the father resides or is found, or in the county where the child resides or is found may enter an order of garnishment whereby no more than forty percent (40%) of the responsible parent's monthly disposable earnings shall be garnished for the support of his minor child. For purposes of this section, "disposable earnings" is defined as that part of the compensation paid or payable to the responsible parent for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension, retirement, or other deferred compensation program) which remains after the deduction of any amounts required by law to be withheld. The garnishee is the person, firm, association, or corporation by whom the responsible parent is employed.

(b) The mother, father, custodian, or guardian of the child or any designated representative interested in the support of a dependent child may move the court for an order of garnishment. The motion shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the employer of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based upon information and belief), and the amount sought to be garnished, not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. The motion for the wage garnishment order along with a motion to join the alleged employer as a third-party garnishee defendant shall be served on both the responsible parent and the alleged employer in accordance with the provisions of G.S. 1A-1, Rules of Civil Procedure. The time period for answering or otherwise responding to pleadings, motions and other papers issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rules of Civil Procedure, except that the alleged employer third-party garnishee shall have 10 days from the date of service of process to answer both the motion to join him as a defendant garnishee and the motion for the wage garnishment order.

(b1) In addition to the foregoing method for instituting a continuing wage garnishment proceeding for child support through motion, the mother, father, custodian, or guardian of the child or any designated representative interested in the support of a dependent child may in an independent proceeding petition the court for an order of continuing wage garnishment. The petition shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to G.S. 110-132 or 110-133 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the alleged-employer garnishee of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based on information and belief), and the amount sought to be garnished, not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. The petition shall be served on both the responsible parent and his alleged employer in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to

process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rules of Civil Procedure.

(c) Following the hearing held pursuant to this section, the court may enter an order of garnishment not to exceed forty percent (40%) of the responsible parent's monthly disposable earnings. If an order of garnishment is entered, a copy of same shall be served on the responsible parent and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be garnished for each pay period. The amount garnished shall be increased by an additional one dollar (\$1.00) processing fee to be assessed and retained by the employer for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(d) Upon receipt of an order of garnishment, the garnishee shall transmit without delay to the State Child Support Collection and Disbursement Unit the amount ordered by the court to be garnished. These funds shall be disbursed to the party designated by the court which in those cases of dependent children receiving public assistance shall be the North Carolina Department of Health and Human Services.

(e) Any garnishee violating the terms of an order of garnishment shall be subject to punishment as for contempt. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 11, 12; 1979, c. 386, ss. 1-8; 1983 (Reg. Sess., 1984), c. 1047, s. 1; 1985, c. 660, s. 2; 1997-443, s. 11A.118(a); 1999-293, s. 17.)

#### **§ 110-136.1. Assignment of wages for child support.**

Pursuant to G.S. 50-13.4(f)(1), the court may require the responsible parent to execute an assignment of wages, salary, or other income due or to become due whenever his employer's voluntary written acceptance of the wage assignment under G.S. 95-31 is filed with the court. Such acceptance remains effective until the employer files an express written revocation with the court. The amount assigned shall be increased by an additional one dollar (\$1.00) processing fee to be assessed and retained by the employer for each payment under the order. (1981, c. 275, s. 7; 1983 (Reg. Sess., 1984), c. 1047, s. 2.)

#### **§ 110-136.2. Use of unemployment compensation benefits for child support.**

(a) A responsible parent may voluntarily assign unemployment compensation benefits to a child support agency to satisfy a child support obligation or a child support enforcement agency may request a responsible parent to voluntarily assign unemployment benefits to satisfy a child support obligation. An assignment of less than the full amount of the support obligation shall not relieve the responsible parent of liability for the remaining amount.

(b) Upon notification of a voluntary assignment by the Department of Health and Human Services, the Division of Employment Security shall deduct and withhold the amount assigned by the responsible parent as provided in G.S. 96-17.

(c) Any amount deducted and withheld shall be paid by the Division of Employment Security to the Department of Health and Human Services for distribution as required by federal law.

(d) Voluntary assignment of unemployment compensation benefits shall remain effective until the Division of Employment Security receives notification from the



Department of Health and Human Services of an express written revocation by the responsible parent.

(e) The Department of Health and Human Services shall ensure that payments received under this section are properly credited against the responsible parent's child support obligation.

(f) In the absence of a voluntary assignment of unemployment compensation benefits, the Department of Health and Human Services shall implement income withholding as provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of the requirement to withhold shall be served upon the Division and payment shall be made by the Division directly to the Department of Health and Human Services pursuant to G.S. 96-17 or to another state under G.S. 52C-5-501. Except for the requirement to withhold from unemployment compensation benefits and the forwarding of withheld funds to the Department of Health and Human Services or to another state under G.S. 52C-5-501, the Division is exempt from the provisions of G.S. 110-136.8. (1983, c. 33, s. 1; 1987, c. 764, ss. 1, 2; 1997-443, s. 11A.118(a); 1999-293, s. 6; 2011-401, s. 3.14.)

### **§ 110-136.3. Income withholding procedures; applicability.**

(a) Required Contents of Support Orders. – All child support orders, civil or criminal, entered or modified in the State in IV-D cases shall include a provision ordering income withholding to take effect immediately. All child support orders, civil or criminal, initially entered in the State in non-IV-D cases on or after January 1, 1994, shall include a provision ordering income withholding to take effect immediately as provided in G.S. 110-136.5(c1), unless one of the exceptions specified in G.S. 110-136.5(c1) applies. A non-IV-D child support order that contains an income withholding requirement and a IV-D child support order shall comply with each of the following:

- (1) Require the obligor to keep the clerk of court or IV-D agency informed of the obligor's current residence and mailing address.
- (2), (2a) Repealed by Session Laws 1993, c. 517, s. 1.
- (3) Require the obligor to cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income.
- (4) Require the custodial party to keep the obligor informed of the custodial party's disposable income and the amount and effective date of any substantial change in this disposable income.
- (4a) Include the current residence and mailing address of the custodial parent, or the address of the child if the address of the custodial parent and the address of the child are different. However, there is no requirement that the child support order contain the address of the custodial parent or the child if (i) there is an existing order prohibiting disclosure of the custodial parent's or child's address to the obligor or (ii) the court has determined that notice to the obligor is inappropriate because the obligor has made verbal or physical threats that constitute domestic violence under Chapter 50B of the General Statutes.

- (5) Require the obligor to keep the initiating party informed of the name and address of any payor of the obligor's disposable income and of the amount and effective date of any substantial change in this disposable income.

