

# RESPONSIBLE INDIVIDUAL LIST (RIL) REFRESHER

## GENERAL BACKGROUND

- The RIL is the direct result of federal requirements under the Child Abuse Prevention and Treatment Act (CAPTA) that each State establish procedures for individuals to appeal a finding of child abuse or neglect. North Carolina's Central Registry, which captures all case decisions in a CPS assessment, does not provide for any appeal rights.
- The goal of the federal regulation was to create a child abuse registry that was accessible to certain authorized agencies who must determine the fitness of an individual to care for or adopt children.
- Those authorized agencies are (1) child caring institutions, (2) child placing agencies, (3) group home facilities, (4) child care entities, (5) licensed adoption agencies, (6) State GAL program, and (7) DSS directors.
- North Carolina's RIL was established in 2006 as a list of individuals responsible for the abuse or serious neglect of a child. The General Assembly created a new category of neglect, "serious neglect," to be defined by DHHS, rather than have RIL procedures apply to all neglect determinations. Responsible individuals were placed on the RIL and then given the right to seek expunction from the list.
- In March 2010, the Court of Appeals in *In re W.B.M.*, 202 N.C. App. 606, found the expunction process to be unconstitutional because it provided no opportunity for judicial review prior to placement on the RIL. 6000+ names then on the RIL were removed.
- New RIL legislation went into effect on July 8, 2010, requiring notice and an opportunity to be heard prior to placement on the list and clarifying the judicial review process.
- The RIL process is not discretionary. If a case decision of abuse or serious neglect is made with the identification of a responsible person, that person must be given notice of the RIL process. The definition of serious neglect, once only found in the NC Administrative Code, is now in 7B-101(19a), and includes any conduct or inaction by a parent, guardian, custodian or caretaker that constitutes an unequivocal danger to the child's health, safety or welfare, but does not constitute abuse.

- **CPS family assessments, as opposed to investigative assessments, do not trigger the RIL process because no abuse or serious neglect determination is made in those cases, and no perpetrator goes into the Central Registry. The family is only found “in need of services.” Cases that begin as family assessments can be reassigned as investigative assessments if abuse or serious neglect issues are found.**

## **PROCEDURES**

- **7B-320(a) requires personal written notice to the alleged RI within 5 business days of the case decision. If personal delivery is not successful within 15 days, the notice shall be sent by registered or certified mail, restricted delivery, to the last known address.**
- **Actual notice is required, so the individual must get notice either by personal delivery or registered mail, or his name cannot be placed on the RIL.**
- **When a person is placed on the RIL (DSS-5104a), DSS needs to provide either a signed court order after a judicial review or a statement that notice was given and there was no request for a judicial review. The Division will take the word of the social worker, but a signed acknowledgement of personal delivery, if possible, is preferred.**
- **7B- 320(c) provides that the notice contain a statement summarizing substantial evidence supporting the director’s determination without identifying the reporter or collateral contacts, explain the judicial review process, and provide a copy of the petition for judicial review. A sample letter is included in the RI policy material, Chapter VIII, Section 1427.**
- **The alleged RI has 15 days in which to request a judicial review, although 7B-323(e) allows a judicial review to be requested after this period “in the interest of justice or extraordinary circumstances.”**
- **No review may be requested if (1) the alleged RI is criminally convicted as the result of the same incident, (2) the alleged RI is a respondent in a juvenile court case resulting from the same incident that concludes with a determination that the individual has abused or seriously neglected the child and is a responsible individual, or (3) after proper notice the alleged RI fails to file a petition for review in a timely manner.**

- The petition is filed “in the county in which the abuse or serious neglect report arose,” so if there is a conflict investigation by a “buddy county,” the review petition is filed in the home county, and the “buddy county” travels to the hearing there.
- If a judicial review is desired, the alleged RI files the J-131 and copies the DSS director. The director then reviews the file and determines whether there is sufficient evidence of abuse or serious neglect. If insufficient evidence is found, the director must notice the alleged RI and the court, and the judicial review is cancelled.
- Otherwise, the case is calendared by the clerk for a hearing within 15 days. If there is no juvenile court within 15 days, it is calendared for the next session of juvenile court. There is no time frame for any hearing beyond this 15 days period. Most counties use this hearing as a preliminary hearing and schedule the hearing on the merits for a later date, as DSS is frequently unable to prepare for the hearing within 15 days.
- Notice to an alleged RI must be given even if DSS chooses to file a regular juvenile petition, J-130, with or without requesting a RI determination. If DSS files a normal petition minus the RI option, the alleged RI may file a separate petition for judicial review, J-131. If DSS files the J-130 and requests a RI determination, the RI issue will be determined in that action.
- At the RI hearing, the director has the burden of proving the abuse or serious neglect and the identification of the RI by a preponderance of the evidence. There is no right to appointed counsel.
- The court shall enter an order within 30 days of the hearing. If the court finds no abuse or serious neglect has been proven, DSS must determine whether the family requires on-going, involuntary services, including whether the case decision included another legal basis for continuing to work with the family, such as neglect by the alleged RI or another parent.

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