

## What Is the Responsible Individuals List and Why Is Someone on It?

With April recognized as Child Abuse Prevention Month, it seemed fitting to write about North Carolina's **Responsible Individuals List (RIL)**. If you're thinking "I'm a responsible person; I should be on that list," you should know what makes a person a "responsible individual" for purposes of placement on the RIL. The definition is somewhat counterintuitive; a "responsible individual" is a parent, guardian, custodian or caretaker who has abused or seriously neglected a child. [G.S. 7B-101\(18a\)](#). If you are identified as a "responsible individual," your name will be added to the statewide RIL, which is maintained by the North Carolina Department of Health and Human Services. [G.S. 7B-311\(b\)](#).

### What Is the purpose of the RIL?

Information on the RIL may be accessed by child care institutions; child placing agencies; group homes; and other foster care, child care, or adoption services providers for the exclusive purpose of determining a person's fitness to care for or adopt a child. G.S. 7B-311(b); [10A N.C.A.C. 70A.0102\(c\)](#). The administrative code also refers to a determination of a person's prospective employability (10A N.C.A.C. 70A.0102(c)). Because the statute does not refer to employment generally, access for employment purposes is likely limited to a job that is available in an agency authorized to access information from the RIL when the position requires the prospective employee to provide care for a child, such as a caregiver in child care facility.

### Who Is a Responsible Individual?

Despite having a definition of only 13 words -- "a parent, guardian, custodian, or caretaker who abuses or seriously neglects a juvenile" (G.S. 7B-101(18a)) -- 3 factors must be satisfied when determining if someone is a "responsible individual."

#### 1. A child has been abused or seriously neglected.

When determining if "abuse" or "serious neglect" has occurred, the definitions found at [G.S. 7B-101\(1\) and \(19a\)](#) apply. "Serious neglect" differs from "neglect." A county department and court look to the definition of "neglect," found at [G.S. 7B-101\(15\)](#), when determining the child's status: is the child a "neglected juvenile?" See [G.S. 7B-301\(a\)](#), [-302\(a\)](#), [-805](#). The county department and court look to the definition of "serious neglect" when determining whether a person is a responsible individual. The definition of "serious neglect" focuses on the actions or inaction of a parent, guardian, custodian, or caretaker and whether that conduct evidences a disregard of consequences of such magnitude that it constitutes an unequivocal danger to a child's health, welfare, or safety. G.S. 7B-101(19a).

## 2. The identified individual committed abuse or serious neglect.

For placement on the RIL, it is not sufficient to prove a child has been abused or seriously neglected. The identified individual must have caused the abuse or serious neglect. See G.S. 7B-101(18a); [In re F.C.D.](#), \_\_\_ N.C. App. \_\_\_, 780 S.E.2d 214 (2015) (interpreting G.S. 7B-101(18a) the court found the evidence demonstrated the mother abused her child as defined by G.S. 7B-101(1)c. and is therefore “a parent who abuse[d]...a juvenile”).

## 3. The identified individual is the child’s parent, guardian, custodian, or caretaker.

The person who abused or seriously neglected the child must have a relationship with the child as his or her

- parent,
- guardian (a court order entered pursuant to [G.S. 7B-600](#) or [Article 6 of G.S. Chapter 35A](#)),
- custodian (a court order of legal custody, [G.S. 7B-100\(8\)](#)), or
- caretaker (a person who is not the child’s parent, guardian, or custodian but is responsible for the child’s health and welfare in a residential setting, including a stepparent, foster parent, adult member of the child’s household, cottage parent, or relative entrusted with the juvenile’s care, [G.S. 7B-100\(3\)](#); see [In re R.R.N.](#), 368 N.C. 167 (2015)).

## Who Decides Whether Someone Is a Responsible Individual?

A county department identifies “responsible individuals.” [G.S. 7B-320](#). After a county department accepts a report of a child’s suspected abuse, neglect, or dependency, part of its investigative assessment is to determine whether there is a “responsible individual” that should be placed on the RIL. *Id.*; see also [7B-101\(11b\)](#). As part of its determination, the department applies a **preponderance of the evidence standard**. [In re W.B.M.](#), 202 N.C. App. 606 (2010).

