

CHAPTER THREE

RECORDS, CONFIDENTIALITY, AND EXPUNGEMENT

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CHAPTER THREE

RECORDS, CONFIDENTIALITY, AND EXPUNGEMENT

I. RECORDS OF ALLEGATIONS OF ABUSE OR NEGLECT

A. COURT'S RECORDS DEFINED

The legal records of the court subject to Ind. Code § 31-39-1 including the following: (1) Chronological case summaries. (2) Index entries. (3) Summonses. (4) Warrants. (5) Petitions. (6) Orders. (7) Motions. (8) Decrees.

B. ACCESS BY PARENTS, GUARDIAN, OR CUSTODIAN TO RECORDS

1. Notice to parents, guardian, or custodian of availability of records

Pursuant to Ind. Code § 31-33-18-4(a), whenever a child abuse or neglect assessment is conducted under Ind. Code § 31-33, the department shall give verbal and written notice to each parent, guardian, or custodian of the child that: (1) The reports and information described in Ind. Code § 31-33-18-1 relating to the child abuse or neglect assessment; and (2) If the child abuse or neglect allegations are pursued in juvenile court, the juvenile court's records described in Ind. Code § 31-39; are available upon the request of the parent, guardian, or custodian except as prohibited by federal law.

2. Parents, Guardian, or custodian may be required to sign written release form

A parent, guardian, or custodian requesting information under Ind. Code § 31-33-18-4 may be required to sign a written release form that delineates the information that is requested before the information is made available. However, no other prerequisites for obtaining the information may be placed on the parent, guardian, or custodian except for reasonable copying costs. Ind. Code § 31-33-18-4(b).

C. DCS MAY RETAIN UN-EXPUNGED UNSUBSTANTIATED ASSESSMENTS

1. Only Accessible to Certain Employees

The department may retain information relating to an unsubstantiated assessment of child abuse or neglect in paper or digital form or in other media that is accessible only by department employees with access rights established by the department through policy or rule. This applies only to information that is not expunged under Ind. Code § 31-33-27-3(a) or -3(b). Ind. Code § 31-33-27-3(c).

a. Retained Reports May be Used during Future Assessments

Information that is retained in the records of the department under Ind. Code § 31-33-27-3(c) may be used by the department to facilitate its assessment of a subsequent report concerning the same child or family. Ind. Code § 31-33-27-3(d).

b. Retained Reports May Not be Sole Reason for Future Substantiation

The department may not rely solely on information available under Ind. Code § 31-33-27-3(c) to support substantiation of a later report, if information obtained in the assessment of the later report is otherwise insufficient to support a substantiated determination. Ind. Code § 31-33-27-3(e).

c. DCS Must Have Written Policies Regarding Access to Assessments

The department shall adopt a written policy, and may adopt rules under Ind. Code § 4-22-2, regarding access to information retained under Ind. Code § 31-33-27-3(c). Ind. Code § 31-33-27-3(f).

D. CHILD PROTECTION INDEX

For additional information about the Child Protection Index, see below and Ch. 8 – Initial Investigation and Removal of Child.

The department shall establish and maintain a centralized, computerized child protection index to organize and access data regarding substantiated reports of child abuse and neglect that the department receives from throughout Indiana under Ind. Code § 31-33. Ind. Code § 31-33-26-2.

1. Index Components and Capability

a. Basic Components

Pursuant to Ind. Code § 31-33-26-3, in addition to equipment needed to establish, operate, and maintain the index, the index must include the following components:

- (1) Automated risk assessment in which a family case manager or supervisor is able to review substantiated child abuse or neglect case to determine prior case history during the intake, assessment, and case management processes.
- (2) The capability to allow supervisors to monitor child abuse and neglect cases and reports relating to the cases.
- (3) The automated production of standard reports to enable the automated compilation of information gathered on forms used by family case managers to report the information and results of child abuse and neglect cases. The index must also provide for automation of other data for planning and evaluation as determined by the department.
- (4) The capability of same day notification and transfer of statistical information to the department regarding new and closed child abuse and neglect cases.
- (5) The enabling of child welfare supervisors to review a child abuse or neglect determination at any point after the assessment is initially classified as substantiated abuse or neglect, to confirm the status of the case, and to allow for the consolidated management of cases.
- (6) The capability for adjusting the index's programming at a later date if additional reporting requirements occur.
- (7) A word processing capability to allow case notes to be recorded with each substantiated child abuse and neglect case.

