

Follow-Up Document for the Webinar

Responsible Individuals List: The How and the Why

Presenters

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Produced by

Family and Children's Resource Program, part of the
UNC-Chapel Hill School of Social Work

Sponsored by

NC Division of Social Services

Recording: if you missed the webinar or want to view it again, go to: <http://fcrp.unc.edu/webinars.asp>

Answers to Questions Asked During the Webinar

Responses in this document are from the NC Division of Social Services Child Welfare Services Section.

I. Working with Your Attorney

When should agencies involve the attorney when making decisions about or using the RIL?

Always. We recommend you always involve your attorney for any decision about the RIL.

2. Listing Perpetrators on the RIL

Is it true you can still substantiate, even if there is not a clear perpetrator?

Correct. You can put on 5104 that there is no clear perpetrator. If you have clear evidence the child is abused, you can substantiate. If there is a clear perpetrator, you list that person on the RIL. If there is not, no one gets listed on the RIL.

Can someone who seriously neglected a child be placed on the RIL?

Yes. If a parent, custodian, or caretaker seriously neglected a child, that parent must be placed on the RIL.

Can child perpetrators be listed on the RIL?

It depends. If that child is a parent who abused or seriously neglected their child, then yes. However, in situations wherein the child is not the parent, you cannot put the child perpetrator on the RIL because by definition a child cannot be a caretaker. Also, typically, child-on-child abuse or neglect is not accepted as an investigative assessment, and only investigative assessments can result in a listing on the RIL. Child-on-child is more of a supervision issue (i.e., family assessment).

If you have ongoing child-on-child sexual abuse and the caretaker/parent continues to allow access, would that be serious neglect on the parent?

That seems likely, but staff it with your attorney.

Can parents who are minors who have perpetrated abuse or serious neglect go on RIL?

Yes.

Is there ever a situation or circumstance that there would be a finding on a minor parent (NOT emancipated) for abuse and or neglect of their child?

Yes. If circumstances warrant, it is still appropriate to make findings against minor parents.

When there is no clear perpetrator, how will RIL be served or who do you serve the RIL on?

You mark it on the DSS-5104 and no one is served on the RIL. It may be helpful to talk with your agency attorney to help clarify if a clear perpetrator can be identified.

Can someone be substantiated on and not be put on RIL?

If it is a substantiation of abuse or serious neglect or human trafficking and you have a clear perpetrator, usually they would go on RIL. However, there are sometimes exceptions. If, after the alleged perpetrator has been served and they file a notice of appeal **AND** the DSS director **OR** a judge decides you don't have enough evidence to indicate that they are a responsible individual, then you would not list.

How do we place a human trafficking perpetrator on the RIL if they only go by a street name/nick name and we don't have a legal name?

We suggest you work with law enforcement. In this situation, diligent efforts to locate would include asking your local LE during the assessment process. They have access to "street names" with photographs so you can ensure this is the "correct" person to notify.

What if the clear perpetrator is out of state? Are we still obliged to notify and list?

Yes. It doesn't matter if they were out of state if the offense was committed in NC. If the investigative assessment happens here and they were found responsible, they must be listed. Being out of state may raise barriers in terms of notice, but this individual should be listed. If the offense occurred in another state, we cannot place that perpetrator on the RIL, but we can still substantiate.

3. Locating and Noticing

It says “If the county child welfare worker is unsuccessful in contacting the alleged responsible individual to provide personal written notice within 15 days of the case decision, the notice shall be sent by registered or certified mail, return receipt requested, and addressed to the individual at the individual’s last known address.” Are these 15 calendar days or business days?

Calendar days.

Is notice to last known address sufficient if you know the perpetrator is no longer residing there?

Statute provides that “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.” However, if the Director cannot show that the person 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.”

If your diligent efforts to serve someone on RIL are not successful and later on (e.g., six months later) another report comes in and the perp is in that home, are we then able to serve the notice?

You should have it all resolved way before 6 months have passed.

If a notification letter is delivered two months later, can we proceed with placing perp on the RIL?

If you can prove to a judge that despite the two months passing, the service was “expeditious” under the circumstances, then yes.

If someone else signs for the certified mail, can we proceed with listing the perpetrator?

If this occurs, staff it with your attorney. The decision about whether to proceed will depend on several factors, including your judge. Will he or she think it is sufficient? If you have proof the person is avoiding being noticed, that would help. But in most cases someone else signing is probably not sufficient.

Can a county define "expeditious" in their own policies? For example, can they set a requirement all RIL notifications must be sent within 5 business days?

No. Whether or not the county acted in an expeditious manner is a finding that will be made by a judge. Counties should not be creating policy that is outside of state law and policy. A county may have a protocol that ensures law and policy requirements are met.

What if the perpetrator receives notice but refuses to sign, are we ok leaving the letter with them and documenting that they refused?

Yes, just document they received notice but refused to sign.