(a1) Payment Plan/Work Requirement for Past-Due Support. – In any IV-D case in which an obligor owes past-due support and income withholding has been ordered but cannot be implemented against the obligor, the court may order the obligor to pay the support in accordance with a payment plan approved by the court and, if the obligor is subject to the payment plan and is not incapacitated, the court may order the obligor to participate in such work activities, as defined under 42 U.S.C. § 607, as the court deems appropriate.

(b) When obligor subject to withholding. –

- (1) In IV-D cases in which a new or modified child support order is entered on or after October 1, 1989, an obligor is subject to income withholding immediately upon entry of the order. In IV-D cases in which the child support order was entered prior to October 1, 1989, an obligor shall become subject to income withholding on the date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month, or the date on which the obligor or obligee requests withholding.
- (2) In non-IV-D cases in which the child support order was entered prior to January 1, 1994, an obligor shall be subject to income withholding on the earliest of:
  - a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month;
  - b. The date on which the obligor requests withholding; or
  - c. The date on which the court determines, pursuant to a motion or independent action filed by the obligee under G.S. 110-136.5(a), that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments.
- (3) In IV-D child support cases in which an order was issued or modified in this State prior to October 1, 1996, and in which the obligor is not otherwise subject to withholding, the obligor shall become subject to withholding if the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month.
- (4) In the enforcement of alimony or postseparation support orders pursuant to G.S. 110-130.2, an obligor shall become subject to income withholding on the earlier of:
  - a. The date on which the obligor fails to make legally obligated alimony or postseparation payments; or
  - b. The date on which the obligor or obligee requests withholding.

(c) Repealed by Session Laws 1993, c. 517, s. 1.

(d) Interstate cases. – An interstate case is one in which a child support order of one state is to be enforced in another state.

- (1) In interstate cases withholding provisions shall apply to a child support order of this or any other state. A petition addressed to this State to enforce a child support order of another state or a petition from an initiating party in this State addressed to another state to enforce a child support order entered in this State shall include:
  - a. A certified copy of the support order with all modifications, including any income withholding notice or order still in effect;
  - b. A copy of the income withholding law of the jurisdiction which issued the support order, provided that this jurisdiction has a withholding law;
  - c. A sworn statement of arrearages;
  - d. The name, address, and social security number of the obligor, if known;
  - e. The name and address of the obligor's employer or of any other source of income of the obligor derived in the state in which withholding is sought; and
  - f. The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.
- (2) The law of the state in which the support order was entered shall apply in determining when withholding shall be implemented and interpreting the child support order. The law and procedures of the state where the obligor is employed shall apply in all other respects.
- (3) Except as otherwise provided by subdivision (2), income withholding initiated under this subsection is subject to all of the notice, hearing and other provisions of Chapter 110.
- (4) In all interstate cases notices and orders to withhold shall be served upon the payor by a North Carolina agency or judicial officer. In all interstate non-IV-D cases, the advance notice to the obligor shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure.
- (5) For purposes of enforcing a petition under this subsection, jurisdiction is limited to the purposes of income withholding and Chapter 52A of the General Statutes shall not apply. Nothing in this subsection precludes any remedy otherwise available in a proceeding under Chapter 52A of the General Statutes.

(d1) Recodified as § 110-139(c1) by Session Laws 2001-237, s. 5, effective June 23, 2001.

(e) Procedures and regulations. – Procedures, rules, regulations, forms, and instructions necessary to effect the income withholding provisions of this Article shall be established by the Secretary of the Department of Health and Human Services or the Secretary's designee and the Administrative Office of the Courts. Forms and instructions shall be sent with each order or notice of withholding. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 589, s. 1; 1989, c. 601, s. 2; 1993, c. 517, s. 1; 1997-433, ss. 3, 6.1; 1997-443, s. 11A.118(a); 1998-17, s. 1; 1998-176, s. 4; 2000-140, s. 20(b); 2001-237, s. 5; 2014-115, s. 44.5.)

#### **§ 110-136.4. Implementation of withholding in IV-D cases.**

- (a) Withholding based on arrearages or obligor's request.
- (1) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.
  - (2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:
    - a. Whether the proposed withholding is based on the obligor's failure to make legally obligated child support, alimony or postseparation support payments on the obligor's request for withholding, on the obligee's request for withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);
    - b. The amount of overdue child support, overdue alimony or postseparation support payments, the total amount to be withheld, and when the withholding will occur;
    - c. The name of each child or person for whose benefit the child support, alimony or postseparation support payments are due and information sufficient to identify the court order under which the obligor has a duty to support the child, spouse, or former spouse;
    - d. The amount and sources of disposable income;
    - e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;
    - f. An explanation of the obligor's rights and responsibilities pursuant to this section;
    - g. That withholding will be continued until terminated pursuant to G.S. 110-136.10.
  - (3) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligor's or obligee's request for withholding. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a hearing in the county where the support order was entered before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur.

Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

- (4) Uncontested withholding. If the obligor does not contest the withholding within the 10-day response period, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.
- (5) Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.
- (6) Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall either request the clerk of superior court to initiate enforcement proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other appropriate available measures to enforce the support obligation.

(b) Immediate income withholding. When a new or modified child support order is entered, the district court judge shall, after hearing evidence regarding the obligor's disposable income, place the obligor under an order for immediate income withholding. The IV-D agency shall serve the payor pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, or by electronic transmission in compliance with the federal Office of Child Support Enforcement (OCSE) electronic income withholding (e-IWO) procedures, with a notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. If information is unavailable regarding an obligor's disposable income, or the obligor is unemployed, or an agreement is reached between both parties which provides for an alternative arrangement, immediate income withholding shall not apply. The obligor, however, is subject to income withholding pursuant to G.S. 110-136.4(a).

(c) Subsequent payors. If the obligor changes employment or source of disposable income, notice to subsequent payors of their obligation to withhold shall be served as required by G.S. 1A-1, Rule 5, Rules of Civil Procedure or by electronic transmission in compliance with the federal Office of Child Support Enforcement (OCSE) electronic

income withholding (e-IWO) procedures. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(d) Multiple withholdings. The obligor must notify the obligee if the obligor is currently subject to another withholding for child support. In the case of two or more withholdings against one obligor, the obligee or obligees shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured party, upon request, shall be granted a hearing in accordance with the procedure specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be resolved in accordance with G.S. 110-136.7.

(e) Modification of withholding. When an order for withholding has been entered under this section, the obligee may modify the withholding based on changed circumstances. The obligee shall proceed as is provided in this section.

(f) Applicability of section. The provisions of this section apply to IV-D cases only. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1989, c. 601, s. 3; 1997-433, s. 6.2; 1998-17, s. 1; 1998-176, s. 5; 2001-237, s. 4; 2015-62, s. 2(b); 2015-117, s. 4.)