b. Ability to Maintain a Case History File

In addition to the components described in Ind. Code § 31-33-26-3, the index must have the capability to maintain a case history file. Ind. Code § 31-33-26-4(a).

c. Ability to Automatically Search for Specific Reports

Whenever a person enters a new child abuse or neglect report into the index, the index must have the capability to automatically search for reports that match the name of the: (1) perpetrator; (2) victim; or (3) person who is legally responsible for the victim's welfare; with the persons named in the new report as described in Ind. Code § 31-33-26. Ind. Code § 31-33-26-4(b).

d. Ability to Transfer Previous Substantiated Reports to New County

If the index identifies a previous, substantiated report, the index must have the capability to transfer the report to the county where the new report originated not later than twenty-four (24) hours after receipt of the new report. If a previous, matching report is located, a case history extract must be made available to the assigned caseworker. Ind. Code § 31-33-26-4(c).

e. Data Storage and Retrieval Requirements

The department shall store data regarding child abuse or neglect reports in a manner that allows the data to be retrieved based on the following, if known: (1) the child's name; (2) the child's date of birth; (3) the alleged perpetrator's name; (4) the child's mother's name; (5) the child's father's name; (6) the name of a sibling of the child; and (7) the name of the child's guardian or custodian if applicable. Ind. Code § 31-33-26-6.

2. Administration of Index

Pursuant to Ind. Code § 31-33-26-10, the department shall administer the index in a manner that enables the department to do the following:

- (1) Immediately identify and locate prior reports of child abuse or neglect through the use of the department's: (A) computerized tracking system; and (B) automated risk assessment system.
- (2) Track steps in the investigative process to ensure compliance with all requirements for a report of child abuse or neglect.
- (3) Maintain and produce aggregate statistical reports monitoring patterns of child abuse and neglect that the department shall make available to the public upon request.
- (4) Serve as a resource for the evaluation, management, and planning of preventive and remedial services to children who have been subject to child abuse or neglect.

II. CONFIDENTIALITY OF RECORD

A. RECORDS THAT ARE CONFIDENTIAL

1. Reports of Child Abuse and Neglect Allegations

Reports made under Ind. Code § 31-33 are confidential. Ind. Code § 31-33-18-1(a)(1).

a. Audio Recordings to Hotline

An audio recording of a telephone call to the child abuse hotline is confidential and may be released only upon court order. Ind. Code § 31-33-18-5(a).

b. Release of Recording to Prosecutor

An audio recording of a report of child abuse or neglect that is the subject of a complaint made to a prosecuting attorney under Ind. Code § 31-33-22-3 shall be released without a court order to the prosecuting attorney upon written request of the prosecuting attorney. Ind. Code § 31-33-18-5(b).

2. Information Held by Certain Agencies

Any other information obtained, reports written, or photographs taken concerning the reports in possession of: (A) the division of family resources; (B) the local office; (C) the department; or (D) the department of child services ombudsman established by Ind. Code § 4-13-19-3 are confidential. Ind. Code § 31-33-18-1(a)(2).

3. All Records Regarding Death as a Result of Abuse, Abandonment, or Neglect

See conditions for release of redacted records regarding death below.

Except as provided by Ind. Code § 31-33-18-1.5, all records held by: (1) the division of family resources; (2) a local office; (3) the department; (4) a local child fatality review team established by Ind. Code § 16-49-2; (5) the statewide child fatality review committee established by Ind. Code § 16-49-4; or (6) the department of child services ombudsman established by Ind. Code § 4-13-19-3; regarding the death of a child determined to be a result of abuse, abandonment, or neglect are confidential and may not be disclosed. Ind. Code § 31-33-18-1(b).

