

ARTICLE 3A.

Judicial Review; Responsible Individuals List.

§ 7B-320. Notification to individual determined to be a responsible individual.

(a) Within five working days after the completion of an investigative assessment response that results in a determination of abuse or serious neglect and the identification of a responsible individual, the director shall personally deliver written notice of the determination to the identified individual.

(b) If personal written notice is not made within 15 days of the determination and the director has made diligent efforts to locate the identified individual, the director shall send the notice to the individual by registered or certified mail, return receipt requested, and addressed to the individual at the individual's last known address.

(c) The notice shall include all of the following:

(1) A statement informing the individual of the nature of the investigative assessment response and whether the director determined abuse or serious neglect or both.

(1a) A statement that the individual has been identified as a responsible individual.

(2) A statement summarizing the substantial evidence supporting the director's determination without identifying the reporter or collateral contacts.

(3) A statement informing the individual that unless the individual petitions for judicial review, the individual's name will be placed on the responsible individuals list as provided in G.S. 7B-311, and that the Department of Health and Human Services 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 that need to determine the fitness of individuals to care for or adopt children.

(4) A clear description of the actions the individual must take to seek judicial review of the director's determination.

(d) In addition to the notice, the director shall provide the individual with a copy of a petition for judicial review form. (2005-399, s. 3; 2010-90, s. 5; 2013-129, s. 4.)

§ 7B-321: Repealed by Session Laws 2010-90, s. 6, effective July 11, 2010.

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§ 7B-323. Petition for judicial review; district court.

(a) Within 15 days of the receipt of notice of the director's determination under G.S. 7B-320(a) or (b), an individual may file a petition for judicial review with the district court of the county in which the abuse or serious neglect report arose. The request shall be by a petition for judicial review filed with the appropriate clerk of court's office with a copy delivered in person or by certified mail, return receipt requested, to the director who determined the abuse or serious neglect and identified the individual as a responsible individual. The petition for judicial review shall contain the name, date of birth, and address of the individual seeking judicial review, the name of the juvenile who was the subject of the determination of abuse or serious neglect, and facts that invoke the jurisdiction of the court. Failure to timely file a petition for judicial review

constitutes a waiver of the individual's right to a district court hearing and to contest the placement of the individual's name on the responsible individuals list.

(a1) If the director cannot show that the individual has received actual notice, the director shall not place the individual on the responsible individuals list until an ex parte hearing is held at which a district court judge determines that the director made diligent efforts to find the individual. A finding that the individual is evading service is relevant to the determination that the director made diligent efforts.

(b) The clerk of court shall maintain a separate docket for judicial review actions. Upon the filing of a petition for judicial review, the clerk shall calendar the matter for hearing within 45 days from the date the petition is filed at a session of district court hearing juvenile matters or, if there is no such session, at the next session of juvenile court. The clerk shall send notice of the hearing to the petitioner and to the director who determined the abuse or serious neglect and identified the individual as a responsible individual. Upon the request of a party, the court shall close the hearing to all persons, except officers of the court, the parties, and their witnesses. At the hearing, the director shall have the burden of proving by a preponderance of the evidence the abuse or serious neglect and the identification of the individual seeking judicial review as a responsible individual. The hearing shall be before a judge without a jury. The rules of evidence applicable in civil cases shall apply. However, the court, in its discretion, may permit the admission of any reliable and relevant evidence if the general purposes of the rules of evidence and the interests of justice will best be served by its admission.

(b1) Upon receipt of a notice of hearing for judicial review, the director who identified the individual as a responsible individual shall review all records, reports, and other information gathered during the investigative assessment response. If after a review, the director determines that there is not sufficient evidence to support a determination that the individual abused or seriously neglected the juvenile and is a responsible individual, the director shall prepare a written statement of the director's determination and either deliver the statement personally to the individual seeking judicial review or send the statement by first-class mail. The director shall also give written notice of the director's determination to the clerk to be placed in the court file, and the judicial review hearing shall be cancelled with notice of the cancellation given by the clerk to the petitioner.

(c) At the hearing, the following rights of the parties shall be preserved:

- (1) The right to present sworn evidence, law, or rules that bear upon the case.
- (2) The right to represent themselves or obtain the services of an attorney at their own expense.
- (3) The right to subpoena witnesses, cross-examine witnesses of the other party, and make a closing argument summarizing the party's view of the case and the law.

(d) Within 30 days after completion of the hearing, the court shall enter an order containing findings of fact and conclusions of law. The clerk shall serve a copy of the order on each party or the party's attorney of record. If the court concludes that the director has not established by a preponderance of the evidence abuse or serious neglect or the identification of the responsible individual, the court shall reverse the director's determination and order the director not to place the individual's name on the responsible individuals list. If the court concludes that the director has established by a preponderance of the evidence abuse or serious neglect and the identification of the individual seeking judicial review as a responsible individual, the court shall order the

director to place the individual's name on the responsible individuals list, consistent with the court's order.

(e) Notwithstanding any time limitations contained in this section or the provisions of G.S. 7B-324(a)(4), upon the filing of a petition for judicial review by an individual identified by a director as a responsible individual, the district court of the county in which the abuse or neglect report arose may review a director's determination of abuse or serious neglect at any time if the review serves the interests of justice or for extraordinary circumstances. If the district court undertakes such a review, a hearing shall be held pursuant to this section at which the director shall have the burden of establishing by a preponderance of the evidence abuse or serious neglect and the identification of the individual seeking judicial review as a responsible individual. If the court concludes that the director has not established by a preponderance of the evidence abuse or serious neglect or the identification of the responsible individual, the court shall reverse the director's determination and order the director to expunge the individual's name from the responsible individuals list.

(f) A party may appeal the district court's decision under G.S. 7A-27(b)(2). (2005-399, s. 3; 2010-90, s. 7; 2013-129, s. 5; 2015-247, s. 7.)

§ 7B-324. Persons ineligible to petition for judicial review.

(a) An individual who has been identified by a director as a responsible individual may not petition for judicial review if any of the following apply:

- (1) The individual is criminally convicted as a result of the same incident. The district attorney shall inform the director of the result of the criminal proceeding.
- (2) Repealed by Session Laws 2013-129, s. 6, effective October 1, 2013, and applicable to actions filed or pending on or after that date.
- (3) Repealed by Session Laws 2010-90, s. 8, effective July 11, 2010.
- (4) After proper notice, the individual fails to file a petition for judicial review with the district court in a timely manner.
- (5) Repealed by Session Laws 2010-90, s. 8, effective July 11, 2010.

(b) If an individual seeking judicial review is named as a respondent in a juvenile court case or a defendant in a criminal court case resulting from the same incident, the district court judge may stay the judicial review proceeding. (2005-399, s. 3; 2010-90, s. 8; 2013-129, s. 6.)

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