**§ 110-136.5. Implementation of withholding in non-IV-D cases.**

(a) Withholding based on delinquent or erratic payments. Notwithstanding any other provision of law, when an obligor is delinquent in making child support payments or has been erratic in making child support payments, the obligee may apply to the court, by motion or in an independent action, for an order for income withholding.

- (1) The motion or complaint shall be verified and state, to the extent known:
  - a. Whether the obligor is under a court order to provide child support and, if so, information sufficient to identify the order;
  - b. Either:
    1. That the obligor is currently delinquent in making child support payments; or
    2. That the obligor has been erratic in making child support payments;
  - c. The amount of overdue support and the total amount sought to be withheld;
  - d. The name of each child for whose benefit support is payable; and
  - e. The name, location, and mailing address of the payor or payors from whom withholding is sought and the amount of the obligor's monthly disposable income from each payor.
- (2) The motion or complaint shall include or be accompanied by a notice to the obligor, stating:
  - a. That withholding, if implemented, will apply to the obligor's current payors and all subsequent payors; and
  - b. That withholding, if implemented, will be continued until terminated pursuant to G.S. 110-136.10.

At any time the parties may agree to income withholding by consent order.

(b) Withholding Based on Obligor's Request. The obligor may request at any time that income withholding be implemented. The request may be made either verbally in open court or by written request.

- (1) A written request for withholding shall state:
  - a. That the obligor is under a court order to provide child support, and information sufficient to identify the order;
  - b. Whether the obligor is delinquent and the amount of any overdue support;
  - c. The name of each child for whose benefit support is payable;
  - d. The name, location, and mailing address of the payor or payors from whom the obligor receives disposable income and the amount of the obligor's monthly disposable income from each payor;
  - e. That the obligor understands that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10; and
  - f. That the obligor understands that the amount withheld will include an amount sufficient to pay current child support, an additional amount toward liquidation of any arrearages, and a two dollar (\$2.00) processing fee to be retained by the employer for each withholding, but that the total amount withheld may not exceed the following percent of disposable income:
    1. Forty percent (40%) if there is only one order for withholding;
    2. Forty-five percent (45%) if there is more than one order for withholding and the obligor is supporting other dependent children or his or her spouse; or
    3. Fifty percent (50%) if there is more than one order for withholding and the obligor is not supporting other dependent children or a spouse.
- (2) A written request for withholding shall be filed in the office of the clerk of superior court of the court that entered the order for child support. If the request states and the clerk verifies that the obligor is not delinquent, the court may enter an order for withholding without further notice or hearing. If the request states or the clerk finds that the obligor is delinquent, the matter shall be scheduled for hearing unless the obligor in writing waives his right to a hearing and consents to the entry of an order for withholding of an amount the court determines to be appropriate. The court may require a hearing in any case. Notice of any hearing under this subdivision shall be sent to the obligee.

(c) Order for withholding. If the district court judge finds after hearing evidence that the obligor, at the time of the filing of the motion or complaint was, or at the time of the hearing is, delinquent in child support payments or that the obligor has been erratic in making child support payments in accordance with G.S. 110-136.5(a), or that the obligor has requested that income withholding begin in accordance with G.S. 110-136.5(b), the court shall enter an order for income withholding, unless:

- (1) The obligor proves a mistake of fact, except that G.S. 110-129(10)(a) is not applicable if withholding is based on the obligee's motion or independent action alleging that the obligor is delinquent or has been erratic in making child support payments; or
- (2) The court finds that the child support obligation can be enforced and the child's right to receive support can be ensured without entry of an order for income withholding; or
- (3) The court finds that the obligor has no disposable income subject to withholding or that withholding is not feasible for any other reason.

If the obligor fails to respond or appear, the court shall hear evidence and enter an order as provided herein.

(c1) Immediate income withholding. In non-IV-D cases in which a child support order is initially entered on or after January 1, 1994, an obligor is subject to income withholding immediately upon entry of the order, unless either of the following applies:

- a. One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding.
- b. A written agreement is reached between the parties that provides for an alternative arrangement.

The term "good cause" as used in this subsection includes a reasonable and workable plan for consistent and timely payments by some means other than income withholding. In considering whether a plan is reasonable, the court may consider the obligor's employment history and record of meeting financial obligations in a timely manner.

In entering an order for immediate income withholding under this subsection, the court shall follow the requirements and procedures as specified in other sections of this Article, including amount to be withheld, multiple withholdings, notice to payor, and termination of withholding.

(d) Notice to payor and obligor. If an order for income withholding is entered, a notice of obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 5, Rules of Civil Procedure. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(e) Modification of withholding. When an order for withholding has been entered under this section, any party may file a motion seeking modification of the withholding based on changed circumstances. The clerk or the court on its own motion may initiate a hearing for modification when it appears that modification of the withholding is required or appropriate. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 60; 1989, c. 601, s. 4; 1993, c. 517, s. 2; 1999-293, s. 18; 2001-487, s. 72.)

**§ 110-136.6. Amount to be withheld.**

(a) Computation of amount. When income withholding is implemented pursuant to this Article, the amount to be withheld shall include:

- (1) An amount sufficient to pay current child support; and
- (2) An additional amount toward liquidation of arrearages; and
- (3) A processing fee of two dollars (\$2.00) to cover the cost of withholding, to be retained by the payor for each withholding unless waived by the payor.



The amount withheld may also include court costs and attorneys fees as may be awarded by the court in non-IV-D cases and as may be awarded by the court in IV-D cases pursuant to G.S. 110-130.1.

(b) Limits on amount withheld. Withholding for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed forty percent (40%) of the obligor's disposable income for one pay period from the payor when there is one order of withholding. The sum of multiple withholdings, for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed:

- (1) Forty-five percent (45%) of disposable income for one pay period from the payor in the case of an obligor who is supporting his spouse or other dependent children; or
- (2) Fifty percent (50%) of disposable income for one pay period from the payor in the case of an obligor who is not supporting a spouse or other dependent children.

(b1) When there is an order of income withholding for current or delinquent payments of alimony or postseparation support or for any portion of the payments, the total amount withheld under this Article and under G.S. 50-16.7 shall not exceed the amounts allowed under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673(b).

(c) Contents of order and notice. An order or advance notice for withholding and any notice to a payor of his obligation to withhold shall state a specific monetary amount to be withheld and the amount of disposable income from the applicable payor on which the amount to be withheld was determined. The notice shall clearly indicate that in no event shall the amount withheld exceed the appropriate percentage of disposable income paid by a payor as provided in subsection (b). (1985 (Reg. Sess., 1986), c. 949, s. 2; 1998-176, s. 6.)