4. Reports by Health Care Providers, Schools, and Certain Placements/Facilities

Pursuant to Ind. Code § 31-33-7-8(e), a report made to: (1) a hospital; (2) a community mental health center; (3) a managed care provider (as defined in Ind. Code § 12-7-2-127); (4) a referring physician; (5) a dentist; (6) a licensed psychologist; (7) a school; (8) a child caring institution licensed under Ind. Code § 31-27; (9) a group home licensed under Ind. Code § 31-27 or Ind. Code § 12-28-4; (10) a secure private facility; or (11) a child placing agency (as defined in Ind. Code § 31-9-2-17.5) is:

(1) Confidential; and

(2) May be made available only to: (A) The agencies listed in Ind. Code § 31-33-7-8(a); and (B) The persons and agencies listed in Ind. Code § 31-33-18-2.

5. Child Protection Index

See additional information about the Child Protection Index below and in Ch. 8 – Initial Investigation and Removal of Child.

The department may adopt rules under Ind. Code § 4-22-2 to ensure that the confidentiality of and access to reports of child abuse and neglect are maintained as provided in Ind. Code § 31-33-26. Ind. Code § 31-33-26-7.

a. DCS Shall Establish Access Restrictions

The department shall establish access restrictions in order to maintain the security and confidentiality of the index as required by this chapter. Ind. Code § 31-33-26-5(a).

b. Limits to DCS Ombudsman Access to the Child Protection Index

Pursuant to Ind. Code § 31-33-26-5(b), the department of child services ombudsman established by Ind. Code § 4-13-19-3 shall have read only access to the index concerning: (1) Children who are subject of complaints filed with; or (2) Cases being investigated by: the department of child services ombudsman. The office of the department of child services ombudsman shall not have access to any information related to cases or information that involves the ombudsman or any member of the ombudsman's immediate family.

c. Transfer of Old Records to the Index

On July 1, 2007, all substantiated reports and other documents relating to child abuse or neglect cases contained in the child abuse registry under Ind. Code § 31-33-17 (before its repeal) and the automated child protection system under Ind. Code § 31-33-20 (before its repeal) shall be transferred to and be included in the child protection index. The department shall maintain and administer all reports and documents transferred to and included in the child protection index as provided in Ind. Code § 31-33-26. Ind. Code § 31-33-26-18.

B. DEATH OR NEAR FATALITY RECORDS NOT CONFIDENTIAL IF REDACTED

Unless information in a record is otherwise confidential under state or federal law, or a police investigation or criminal prosecution is ongoing, a record described in Ind. Code § 31-33-18-1.5(a) that has been redacted in accordance with this section is not confidential and may be disclosed to any person who requests the record. Ind. Code § 31-33-18-1.5(e).

1. Applicable Records

Pursuant to Ind. Code § 31-33-18-1.5(a), this section applies to records held by: (1) The local office; (2) The department; (3) The department of child services ombudsman established by Ind. Code 4-13-19-3; regarding a child whose death or near fatality may have been the result of abuse, abandonment, or neglect.

a. Definition of Death or Near Fatality Records

Pursuant to Ind. Code § 31-33-18-1.5(b), for purposes of Ind. Code § 31-33-18-1.5(a), a child's death or near fatality may have been the result of abuse, abandonment, or neglect if: (1) An entity described in Ind. Code § 31-33-18-1.5(a), determines that the child's death or near fatality is the result of abuse, abandonment, or neglect; or (2) A prosecuting attorney files: (A) an indictment or information, or (B) a complaint alleging the commission of a delinquent act; that, if proven, would cause a reasonable person to believe that the child's death or near fatality may have been the result of abuse, abandonment, or neglect.

b. "Case"