## What Is the Process for Placing Someone on the RIL?

In 2010, the court of appeals held that placement on the RIL impacts the identified individual’s constitutional liberty interest to adopt, foster, and care for children and to work in the childcare field. *Id.* Procedural due process is required, meaning the individual must receive notice and have a meaningful opportunity to be heard before being placed on the RIL. *Id.* The RIL statutes in effect at the time of the 2010 court decision were held to be unconstitutional. *Id.* Statutory amendments were made effective in July 2010. [S.L. 2010-90](#).

### Notice

Within five business days of when a county department completes its investigative assessment that determined a person is a responsible individual, it must personally deliver written notice of that

determination to the individual. G.S. 7B-320(a). The notice must include

- a statement of the nature of the investigative assessment response and determination that the person has been identified as a responsible individual based on abuse, serious neglect, or both;
- a summary of the substantial evidence that supports the determination;
- an explanation of how to petition for a judicial review with a copy of a [form petition](#) for judicial review provided; and
- a statement that if the individual does not file a petition for judicial review, his or her name will be placed on the RIL, and information from the RIL may be provided to child care institutions, child placing agencies, group homes, and other foster care, child care, or adoption services providers as part of their determination of whether the individual is fit to care for or adopt children.

[G.S. 7B-320\(c\), \(d\)](#).

The notice should not disclose the identity of the reporter or any collateral contacts the county department made as part of its investigative assessment. G.S. 7B-320(c)(2).

### Petition for Judicial Review

A petition for judicial review must be filed by the alleged responsible individual in the district court in the county where the abuse or serious neglect report arose within 15 days of receiving the notice. [G.S. 7B-323\(a\)](#). Failure to timely file a petition for judicial review is a waiver of the right to a review hearing and will result in the individual's placement on the RIL. *Id.*; [G.S. 7B-324\(a\)\(4\)](#). However, a court may hear a petition for judicial review at any time, including after the expiration of the 15-day time period, if the court determines there are extraordinary circumstances or holding a review hearing serves the interests of justice. [G.S. 7B-323\(e\)](#). A copy of the petition must be personally delivered or sent by certified mail, return receipt requested, to the county department's director or authorized representative. G.S. 7B-323(a); *see also* [7B-101\(10\)](#); [108A-14](#).

### Department Director Review

After the director receives the notice of hearing for judicial review, he or she must conduct a review to determine whether there is sufficient evidence to support the identification of the person as a responsible individual. [G.S. 7B-323\(b1\)](#). A director may start the review process as soon as he or she receives a copy of the petition. When the director determines there is insufficient evidence to support the conclusion that the petitioner (1) abused or seriously neglected the child and (2) is a responsible individual, he or she must prepare a written statement reversing the department's decision and personally deliver or send by first-class mail that statement to the petitioner. *Id.* The director must also give the clerk written notice of his or her decision reversing the department's decision so the clerk may notify the petitioner that the review hearing has been cancelled. *Id.* The

person's name will not be placed on the RIL. When the director does not reverse the department's determination, the judicial review hearing will proceed.

### Judicial Review Hearing

The clerk must calendar the hearing during a juvenile court session within 45 days of when the petition is filed or at the next session of juvenile court if one is not scheduled within 45 days. [G.S. 7B-323\(b\)](#). The court may stay the proceeding if the alleged responsible individual is also a respondent in an abuse, neglect, dependency, or criminal court action based on the same incident. [G.S. 7B-324\(b\)](#). If the individual is convicted as a result of the same incident, he or she will be placed on the RIL without a right to a judicial review. G.S. 7B-311(b)(3), [-324\(a\)\(1\)](#).

If requested by a party, the court must close the hearing to everyone but court officers, the parties, and witnesses. G.S. 7B- 323(b). Although the alleged responsible individual files the petition, it is the department that has the burden of proving by a **preponderance of the evidence** that the identified person is a responsible individual. *Id.* This means the department must prove

- the child was abused, seriously neglected, or both;
- the person identified as the responsible individual committed the abuse and/or serious neglect; and
- the person is the child's parent, guardian, custodian, or caretaker.