#### **§ 110-136.7. Multiple withholding.**

When an obligor is subject to more than one withholding for child support, withholding for current child support shall have priority over past-due support. Where two or more orders for current support exist, each family shall receive a pro rata share of the total amount withheld based on the respective child support orders being enforced. (1985 (Reg. Sess., 1986), c. 949, s. 2.)

#### **§ 110-136.8. Notice to payor; payor's responsibilities.**

(a) Contents of notice. Notice to a payor of his obligation to withhold shall include information regarding the payor's rights and responsibilities, the amount of disposable income attributable to that payor on which that withholding is based, the penalties under this section, and the maximum percentages of disposable income that may be withheld as provided in G.S. 110-136.6.

(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

- (1) Withhold from the obligor's disposable income and, within 7 business days of the date the obligor is paid, send to the State Child Support Collection and Disbursement Unit the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either:

- a. Compute, and send the appropriate amount to the State Child Support Collection and Disbursement Unit, using the percentages as provided in G.S. 110-136.6; or
    - b. Request the initiating party to inform the payor of the proper amount to be withheld for that period;
  - (2) Continue withholding until further notice from the IV-D agency, the clerk of superior court, or the State Child Support Collection and Disbursement Unit;
  - (3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;
  - (4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;
  - (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court or the State Child Support Collection and Disbursement Unit in a non-IV-D case, in writing:
    - a. If there are one or more orders of child support withholding for the obligor;
    - a1. If there are one or more orders of alimony or postseparation support withholding for the obligor;
    - b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;
    - c. Of the payor's inability to comply with the withholding for any reason; and
  - (6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income.
- (c) Change in obligor's employment. If the obligor changes employment within the State when withholding is in effect, the requirement for withholding shall continue, and
- (1) In a IV-D case, the IV-D obligee shall make any necessary adjustments to the withholding, notify the obligor and his new employer in accordance with this section, and file a copy of the adjusted withholding with the clerk of superior court;
  - (2) In a non-IV-D case, the clerk shall serve a notice of obligation to withhold according to the terms of the withholding order on the new employer and on the obligor; if the obligor or payor gives notice that an adjustment to the withholding order, other than the change in payor, is needed, the matter shall be scheduled for hearing before a child support hearing officer or district court judge who shall make any necessary adjustments to the withholding.
- (d) The payor may combine amounts withheld from obligors' disposable incomes in a single payment to the State Child Support Collection and Disbursement Unit if the payor separately identifies by name and case number the portion of the single payment attributable to each

individual obligor and the date that each payment was withheld from the obligor's disposable income.

(e) Prohibited conduct by payor; civil penalty. Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the initiating party joining the payor as a third party defendant, with 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to commence withholding and shall be held liable to the initiating party for any amount which such payor should have withheld, except that such payor shall not be required to vary the normal pay or disbursement cycles in order to comply with these provisions.

A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty. For a first offense, the civil penalty shall be one hundred dollars (\$100.00). For second and third offenses, the civil penalty shall be five hundred dollars (\$500.00) and one thousand dollars (\$1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(f) Any payor who withholds the sum provided in any notice or order to the payor shall not be liable for any penalties under this section. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 589, s. 2; 1991, c. 541, ss. 1, 2; 1997-433, s. 6; 1997-465, s. 27; 1998-17, s. 1; 1998-176, s. 7; 1998-215, s. 76; 1999-293, ss. 19, 20.)

#### **§ 110-136.9. Payment of withheld funds.**

In all cases, the State Child Support Collection and Disbursement Unit shall distribute payments received from payors to the appropriate recipient. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1997-443, s. 11A.118(a); 1999-293, s. 21.)

#### **§ 110-136.10. Termination of withholding.**

A requirement that income be withheld for child support shall promptly terminate as to prospective payments when the payor receives notice from the court or IV-D agency that:

- (1) The child support order has expired or become invalid; or
- (2) The initiating party, the obligor, and the district court judge agree to termination because there is another adequate means to collect child support or arrearages; or
- (3) The whereabouts of the child and obligee are unknown, except that withholding shall not be terminated until all valid arrearages to the State are paid in full. (1985 (Reg. Sess., 1986), c. 949, s. 2.)

#### **§ 110-136.11. National Medical Support Notice required.**

(a) Notice Required. – The National Medical Support Notice shall be used to notify employers and health insurers or health care plan administrators of an order entered pursuant to G.S. 50-13.11 for dependent health benefit plan coverage in a IV-D case. For purposes of this

section and G.S. 110-136.12 through G.S. 110-136.14, the terms "health benefit plan" and "health insurer" are as defined in G.S. 108A-69(a).

(b) Exception. – The National Medical Support Notice shall not be used in cases where the court has ordered nonemployment-based health benefit plan coverage or where the parties have stipulated to nonemployment-based health benefit plan coverage. (2001-237, s. 8.)

**§ 110-136.12. IV-D agency responsibilities.**

(a) Within five business days after the order for dependent health benefit plan coverage has been filed in a IV-D case, the IV-D agency shall serve, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, the National Medical Support Notice on the employer, if known to the agency, of the noncustodial parent.

(b) In cases where the obligor is a newly hired employee, the agency shall serve, pursuant to G.S. 1A-1, Rule 5, Rules of Civil Procedure, the National Medical Support Notice, along with the income withholding notice pursuant to G.S. 110-136.8, on the employer within two business days after the date of entry of an obligor in the State Directory of New Hires.

(c) The IV-D agency shall notify the employer within 10 business days when there is no longer a current order for medical support for which the agency is responsible.

(d) In cases where the health insurer or health care plan administrator reports that there is more than one health care option available under the health benefit plan, the IV-D agency, in consultation with the custodian, may within 20 business days of the date the insurer or administrator informed the agency of the option, select an option and inform the health insurer or health care plan administrator of the option selected. (2001-237, s. 9.)

**§ 110-136.13. Employer responsibilities.**

(a) For purposes of this section, G.S. 110-136.11, 110-136.12, and 110-136.14, the term "employer" means employer as is defined at 29 U.S.C. § 203(d) in the Fair Labor Standards Act.

(b) Within 20 business days after the date of the National Medical Support Notice, the employer shall transfer the Notice to the health insurer or health care plan administrator that provides health benefit plan coverage for which the child is eligible unless one of following applies:

- (1) The employer does not maintain or contribute to plans providing dependent or family health insurance.
- (2) The employee is among a class of employees that are not eligible for family health benefit plan coverage under any group health plan maintained by the employer or to which the employer contributes.
- (3) Health benefit plan coverage is not available because the employee is no longer employed by this employer.
- (4) State or federal withholding limitations prevent the withholding from the obligor's income of the amount required to obtain insurance under the terms of the plan.

(c) If the employer is not required to transfer the Notice under subsection (b) of this section, then the employer shall, within the 20 business days after the date of the Notice, inform the agency in writing of the reason or reasons the Notice was not transferred.