Pursuant to Ind. Code § 31-33-18-1.5(d)(1), as used in this section, "case" means: (A) Any intake report generated by the department; (B) Any investigation or assessment conducted by the department; or (C) Ongoing involvement between the department and a child or family that is the result of: (i) A program of informal adjustment; or (ii) A child in need of services action; for which related records and documents have not been expunged as required by law or by a court at the time the department is notified of a fatality or near fatality.

c. "Contact"

Pursuant to Ind. Code § 31-33-18-1.5(d)(2), as used in this section, "contact" means in person communication about a case in which: (A) The child who is the victim of a fatality or near fatality is alleged to be a victim; or (B) The perpetrator of the fatality or near fatality is alleged to be the perpetrator.

d. "Near Fatality"

"Near fatality" means a severe childhood injury or condition that is certified by a physician as being life threatening. Ind. Code § 31-33-18-1.5(d)(5).

e. Procedure for Determining If Records are Death or Near Fatality Records

Upon the request of any person, or upon its own motion, the court exercising juvenile jurisdiction in the county in which the child's death or near fatality occurred shall determine whether the allegations contained in the indictment, information, or complaint described in Ind. Code § 31-33-18-1.5(b)(2) if proven, would cause a reasonable person to believe that the child's death or near fatality may have been the result of abuse, abandonment, or neglect. Ind. Code § 31-33-18-1.5(b).

f. Court Must Make Written Findings

If the juvenile court finds that the child's death or near fatality was the result of abuse, abandonment, or neglect, the court shall make written findings and provide a copy of the findings and the indictment, information, or complaint described in Ind. Code § 31-33-18-1.5(b)(2) to the department. Ind. Code § 31-33-18-1.5(c).

2. Procedure for Redacting Records

a. Transmission of the Record to Juvenile Court

When a person requests a record described in Ind. Code § 31-33-18-1.5(a), the entity having control of the record shall immediately transmit a copy of the record to the court exercising juvenile jurisdiction in the county in which the death or near fatality of the child occurred. However, if the court requests that the entity having control of a record transmit the original record, the entity shall transmit the original record. Ind. Code § 31-33-18-1.5(f).

b. Juvenile Court Shall Redact Record within Thirty Days

Pursuant to Ind. Code § 31-38-18-1.5(g), upon receipt of the record described in Ind. Code § 31-33-18-1.5(a), the court shall, within thirty (30) days, redact the record to exclude: (1) Identifying information described in Ind. Code § 31-33-18-1.5(d)(3)(B) through Ind. Code § 31-33-18-1.5(d)(3)(F) of a person; and (2) All identifying information of a child less than eighteen (18) years of age.

c. "Identifying Information"

Pursuant to Ind. Code § 31-33-18-1.5(d)(3), "identifying information" means information that identifies an individual, including an individual's:

- (A) Name, address, date of birth, occupation, place of employment, and telephone number;
- (B) Employer identification number, mother's maiden name, Social Security number, or any identification number issued by a governmental entity;
- (C) Unique biometric data, including the individual's fingerprint, voice print, or retina or iris image;
- (D) Unique electronic identification number, address, or routing code;
- (E) Telecommunication identifying information; or
- (F) Telecommunication access device, including a card, a plate, a code, an account number, a personal identification number, an electronic serial number, a mobile identification number, or another telecommunications service or device or means of account access.

d. Court's Determination Not Admissible in Criminal or Civil Case

The court's determination under Ind. Code § 31-33-18-1.5(g) that certain identifying information or other information is not relevant to establishing the facts and circumstances leading to the death or near fatality of a child is not admissible in a criminal proceeding or civil action. Ind. Code § 31-33-18-1.5(j).

3. Content of Redacted Records

Pursuant to Ind. Code § 31-33-18-1.5(i), the data and information in a record disclosed under Ind. Code § 31-33-18-1.5 must include the following:

- (1) A summary of the report of abuse or neglect and a factual description of the contents of the report.

