

[Judicial Review]

Terri Reichert
CPS Policy Consultant
(919) 334-1106
terri.reichert@dhhs.nc.gov

Jane Thompson
Child Welfare Attorney
(336) 761-2050
Jane.thompson@dhhs.nc.gov

Patrick Betancourt
Policy Program Administrator
(919) 334-1104
Patrick.betancourt@dhhs.nc.gov

[Background]

- Federal Code 42 U.S.C.5106a
- CAPTA Grant section 106
 - Requires procedures for appealing and responding to appeals of substantiated reports of abuse and neglect.
 - Non-compliance could affect the receipt the CAPTA grant.

Judicial Review

- Court of Appeals ruling on March 2, 2010
 - Session Law 2010-90
 - Amended the statutes pertaining to the Responsible Individuals List
 - Expunction Process
 - Established the Judicial Review process
 - A District Court hearing on a petition ([AOC-J-131](#)), initiated by the responsible individual for a review of the Director's decision to identify the individual as a responsible individual and place their name on the RIL.

North Carolina Statutes

- 7B-101 Definitions
 - (18a) Responsible Individual (clarified)
 - (19a) Serious Neglect (added)
- 7B-311 Central Registry / RIL
 - Clarifies when an identified individual's name goes on the RIL
- 7B-320 Notification
 - Clarifies the necessity of adding certain statements to the case decision notice
- 7B-323 Petition for Judicial Review
 - Revised to include the new Judicial Review language
 - Adds that upon notice of a Judicial Review, the Director will first review the record
- 7B-324
 - Eligibility clarified

North Carolina Statutes

Cont.

- 7B-402. Petition
- 7B-406. Issuance of summons
- 7B-805. Quantum of proof in adjudicatory hearing
- 7B-807. Adjudication

G.S. § 7B-101

Definitions

- Responsible Individual (revised)
 - A parent, guardian, custodian or caretaker who abuses or seriously neglects a juvenile
- Serious Neglect (added)
 - Conduct, behavior, or inaction of the juvenile's parent, custodian or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse.

G.S. §7B-311

Central Registry & RIL

- As a result of an Investigative Assessment the name of the identified responsible individual can *only* be placed on the RIL after one of the following:
 - The responsible individual is properly notified by DSS of the case decision and fails to file a Judicial Review Petition.
 - A Judicial Review hearing results in an order to place the name on the RIL.
 - The individual is criminally convicted as a result of the same incident

[G.S. §7B-320]

Notice after a case decision of

Abuse or Serious Neglect

- Notice must be given – it is not discretionary
- Must be able to give actual notice by mail or in person
- Need proof of receipt to count the days
- The notice must contain
 - Summary of substantial evidence supporting the case decision and copy of Judicial Review Petition (AOC J-131)

G.S. §7B-323

Petition for Judicial Review

- A hearing based on the alleged responsible individual's filing of a petition (AOC J-131) to contest the placement of the individual's name on the RIL.
 - Court determines whether case decision to identify a responsible individual is proven by a preponderance of the evidence

G.S. §7B-323

Petition for Judicial Review

- If court finds that the case decision of Abuse or Serious Neglect is not proven by preponderance of the evidence, DSS cannot continue working with the family unless there was also a neglect case decision.
 - Example: Abuse on father, Neglect on mother. Court finds abuse not proven, can still work with family based on neglect decision. If only abuse decision on divorced father based on his actions during visit, no sub on mother who was appropriate, court finds abuse not proven, no basis to continue work with father.

G.S. §7B-324

Eligibility

- Those who may NOT file a Judicial Review petition (AOC J-131)
 - Criminally convicted as a result of the same incident
 - Respondent in a juvenile court proceeding as a result of the same incident, with an adjudication of abuse/neglect and a decision to place the name on the RIL
 - Those who fail to file a Judicial Review petition within 15 days of the delivery of the case decision notice

Child Welfare Services Manual

Section 1427

- Effective Aug 20th, 2010
- Applies on to Investigative Assessments
 - On-line Manuals are located
<http://info.dhhs.state.nc.us/olm/manuals/dss/csm-60/man/>
 - Administrative Letters carry the weight of policy
<http://info.dhhs.state.nc.us/olm/manuals/dss/csm-05/man/>

Child Welfare Services Manual

Section 1427; cont.

- Instructions on how to put the name on the RIL
 - DSS-5104a
 - At this time there is no automated system; there, forms are submitted to the Division
 - Must be filled out completely and include supporting documentation
 - Copy of the notice to the RI or signed court order

Child Welfare Services Manual

Section 1427; cont

- Court findings do not affect the DSS finding just how DSS works with the family.
 - In the RIL system the DSS case decision will remain and the action of the court will appear
 - Leaving the original DSS decision preserves the SW history

Statistical Information from the RIL

- Total # of names on the RIL = 186
- Judicial Review's: 14 total
 - In each instance the Director has upheld the SW decision
 - 3 cases have resulted in the petition being dismissed
 - 0 cases have resulted in an adjudication with no RIL placement

[Statistics cont.]

- Juvenile Petitions involving an RIL
 - # of cases reported to the Division = 21
 - In every case the RIL placement was upheld.

[Central Registry vs. RIL]

- The Central Registry (CR) records historical and statistical data on all children.
 - Confidential
- The RIL only captures information on abuse and serious neglect cases by perpetrators.
 - This information may be released to current or prospective employers (includes foster and adoptive applications)

[Questions?]

- Please contact
 - The Child Welfare Policy Team
 - (919) 733-4622