(d) Upon receipt from the health insurer or health care plan administrator of the cost of dependent coverage, the employer shall withhold this amount from the obligor's wages and transfer this amount directly to the insurer or plan administrator.

(e) In the event the health insurer or health care plan administrator informs the employer that the Notice is not a "qualified medical child support order" (QMCSO), the employer shall notify the agency in writing.

(f) In the event the health insurer or health care plan administrator informs the employer of a waiting period for enrollment, the employer shall inform the insurer or administrator when the employee is eligible to be enrolled in the plan.

(g) An employer obligated to provide health benefit plan coverage pursuant to this section shall inform the IV-D agency upon termination of the noncustodial parent's employment within 10 business days. The notice shall be in writing to the agency and shall include the obligor's last known address and the name and address of the new employer, if known.

(h) In the event the employee contests the withholding order, the employer shall initiate and continue the withholding until the employer receives notice that the contested case is resolved.

(i) An employer shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding.

(j) If a court finds that an employer has failed to comply with this section, the employer is liable as a payor pursuant to G.S. 110-136.8(e). Additionally, an employer who violates this section is liable in a civil action for reasonable damages. (2001-237, s. 10; 2004-203, s. 9.)

#### **§ 110-136.14. Health insurer or health care plan administrator responsibilities.**

(a) Upon receipt of the National Medical Support Notice from the employer, and within 40 business days after the date of the Notice, a health care plan administrator shall determine if the Notice is a "qualified medical child support order" (QMCSO), as defined under the Employee Retirement Income Security Act (ERISA) or the Child Support Performance and Incentive Act (CSPIA). If the Notice is not a qualified medical support order, the plan administrator shall inform the employer within the time set forth in this subsection.

(b) Upon receipt of the Notice in a nonqualified ERISA plan, or upon a finding that the Notice constitutes a qualified medical child support order, the health insurer or plan administrator shall enroll the dependent child or children in a health benefit plan, determine the cost of the coverage, and inform the employer of the amount of the employee contribution to be withheld from the obligor's wages, if appropriate. If the child or children are already enrolled in a health benefit plan, the employer shall be so notified. The employer shall also be notified of any applicable enrollment waiting periods.

(c) If there is more than one health benefit plan in which the dependent child or children may be enrolled, the insurer or plan administrator shall so inform the custodian within the time specified in this subsection. If no plan has been selected within 20 days from the date the insurer or administrator informed the agency of the option, the insurer or administrator may enroll the child or children in the insurer's or administrator's default option.

(d) If the obligor is subject to a waiting period for enrollment, the insurer or administrator shall inform the agency, the employer, the obligor, and the custodial parent. Upon the completion of the waiting period, the enrollment shall be instituted.

(e) When a court finds that a health insurer or health care plan administrator has failed to comply with this section, the employer is liable as a payor pursuant to G.S. 110-136.10(e).

Additionally, a health insurer or health care plan administrator who violates this section is liable in a civil action for reasonable damages. (2001-237, s. 11.)

**§ 110-137. Acceptance of public assistance constitutes assignment of support rights to the State or county.**

By accepting public assistance for or on behalf of a dependent child or children, the recipient shall be deemed to have made an assignment to the State or to the county from which such assistance was received of the right to any child support owed for the child or children up to the amount of public assistance paid. The State or county shall be subrogated to the right of the child or children or the person having custody to initiate a support action under this Article and to recover any payments ordered by the court of this or any other state. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 13.)

**§ 110-138. Duty of county to obtain support.**

Whenever a county department of social services receives an application for public assistance on behalf of a dependent child, and it shall appear to the satisfaction of the county department that the child has been abandoned by one or both responsible parents, or that the responsible parent(s) has failed to provide support for the child, the county department shall without delay notify the designated representative who shall take appropriate action under this Article to provide that the parent(s) responsible supports the child. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 14.)

**§ 110-138.1. Duty of judicial officials to assist in obtaining support.**

Any party to whom child support has been ordered to be paid, and who has failed to receive the ordered support payments for two consecutive months, may make application to a magistrate for issuance of criminal process against the responsible parent for violation of G.S. 14-322. If the magistrate determines that the applicant has failed to receive the ordered support for two consecutive months, and that the responsible parent has willfully neglected or refused to make such payments, he shall make a finding of probable cause and issue criminal process for violation of G.S. 14-322. It shall be the duty of the District Attorney to prosecute such charges according to law. It shall be the duty of the Clerk of Superior Court to assist the applicant in making such application to the magistrate for the issuance of criminal process, and to supply such necessary child support records as are in his possession to the magistrate, District Attorney, and the Court. (1981, c. 613, s. 4.)

**§ 110-139. Location of absent parents.**

(a) The Department of Health and Human Services shall attempt to locate absent parents for the purpose of establishing paternity of and/or securing support for dependent children. The Department is to serve as a registry for the receipt of information which directly relates to the identity or location of absent parents, to assist any governmental agency or department in locating an absent parent, to answer interstate inquiries concerning deserting parents, and to develop guidelines for coordinating activities with any governmental department, board, commission, bureau or agency in providing information necessary for the location of absent parents.

(b) In order to carry out the responsibilities imposed under this Article, the Department may request from any governmental department, board, commission, bureau or agency information and assistance. All State, county and city agencies, officers and employees shall cooperate with the Department in the location of parents who have abandoned and deserted

children with all pertinent information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential. Except as otherwise stated in this subsection, all nonjudicial records maintained by the Department pertaining to child-support enforcement shall be confidential, and only duly authorized representatives of social service agencies, public officials with child-support enforcement and related duties, and members of legislative committees shall have access to these records. The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee. Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order.

(c) Notwithstanding any other provision of law making such information confidential, an employer doing business in this State or incorporated under the laws of this State shall provide the Department with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to enforce an order for child support: full name, social security account number, date of birth, home address, wages, existing or available medical, hospital, and dental insurance coverage, and number of dependents listed for tax purposes.

(c1) Employment verifications. – For the purpose of establishing, enforcing, or modifying a child support order, the amount of the obligor's gross income may be established by a written statement signed by the obligor's employer or the employer's designee or an Employee Verification form produced by the Automated Collections Tracking System that has been completed and signed by the obligor's employer or the employer's designee. A written statement signed by the employer of the obligor or the employer's designee that sets forth an obligor's gross income, as well as an Employee Verification form signed by the obligor's employer or the employer's designee, shall be admissible evidence in any action establishing, enforcing, or modifying a child support order.

