

1 Article 3A.

2 Judicial Review; Responsible Individuals List.

3 **§ 7B-320. Notification to individual determined to be a responsible individual.**

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

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

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

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

16 (1a) A statement that the individual has been identified as a responsible  
17 individual.

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

20 (3) A statement informing the individual that unless the individual petitions for  
21 judicial review, the individual's name will be placed on the responsible  
22 individuals list as provided in G.S. 7B-311, and that the Department of  
23 Health and Human Services may provide information from this list to child  
24 caring institutions, child placing agencies, group home facilities, and other  
25 providers of foster care, child care, or adoption services that need to  
26 determine the fitness of individuals to care for or adopt children.

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

29 (d) In addition to the notice, the director shall provide the individual with a copy of a  
30 petition for judicial review form and instructions for how to file and serve the petition.  
31 (2005-399, s. 3; 2010-90, s. 5.)  
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33 **§ 7B-323. Petition for judicial review; district court.**

34 (a) Within 15 days of the receipt of notice of the director's determination under G.S.  
35 7B-320(a) or (b), an individual may file a petition for judicial review with the district court of  
36 the county in which the abuse or serious neglect report arose. The request shall be by a petition  
37 for judicial review filed with the appropriate clerk of court's office with a copy delivered in  
38 person or by certified mail, return receipt requested, to the director who determined the abuse  
39 or serious neglect and identified the individual as a responsible individual. The petition for  
40 judicial review shall contain the name, date of birth, and address of the individual seeking  
41 judicial review, the name of the juvenile who was the subject of the determination of abuse or  
42 serious neglect, and facts that invoke the jurisdiction of the court. Failure to timely file a  
43 petition for judicial review constitutes a waiver of the individual's right to a district court  
44 hearing and to contest the placement of the individual's name on the responsible individuals  
45 list.

46 (b) The clerk of court shall maintain a separate docket for judicial review actions. Upon  
47 the filing of a petition for judicial review, the clerk shall calendar the matter for hearing within  
48 15 days from the date the petition is filed at a session of district court hearing juvenile matters  
49 or, if there is no such session, at the next session of juvenile court. The clerk shall send notice  
50 of the hearing to the petitioner and to the director who determined the abuse or serious neglect  
51 and identified the individual as a responsible individual. Upon the request of a party, the court

1 shall close the hearing to all persons, except officers of the court, the parties, and their  
2 witnesses. At the hearing, the director shall have the burden of proving by a preponderance of  
3 the evidence the abuse or serious neglect and the identification of the individual seeking  
4 judicial review as a responsible individual. The hearing shall be before a judge without a jury.  
5 The rules of evidence applicable in civil cases shall apply. However, the court, in its discretion,  
6 may permit the admission of any reliable and relevant evidence if the general purposes of the  
7 rules of evidence and the interests of justice will best be served by its admission.

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

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

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

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

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

47 (f) A party may appeal the district court's decision under G.S. 7A-27(c). (2005-399, s.  
48 3; 2010-90, s. 7.)

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50 **§ 7B-324. Persons ineligible to petition for judicial review; stay of judicial review**  
51 **proceeding pending juvenile court case.**

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

3 (1) The individual is criminally convicted as a result of the same incident. The  
4 district attorney shall inform the director of the result of the criminal  
5 proceeding.

6 (2) The individual is a respondent in a juvenile court proceeding regarding  
7 abuse or neglect resulting from the same incident that concludes with an  
8 adjudication of abuse or neglect and a determination that the individual has  
9 abused or seriously neglected the juvenile and is a responsible individual.

10 (3) Repealed by Session Laws 2010-90, s. 8, effective July 11, 2010.

11 (4) After proper notice, the individual fails to file a petition for judicial review  
12 with the district court in a timely manner.

13 (5) Repealed by Session Laws 2010-90, s. 8, effective July 11, 2010.

14 (b) If an individual seeking judicial review is named as a respondent in a juvenile court  
15 case resulting from the same incident, the district court judge may stay the judicial review  
16 proceeding or consolidate the proceeding with the juvenile court case. If the juvenile court case  
17 is involuntarily dismissed, or concludes without an adjudication of abuse or neglect and a  
18 determination that the individual has abused or seriously neglected a juvenile and is a  
19 responsible individual, the director shall not place the individual's name on the responsible  
20 individuals list. If a juvenile court case concludes with an adjudication of abuse or neglect and  
21 a determination that the individual has abused or seriously neglected a juvenile and is a  
22 responsible individual, the director shall place that individual's name on the responsible  
23 individuals list, consistent with the court's order. (2005-399, s. 3; 2010-90, s. 8.)

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25 **§§ 7B-325 through 7B-329: Reserved for future codification purposes.**