What if your agency attorney advises against the *ex parte* hearing for placement on RIL due to not locating the perp?

If they advise against that, ask why. Do they think your documentation of reasonable efforts is insufficient, or are they advising this for case-specific reasons? Note that the requirement for an *ex parte* hearing is part of RIL law. It is not discretionary.

Is it true that if the perp did not receive the notice personally or sign the return receipt, we must work with our legal department to motion for an *ex parte* hearing?

Yes, that is correct.

Is the *ex parte* hearing information entered in the judicial review boxes? Even if there was no appeal?

There is not a place for this on the DSS-5104. The *ex parte* is just another step the agency can take to show notification.

4. Completing the DSS-5104

If criminal charges are pending, is it OK if DSS-5104A entry is delayed because the agency/court determines a RIL hearing cannot take place until after the criminal charges are resolved (e.g., there is a conviction)?

Yes. In practice you typically put off RIL listing until criminal charges are no longer pending.

If I put someone on the RIL in NCFAST do I also put them on the Legacy System?

No. They are separate systems.

Does the *ex parte* hearing date become the service date when completing the 5104a?

Legally, the date the person is served is the service date.

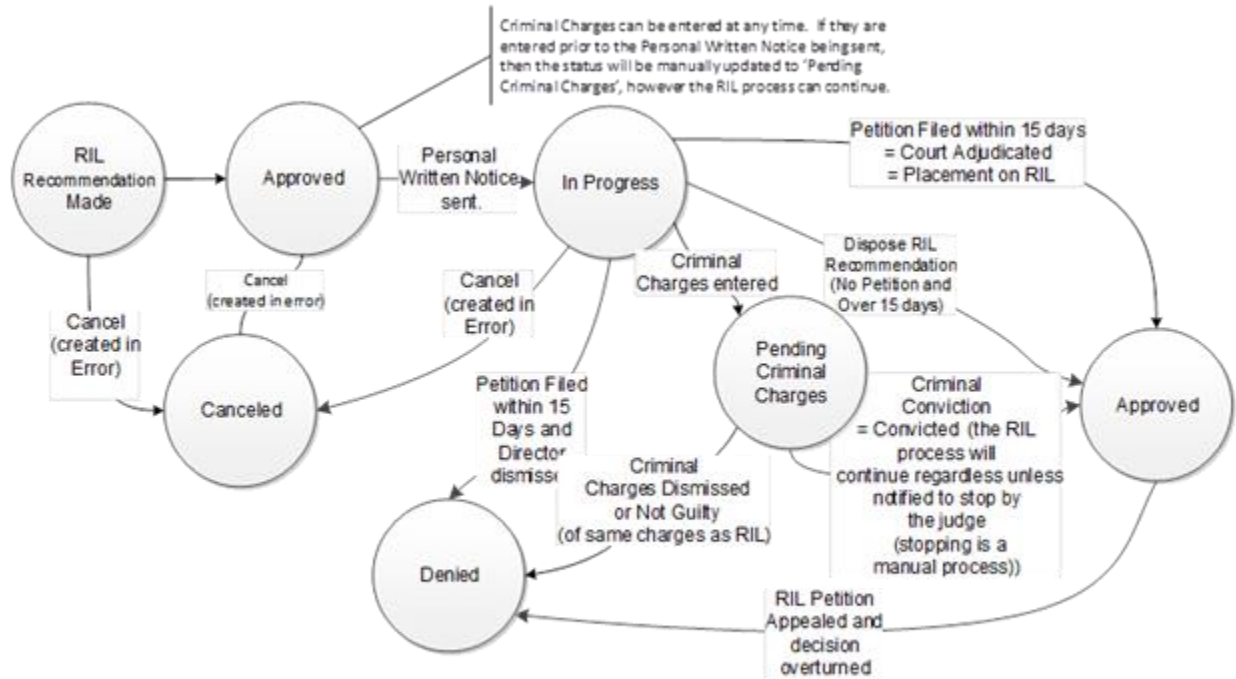
5. NC FAST

Am I correct that if they file a petition and we are waiting on an RIL hearing, I can't complete this in NCFAST?

That is correct.

Regarding adding perp to the RIL in NCFAST that have pending charges: If there are charges and they have not been to court, we are not able to dispose the information in NCFAST (adding to the RIL) until we have more. The questions are acquitted, sentenced, convicted.

NC Fast has corrected this issue. Please refer to the process flow below:



6. Miscellaneous

Has the state thought about changing the name of this list? I had a parent assume that being listed is a compliment or a good thing—that it meant he was found to be a responsible parent. Peter, would you ask the state if the list can have a name change?

Peter promised to inquire about this.

Will DSS attorneys have access to this webinar?

Attorneys and anyone else can access the recording of this webinar here:

<https://fcrp.unc.edu/multimedia/>

Any update on when the RIL judicial review petition will be available in Spanish?

We've asked the AOC to put this on their radar.