(d) Notwithstanding any other provision of law making this information confidential, including Chapter 53B of the General Statutes, any utility company, cable television company, or financial institution, including federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State shall provide the Department of Health and Human Services with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to establish or enforce an order for child support: full name, social security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the utility company, cable television company, or financial institution. A utility company, cable television company, or financial institution that discloses information pursuant to this subsection in good faith reliance upon certification by the Department is not liable for damages resulting from the disclosure.

(e) Subsection (d) of this section shall not apply to telecommunication utilities or providers of electronic communication service to the general public.

(f) There is established the State Child Support Collection and Disbursement Unit. The duties of the Unit shall be the collection and disbursement of payments under support orders for all cases. The Department may administer and operate the Unit or may contract with another State or private entity for the administration and operation of the Unit. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 15; 1987, c. 591; 1991, c. 419, s. 1; 1995, c. 538, s. 4; 1997-433, ss. 8.1, 9.1;

1997-443, s. 11A.118(a); 1998-17, s. 1; 1999-293, s. 22; 2000-140, s. 20(b); 2001-237, ss. 5, 6; 2003-288, s. 3.1.)

**§ 110-139.1. Access to federal parent locator service; parental kidnapping and child custody cases.**

(a) Except as otherwise provided in this section, the parent locator service of the Department of Health and Human Services shall transmit, upon payment of the fee prescribed by federal law, requests for information as to the whereabouts of any parent or child to the federal parental locator service when such requests are made by judges, clerks of superior court, district attorneys, or United States attorneys, and when the information is to be used to locate the parent or child for the purpose of enforcing State or federal law with respect to:

- (1) The unlawful taking or restraint of a child;
- (2) Making or enforcing a child custody determination, including visitation orders;
- (3) Establishing paternity; or
- (4) Establishing, setting or modifying the amount of, or enforcing child support obligations.

The Department shall not disclose any information from or through the parent locator service if there is reasonable evidence of domestic violence or child abuse and the disclosure of the information could be harmful to the custodial parent or the child of the custodial parent.

(b) For the purpose of this section, custody determination means a judgment, decree, or other order of the court providing for the custody or visitation of a child and includes permanent or temporary orders, and initial orders and modifications.

(c) All nonjudicial records maintained by the Department pertaining to the unlawful taking or restraint of a child or child custody determinations shall be confidential, and only individuals directly connected with the administration of the child support enforcement program and those authorized herein shall have access to these records. (1983, c. 15, s. 1; 1997-433, s. 8.2; 1997-443, s. 11A.118(a); 1998-17, s. 1.)

**§ 110-139.2. Data match system; agreements with financial institutions.**

(a) The Department of Health and Human Services and financial institutions doing business in this State shall enter into mutual agreements for the purpose of facilitating the enforcement of child support obligations. The agreements shall provide for the development and operation of a data match system that will enable the financial institutions to provide to the Department on a quarterly basis the information required under G.S. 110-139(d). Financial institutions shall provide the information upon certification by the Department that the person about whom the information is requested is subject to a child support order and the information is necessary to enforce the order. The Department may pay a reasonable fee to the financial institution for conducting the data match required under this section provided that the fee shall not exceed the actual costs incurred by the financial institution to conduct the match.

(b) A financial institution shall not be liable under any State law, including but not limited to Chapter 53B of the General Statutes, for disclosure of information to the State



child support agency under this section, and for any other action taken by the financial institution in good faith to comply with this section or with G.S. 110-139.

(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that an obligor who maintains an identified account with the financial institution has a child support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the amount of unpaid support owed. In order to be able to attach a lien on and levy an obligor's account, the amount of unpaid support owed shall be an amount not less than the amount of support owed for six months or one thousand dollars (\$1,000), whichever is less.

Upon certification of the amount of unpaid support owed in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the obligor, and when the matched account is owned jointly, any other nonliable owner of the account, and the financial institution a notice as provided by this subsection. The notice shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied to satisfy the lien, the certified amount of unpaid support, information for the obligor or account owner on how to remove the lien or contest the lien in order to avoid the levy, and a reference to the applicable law, G.S. 110-139.2. The notice shall be served on the obligor, and any nonliable account owner, in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The financial institution shall be served notice in accordance with Rule 5 of the North Carolina Rules of Civil Procedure. Upon service of the notice, the financial institution shall proceed in the following manner:

- (1) Immediately attach a lien to the identified account.
- (2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

In order for an obligor or account owner to contest the lien, within 10 days after the obligor or account owner is served with the notice, the obligor or account owner shall send written notice of the basis of the contest to the Child Support Agency and shall request a hearing before the district court in the county where the support order was entered. The obligor account holder may contest the lien only on the basis that the amount owed is an amount less than the amount of support owed for six months, or is less than one thousand dollars (\$1,000), whichever is less, or the contesting party is not the person subject to the court order of support. The district court may assess court costs against the nonprevailing party. If no response is received from the obligor or account owner within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the obligor.

A financial institution shall not be liable to any person for complying in good faith with this subsection. The remedy set forth in this section shall be in addition to all other remedies available to the State for the reduction of the obligor's child support arrears. This remedy shall not prevent the State from taking any and all other concurrent measures available by law.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this State without involvement of the Department.

(c) As used in this subdivision, a financial institution includes federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State. (1997-433, s. 9; 1997-443, s. 11A.122; 1998-17, s. 1; 2003-288, s. 4; 2004-203, s. 42; 2005-389, s. 5; 2015-62, s. 2(c); 2015-117, s. 5.)

**§ 110-139.3. High-volume, automated administrative enforcement in interstate cases (AEI).**

Upon request of another state, the Department of Health and Human Services shall use automated data processing to search State databases and determine if information is available regarding a parent who owes a child support obligation and shall seize identified assets using the same techniques as used in intrastate cases. Any request by another state to enforce support orders shall certify the amount of each obligor's debt and that appropriate due process requirements have been met by the requesting state with respect to each obligor. The Department of Health and Human Services shall likewise transmit to other states requests for assistance in enforcing support orders through high-volume, automated administrative enforcement where appropriate. (1999-293, s. 7.)

**§ 110-140. Conformity with federal requirements; restriction on options without federal funding.**

(a) Nothing in this Article is intended to conflict with any provision of federal law or to result in the loss of federal funds.

(b) Effective July 24, 1997, the Department of Health and Human Services shall not elect any child support distribution option for families receiving cash assistance under the State Plan for the Temporary Assistance for Needy Families (TANF) Block Grant Program for which the federal government does not provide funding to the State to exercise the option. (1975, c. 827, s. 1; 1997-223, s. 1; 1997-443, s. 11A.122.)

**§ 110-141. Effectuation of intent of Article.**

The North Carolina Department of Health and Human Services shall supervise the administration of the program in accordance with federal law and shall cause the provisions of this Article to be effectuated and to secure child support from absent, deserting, abandoning and nonsupporting parents.