At the hearing, the parties have a right to present sworn evidence, subpoena and cross-examine witnesses, and make closing arguments. [G.S. 7B-323\(c\)\(1\), \(3\)](#). The rules of evidence apply, although the court has discretion to allow for the admission of reliable and relevant evidence if the general purposes of the rules of evidence and the interest of justice will be served. G.S. 7B-323(b). The parties have the right to represent themselves or to hire an attorney at their own expense. G.S. 7B-323(c)(2). An indigent parent's right to court appointed counsel in an abuse, neglect, dependency, or termination of parental rights case does not apply to a judicial review hearing regarding placement on the RIL.

### The Order

The court order must contain findings and conclusions as to whether the department proved by a preponderance of the evidence (1) abuse or serious neglect and (2) the identification of the responsible individual. [G.S. 7B-323\(d\)](#). If the department met its burden, the court must order the department to place the person on the RIL. *Id.* If the department failed to meet its burden, the court order must reverse the department's determination and order that the department not place the person on the RIL. *Id.* The order must be entered within 30 days of the completion of the hearing. *Id.*

### Appeal

A party has a right to appeal the order as a final judgment in a civil action. G.S. 7B-323(f); [7A-27\(b\)\(2\)](#). Because the right to appeal is authorized by the RIL statute and not [G.S. 7B-1001](#), which addresses abuse, neglect, dependency, and termination of parental rights orders, it appears that [Rule 3 of the NC Rules of Appellate Procedure](#) applies.

### **What if the Alleged Responsible Individual Cannot Be Located for Service?**

The county department must make diligent efforts to locate and provide notice to a person who has been determined to be a responsible individual. G.S. 7B-320(b). If after making those efforts, the department has not been able to personally serve the individual within 15 days of its determination, it must send the notice of its determination by registered or certified mail, return receipt requested, to the person's last known address. *Id.* When a person has not received actual notice of the determination, the department cannot place him or her on the RIL without a court order. [G.S. 7B-323\(a1\)](#). To obtain that order, the director must request an ex parte hearing, where the issue the court decides is whether the department made diligent efforts to locate the individual. *Id.*

### **Who Has Access to the RIL?**

The RIL is confidential. G.S. 7B-311(b). Only "authorized persons" as defined by [10A N.C.A.C. 70A.0104\(b\)\(1\)](#) are entitled to access information from the RIL. G.S. 7B-311(b), (c). A willing and knowing disclosure or redisclosure to a non-authorized person is a Class 3 misdemeanor. [G.S. 7B-311\(c\)](#). Authorized persons include someone whose job duties involve maintaining the RIL; designated representatives from child care institutions, child placing agencies, group homes, and other foster care, child care, or adoption services providers; county departments of social services; and the administrator for the State Guardian ad Litem program. 10A N.C.A.C. 70A.0104(b)(1). Requests for information as to whether a specific person is on the RIL must be made in writing and include the person's full name, date of birth, social security number, and gender. [10A N.C.A.C. 70A.0102\(d\)](#); see [DSS Form 5268](#).

### **How Long Is Someone on the RIL?**

The statutes do not address the length of time a person is placed on the RIL. They also do not provide for an expungement procedure after a specified period of time has expired. However, if a person has been placed on the RIL after failing to timely seek a judicial review and the court determines that a later hearing is warranted because of the interests of justice or extraordinary circumstances, the relief a court orders is that person's expunction from the RIL. G.S. 7B-323(e). An expunction is ordered when the department fails to meet its burden of proving abuse or serious neglect and the person's identification as a responsible individual. *Id.* Note that the administrative code contains an expunction process that refers to the former version of the RIL statutes that were held to be unconstitutional in 2010. [10A N.C.A.C. 70A.0114](#). See *In re W.B.M.*, 202 N.C. App. 606 (2010). Although the statutes were amended in response to the court decision, the accompanying regulations were not.

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