

## 2010 North Carolina Legislation: Juvenile Law

### 1. S.L. 2010-90 (S 567). New Responsible Individuals List procedures.

In 2005 the General Assembly amended the Juvenile Code to provide for a Responsible Individuals List to include the name of any individual determined by a county department of social services (DSS) to have abused or seriously neglected a child. [S.L. 2005-399] Unlike names on the Central Registry, which for many years has collected information relating to reports of abuse and neglect, names on the Responsible Individual List can be provided to certain agencies, institutions, and facilities that need to determine individuals' fitness to care for children. On March 2, 2010, the North Carolina Court of Appeals held that the procedures for placing names on the Responsible Individual List and expunging names from the list violated the North Carolina Constitution. *In re W.B.M.*, \_\_\_ N.C. App. \_\_\_, 690 S.E.2d 41 (2010). As a result, placement of names on the list and use of the list were suspended.

S.L. 2010-90 substantially rewrote Article 3A of G.S. Chapter 7B to revise procedures related to the list. The changes became effective July 11, 2010. The primary differences between the former law and current law include the following:

- “Serious neglect” is statutorily defined. Previously the term was defined only in an administrative rule.
- An individual is entitled to judicial review of an agency’s determination that the person is a responsible individual, *i.e.*, has abused or seriously neglected a child, before the individual’s name is placed on the list. The person must be given written notice, a copy of a “petition for judicial review,” and instructions about how to seek judicial review. Previously, judicial review occurred only after the person’s name was placed on the list and after review by the DSS director and, at the option of the individual, the district attorney. The new law includes no role for the district attorney in relation to the list.
- An individual’s name may be placed on the list only after one of the following:
  - i. The person is properly notified and fails to file a timely petition for judicial review.
  - ii. The person files a petition for judicial review and the court determines after a hearing that the person is a responsible individual.
  - iii. DSS alleges in an abuse or neglect petition that the person is a responsible individual, and after a hearing the court determines by a preponderance of the evidence that the person is a responsible individual.
  - iv. The person is criminally convicted as a result of the same incident.

When a county DSS, after an investigative assessment, substantiates abuse or neglect and determines that someone is a responsible individual, DSS files a juvenile petition only if court intervention is necessary to protect the child. If DSS does not file a petition, the court will review the agency’s determination that someone is a responsible individual only if that person files a petition for judicial review. If DSS does file a petition alleging that a child is abused or neglected, in that same petition DSS may allege and seek a determination that a particular respondent abused or seriously neglected the child and therefore is a responsible individual. At the hearing on the petition, if the court adjudicates the child to be abused or neglected, the court then would proceed to determine whether the named respondent is a responsible individual. The standard of proof for the adjudication is clear and convincing evidence. For determining whether a respondent is a responsible individual, it is a preponderance of the evidence.

2. **S.L. 2010-90 (S 567). Amendments to abuse/neglect/dependency petitions.**

S.L. 2010-90 also rewrote G.S. 7B-800 to allow the court, in its discretion, to permit the amendment of an abuse, neglect, or dependency petition, even if the amendment changes the nature of the condition alleged. Previously, the court could allow an amendment only if it did not change the nature of the conditions on which the petition was based. The act also adds a provision requiring the court, after it allows an amendment, to direct the manner in which the amended petition must be served and to specify the time allowed for a party to prepare after an amendment.

3. **S.L. 2010-116 (H 1463). Confidential intermediaries for adoption information.**

This act rewrites G.S. 48-9-104, effective October 1, 2010, to expand the categories of individuals for whom a county department of social services or a licensed child-placing agency may act as a confidential intermediary without appointment by the court. With the consent of all the relevant parties, an agency acting as a confidential intermediary may obtain and share nonidentifying birth family health information, facilitate contact, or share identifying information.

Previously the law applied only to a biological parent, an adult adoptee, or an “adult lineal descendant” of a deceased adoptee. As rewritten, the law now applies to

- a biological parent
- an adult adoptee
- an adult biological sibling of an adult adoptee
- an adult biological half sibling of an adult adoptee
- an adult family member of a deceased biological parent
- an adult family member of a deceased adoptee

A “family member” is a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

4. **S.L. 2010-94 (H 1403). DNA sample from juvenile whose case is transferred.**

Section 13 of the act rewrites G.S. 7B-2201, effective February 1, 2011, to require that a DNA sample be taken from a juvenile whose case is transferred to superior court if an offense for which the juvenile is transferred is included in G.S. 15A-266.3A, a new section that also becomes effective February 1, 2011. Otherwise, the act relates to adult offenders.



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