Effective July 1, 2010, each child support enforcement program being administered by the Department of Health and Human Services on behalf of counties shall be administered, or the administration provided for, by the board of county commissioners of those counties. Until July 1, 2010, it shall be the responsibility of the Department of Health and Human Services to administer or provide for the administration of the program in those counties.

A county may negotiate alternative arrangements to the procedure outlined in G.S. 110-130 for designating a local person or agency to administer the provisions of this Article in that county. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, s. 16; 1979, c. 488; 1983 (Reg. Sess., 1984), c. 1034,

s. 76; 1985, c. 244; c. 479, s. 103; 1985 (Reg. Sess., 1986), c. 1014, s. 129; 1997-443, s. 11A.118(a); 2009-451, s. 10.46A(a.)

**§ 110-142. Definitions; suspension and revocation of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support, or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.**

The definitions in G.S. 110-129 and G.S. 147-54.12 apply to this section and G.S. 110-142.1, and G.S. 110-142.2. In addition, to these sections the following definitions apply:

- (1) "Applicant" means any person applying for issuance or renewal of a license.
- (2) "Board" means any department, division, agency, officer, board, or other unit of State government that issues licenses.
- (3) "Certified list" means a list provided by the designated representative to the Department of Health and Human Services that verifies, under penalty of perjury, that the names contained therein are obligors who have been found to be out of compliance with a judgment or order for support in a IV-D case.
- (4) "Compliance with an order for support" means that, as set forth in a judgment or order for child support or family support, the obligor is no more than 90 calendar days in arrears in making payments for current support, in making periodic payments on a support arrearage, or in making periodic payments on a reimbursement for public assistance, has obtained a judicial finding that precludes enforcement of the order, or has entered into a payment schedule, including G.S. 110-142.1(h), for the child support arrearage with the approval of the obligee in a IV-D case.
- (5) "License" means (i) for the purposes of G.S. 110-142.1, a license, certificate, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession or (ii) for the purposes of G.S. 110-142.2, a license to operate a regular or commercial motor vehicle, or to participate in hunting, fishing, or trapping.
- (6) "Licensee" means any person holding a license.
- (7) "Obligor" means the individual who owes a duty to make child support payments under a court order. (1995, c. 538, s. 1.4; 1997-433, s. 5; 1997-443, s. 11A.118(a); 1998-17, s. 1.)

**§ 110-142.1. IV-D notified suspension, revocation, and issuance of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.**

(a) Effective July 1, 1996, the Department of Health and Human Services may notify any board that a person licensed by that board is not in compliance with an order for child support or

has been found by the court not to be in compliance with a subpoena issued pursuant to child support or paternity establishment proceedings.

(b) The designated representative shall submit a certified list with the names, social security numbers, and last known address of individuals who are not in compliance with a child support order or with a subpoena issued pursuant to a child support or paternity establishment proceeding. The designated representative shall verify, under penalty of perjury, that the individuals listed are subject to an order for the payment of support and are not in compliance with the order, or have been found by the court to be not in compliance with a subpoena issued pursuant to a child support or paternity establishment proceeding. The verification shall include the name, address, and telephone number of the designated representative who certified the list. An updated certified list shall be submitted to the Department on a monthly basis.

The Department of Health and Human Services, Division of Social Services, Child Support Enforcement Office, shall consolidate the certified lists received from the designated representatives and, within 30 calendar days of receipt, shall furnish each board with a certified list of the individuals, as specified in this section.

(c) Each board shall coordinate with the Department of Health and Human Services, Division of Social Services, Child Support Enforcement Office, in the development of forms and procedures to implement this section.

(d) Promptly after receiving the certified list of individuals from the Department of Health and Human Services, each board shall determine whether its applicant or licensee is an individual on the list. If the applicant or licensee is on the list, the board shall immediately send notice as specified in this subsection to the applicant or licensee of the board's intent to revoke or suspend the licensee's license in 20 days from the date of the notice, or that the board is withholding issuance or renewal of an applicant's license, until the designated representative certifies that the applicant or licensee is entitled to be licensed or reinstated. The notice shall be made personally or by certified mail to the individual's last known mailing address on file with the board.

(e) Unless notified by the designated representative as provided in subsection (h) of this section, the board shall revoke or suspend the individual's license 20 days from the date of the notice to the individual of the board's intent to revoke or suspend the license. In the event that a license is revoked or application is denied pursuant to this section, the board is not required to refund fees paid by the individual.

(f) Notices shall be developed by each board in accordance with guidelines provided by the Department of Health and Human Services and shall be subject to the approval of the Department of Health and Human Services. The notice shall include the address and telephone number of the designated representative who submitted the name on the certified list, and shall emphasize the necessity of obtaining a certification of compliance from the designated representative or the child support enforcement agency as a condition of issuance, renewal, or reinstatement of the license. The notice shall inform the individual that if a license is revoked or application is denied pursuant to this subsection, the board is not required to refund fees paid by the individual. The Department of Health and Human Services shall also develop a form that the individual shall use to request a review by the designated representative. A copy of this form shall be included with every notice sent pursuant to subsection (d) of this section.

(g) The Department of Health and Human Services shall establish review procedures consistent with this section to allow an individual to have the underlying arrearage and any relevant defenses investigated, to provide an individual information on the process of obtaining a

modification of a support order, or, if the circumstances so warrant, to provide an individual assistance in the establishment of a payment schedule on arrears.

(h) If the individual wishes to challenge the submission of the individual's name on the certified list, or if the individual wishes to negotiate a payment schedule, the individual shall within 14 days of the date of notice from the board request a review from the designated representative. The designated representative shall within six days of the date of the request for review notify the appropriate board of the request for review and direct the board to stay any action revoking or suspending the individual's license until further notice from the designated representative. The designated representative shall review the case and inform the individual in writing of the representative's findings and decision upon completion of the review. If the findings so warrant, the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. The agreement shall also provide for the maintenance of current support obligations and shall be incorporated into a consent order to be entered by the court. If the individual fails to meet the conditions of this subsection, the designated representative shall notify the appropriate board to immediately revoke or suspend the individual's license. Upon receipt of notice from the designated representative, the board shall immediately revoke or suspend the individual's license.

(i) The designated representative shall notify the individual in writing that the individual may, by filing a motion, request any or all of the following:

- (1) Judicial review of the designated representative's decision.
- (2) A judicial determination of compliance.
- (3) A modification of the support order.

The notice shall also contain the name and address of the court in which the individual shall file the motion and inform the individual that the individual's name shall remain on the certified list unless the judicial review results in a finding by the court that the individual is in compliance with this section. The notice shall also inform the individual that the individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10.

