

**DSS ADMINISTRATIVE LETTER
CHILD WELFARE SERVICES CWS-AL-05-11**

TO: COUNTY DIRECTORS OF SOCIAL SERVICES

**ATTENTION: CHILDREN'S SERVICES PROGRAM ADMINISTRATORS & MANAGERS
CHILD WELFARE SUPERVISORS, CHILDREN'S SERVICES SOCIAL WORKERS**

DATE: August 1, 2011

SUBJECT: RESPONSIBLE INDIVIDUALS LIST POLICY INTERPRETATION AND UPDATE

EFFECTIVE DATE: IMMEDIATELY

I. BACKGROUND

In May 2006, the Responsible Individuals List (RIL) was created in response to federal requirements under the Child Abuse and Treatment Act ([CAPTA](#)) to develop a child abuse registry that was accessible to certain authorized employers which includes foster and adoptive applicants, to assess the fitness of those individuals to provide care to children. Providers of child care/foster care were identified as authorized users of the RIL.

However, on March 2, 2010, the North Carolina Court of Appeals issued an opinion (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/090205-1.pdf>) finding that the statutes governing the procedures surrounding the RIL violated the North Carolina Constitution.

New legislation was ratified on July 8, 2010, and policy regarding the revised RIL is located in the [Child Welfare Services Manual; Chapter VIII; Section 1427](#). Legislative Authority for the RIL can be found in [G.S. §§ 7B-101, 7B-311\(d\), 7B-320, and 7B-323](#). The Division recognizes that policy surrounding the RIL will require regular review as new situations arise which may require consultation with our child welfare attorneys. The Division acknowledges that RIL related issues are often a "moving target" and will keep counties up-to-date through Administrative Letters and policy updates. With that, a number of situations and concerns have been raised regarding RIL policy.

II. PURPOSE

The purpose of this letter is to address those concerns. The policy interpretations found in this letter have been prepared with the guidance of the child welfare attorneys with the North Carolina Office of the Attorney General.

- **Discretion to Place on RIL Clarification / Guidance**
[G.S. § 7B-320 \(a\)](#) states, "after the completion of an Investigative Assessment 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."

The interpretation and guidance provided by the Attorney General's office to the Division is that when a case decision is made by a county department of social services to substantiate abuse and/or serious neglect **and** the perpetrator of that abuse and/or serious neglect is known, that individual must be named as a responsible individual and, following appropriate due process, that name must be placed on the RIL.

The Administrative Letter [CWS-AL-04-11](#) issued June 16, 2011 clarified policy and procedures for when a case decision is made to substantiate abuse and/or serious neglect and the identity of the perpetrator is unknown.

- **Authority to Work with a Family Following a Judicial Review Interpretation Guidance**
[G.S. § 7B-323](#) states, "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."

The interpretation and guidance provided by the Attorney General's office to the Division is that at the conclusion of the Judicial Review, if the court determines that the agency has not established by a preponderance of the evidence abuse and/or serious neglect, the county DSS will need to decide whether this family requires on-going, involuntary services to protect the child. While the court is not making a determination as to the agency's case decision, the court's findings may impact an agency's ability to continue providing on-going, involuntary services.

Should the court find that the alleged perpetrator is not a responsible individual by a preponderance of the evidence, this may limit the county's ability to prove by clear and convincing evidence that involuntary services are needed.

Guidance was also provided that counties should not consider case decisions in "silos." For instance, there may be times in which children are both abused and/or seriously neglected **and** may also be neglected.

In cases where children are abused and/or seriously neglected **and** neglected, the agency may still have grounds to petition the court to adjudicate the child as abused and/or seriously neglected **and** neglected in the event that a Judicial Review finds that the agency did not establish by a preponderance of the evidence that the alleged perpetrator was the individual responsible for the abuse and/or serious neglect.

The Division continues to work toward the implementation of an automated data system and anticipates implementation in fall of 2011.

This Administrative Letter is considered policy will be reflected in the next update of the Child Welfare Services Policy manual Chapter V and Chapter VIII. Should you have any questions please contact your Children's Program Representative or the Child Welfare Policy team at 919-733-4622

Sincerely,



Kevin Kelley, Interim Chief
Child Welfare Services

cc: Sherry S. Bradsher
Jack Rogers
Kathy Sommese
Child Welfare Services Team Leaders
Children's Services Program Representatives
Local Business Liaisons