(j) The motion for judicial review of the designated representative's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. After service of the request for review, the court shall hold an evidentiary hearing at the next regularly scheduled session for the hearing of child support matters in civil district court. The request for judicial review shall be served by the individual upon the designated representative who submitted the individual's name on the certified list within seven calendar days of the filing of the motion.

(k) If the judicial review results in a finding by the court that the individual is no longer in arrears or that the individual's license should be reinstated to allow the individual an opportunity to comply with a payment schedule on arrears or reimbursement and current support obligations, the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. If the judicial review results in a finding that the individual has complied with or is no longer subject to the subpoena that was the basis for the revocation, then the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. In the event of an appeal from judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise.

(l) The Department of Health and Human Services shall prescribe forms for use by the designated representative. When the individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that, for the purposes of this section, the individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section.

(m) The Department of Health and Human Services may enter into interagency agreements with the boards necessary to implement this section.

(n) The procedures specified in Articles 3 and 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall not apply to the denial or failure to issue or renew a license pursuant to this section.

(o) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or revoked under this section shall respond only that the license was denied or revoked pursuant to this section. Information collected pursuant to this section shall be confidential and shall not be disclosed except in accordance with the laws of this State.

(p) If any provision of this section or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. (1995, c. 538, s. 1.4; 1997-433, s. 5.1; 1997-443, ss. 11A.118(a), 122; 1998-17, s. 1; 2007-484, ss. 12(a), (b).)

**§ 110-142.2. Suspension, revocation, restriction of license to operate a motor vehicle or hunting, fishing, or trapping licenses; refusal of registration of motor vehicle.**

(a) Effective December 1, 1996, notwithstanding any other provision of law, when an individual is at least 90 days in arrears in making child support payments, or has been found by the court to be not in compliance with a subpoena issued pursuant to child support or paternity establishment proceedings, the child support enforcement agency may apply to the court, pursuant to the regular show cause and contempt provisions of G.S. 50-13.9(d), for an order doing any of the following:

- (1) Revoking the individual's regular or commercial license to operate a motor vehicle;
- (2) Revoking the individual's hunting, fishing, or trapping licenses;
- (3) Directing the Department of Transportation, Division of Motor Vehicles, to refuse, pursuant to G.S. 20-50.4, to register the individual's motor vehicle.

(b) Upon finding that the individual has willfully failed to comply with the child support order or with a subpoena issued pursuant to child support proceedings, and that the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings has failed

to comply with the subpoena, the court may enter an order instituting the sanctions as provided in subsection (a) of this section. If an individual is adjudicated to be in civil or criminal contempt for a third or subsequent time for failure to comply with a child support order, the court shall enter an order instituting any one or more of the sanctions, if applicable, as provided in subsection (a) of this section. The court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any court-ordered payment plan under this subsection shall require the individual to extinguish the delinquency within a reasonable period of time. In determining the amount to be applied to the delinquency, the court shall consider the amount of the debt and the individual's financial ability to pay. The payment shall not exceed the limits under G.S. 110-136.6(b). The individual shall make an immediate initial payment representing at least five percent (5%) of the total delinquency or five hundred dollars (\$500.00), whichever is less. Any stay of an order under this subsection shall also be conditioned upon the obligor's maintenance of current child support. The court may stay the effectiveness of the sanctions against an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings upon a finding that the individual has complied with or is no longer subject to the subpoena. Upon entry of an order pursuant to this section that is not stayed, the individual shall surrender any licenses revoked by the court's order to the child support enforcement agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order.

(c) If the individual's regular or commercial drivers license is revoked under this section and the court, after the hearing, makes a finding that a license to operate a motor vehicle is necessary to the individual's livelihood, the court may issue a limited driving privilege, with those terms and conditions applying as the court shall prescribe. An individual whose license has been revoked for reasons not related to this section and whose license remains revoked at the time of the hearing shall not be eligible and may not be issued a limited driving privilege. The court may modify or revoke the limited driving privilege pursuant to G.S. 20-179.3(i).

(d) An individual may file a request with the child support enforcement agency for certification that the individual is no longer delinquent in child support payments upon submission of proof satisfactory to the child support enforcement agency that the individual has paid the delinquent amount in full. An individual subject to a subpoena issued pursuant to a child support or paternity establishment proceeding may file a request with the child support enforcement agency for certification that the individual has complied with or is no longer subject to the subpoena. The child support enforcement agency shall provide a form to be used by the individual for a request for certification. If the child support enforcement agency finds that the individual has met the requirements for reinstatement under this subsection, then the child support enforcement agency shall certify that the individual is no longer delinquent or that the individual has complied with or is no longer subject to a subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the individual.

(e) If licensing privileges are revoked under this section, the individual may petition the district court for a reinstatement of such privileges. The court may order the privileges

reinstated conditioned upon full payment of the delinquency over time, or, as applicable, may order the reinstatement if the court finds that the individual has complied with or is no longer subject to the subpoena issued pursuant to paternity establishment proceedings. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. Upon reinstatement under this subsection, the child support enforcement agency shall certify that the individual is no longer delinquent, or, as applicable, that the individual has complied with or is no longer subject to the subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the individual, as applicable.

(f) Upon receipt of certification under subsection (d) or (e) of this section, the Division of Motor Vehicles shall reinstate the license to operate a motor vehicle in accordance with G.S. 20-24.1, and remove any restriction of the individual's motor vehicle registration.

(g) Upon receipt of certification under subsection (d) or (e) of this section, the licensing board having jurisdiction over the individual's hunting, fishing, or trapping license shall reinstate the license.

(h) If the court imposes sanctions under subdivision (3) of subsection (a) of this section and the sanctions are stayed upon conditions as provided in subsection (b) of this section, the child support enforcement agency may, without any further application to the court, notify the Division of Motor Vehicles if the individual violates the terms and conditions of the stay. The Division shall then take such action as provided in subdivision (3) of subsection (a) of this section. The Division shall not remove any restriction of the individual's motor vehicle registration, until receipt of certification pursuant to subsection (d) or (e) of this section.

(i) The Department of Health and Human Services, the Administrative Office of the Courts, the Division of Motor Vehicles, and the Department of Environmental Quality shall work together to develop the forms and procedures necessary for the implementation of this process. (1995, c. 538, s. 1.4; 1997-433, s. 5.2; 1997-443, ss. 11A.118(a), 11A.119(a); 1998-17, s. 1; 1999-293, s. 2; 2015-241, s. 14.30(u).)

**§§ 110-143 through 110-146. Reserved for future codification purposes.**

#### Article 10.

##### Prevention of Child Abuse and Neglect.

**§§ 110-147 through 110-150. Repealed by Session Laws 1998, c. 202, s. 5, effective July 1, 1999.**