- (2) The age and gender of the child.
- (3) The cause of the fatality or near fatality, if the cause has been determined.
- (4) Whether the department had any contact with the child or the perpetrator before the fatality or near fatality, and, if the department had contact, the following:
 - (A) The frequency of the contact with the child or perpetrator before the fatality or near fatality and the date on which the last contact occurred before the fatality or near fatality.
 - (B) A summary of the status of the child's case at the time of the fatality or near fatality, including: (i) Whether the child's case was closed by the department before the fatality or near fatality; and (ii) If the child's case was closed as described in Ind. Code § 31-33-18-1.5(i), the date of closure and the reasons that the case was closed.

4. Payment for Redacted Records

The person requesting the record may be required to pay the reasonable expenses of copying the record. Ind. Code § 31-33-18-1.5(h).

Pursuant to Ind. Code § 31-33-18-1.5(h), the court shall disclose the record redacted in accordance with Ind. Code § 31-33-18-1.5(g) to any person who requests the record, if the person has paid:

- (1) To the entity having control of the record, the reasonable expenses of copying under Ind. Code § 5-14-3-8; and
- (2) To the court, the reasonable expenses of copying the record.

C. CONFIDENTIAL RECORDS THAT MAY BE DISCLOSED TO CERTAIN PERSONS

1. Records Available to Certain Individuals and Agencies

Pursuant to Ind. Code § 31-39-2-6, the records of the juvenile court are available without a court order to:

- (1) The attorney for the department of child services; or
- (2) Any authorized staff member of: (A) The local office; (B) The department of child services; (C) The department of correction; or (D) The department of child services ombudsman established by Ind. Code § 4-13-19-3.

2. Disclosure to Certain Persons or Organizations

Pursuant to Ind. Code § 31-33-18-2, the reports and other material described in Ind. Code § 31-33-18-1(a) and the un-redacted reports and other material described in Ind. Code § 31-33-18-1(b) shall be made available only to the following:

- (1) Persons authorized by Ind. Code § 31-33-18.
- (2) A legally mandated public or private child protective agency investigating a report of child abuse or neglect or treating a child or family that is the subject of a report or record.
- (3) A police or other law enforcement agency, prosecuting attorney, or coroner in the case of the death of a child who is investigating a report of a child who may be a victim of child abuse or neglect.

- (4) A physician who has before the physician a child whom the physician reasonably suspects may be a victim of child abuse or neglect.
- (5) An individual legally authorized to place a child in protective custody if:
 - (A) The individual has before the individual a child whom the individual reasonably suspects may be a victim of abuse or neglect; and
 - (B) The individual requires the information in the report or record to determine whether to place the child in protective custody.
- (6) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, custodian, or other person who is responsible for the child's welfare.
- (7) An individual named in the report or record who is alleged to be abused or neglected or, if the individual named in the report is a child or is otherwise incompetent, the individual's guardian ad litem or the individual's court appointed special advocate, or both.
- (8) Each parent, guardian, custodian, or other person responsible for the welfare of a child named in a report or record and an attorney of the person described under this subdivision, with protection for the identity of reporters and other appropriate individuals.
- (9) A court, for redaction of the record in accordance with Ind. Code § 31-33-18-1.5, or upon the court's finding that access to the records may be necessary for determination of an issue before the court. However, except for disclosure of a redacted record in accordance with Ind. Code § 31-33-18-1.5, access is limited to *in camera* inspection unless the court determines that public disclosure of the information contained in the records is necessary for the resolution of an issue then pending before the court.
- (10) A grand jury upon the grand jury's determination that access to the records is necessary in the conduct of the grand jury's official business.
- (11) An appropriate state or local official responsible for child protection services or legislation carrying out the official's official functions.
- (12) The community child protection team appointed under Ind. Code § 31-33-3 (or Ind. Code § 31-6-11-14 before its repeal), upon request, to enable the team to carry out the team's purpose under Ind. Code § 31-33-3.
- (13) A person about whom a report has been made, with protection for the identity of:
 - (A) Any person reporting known or suspected child abuse or neglect; and
 - (B) Any other person, if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of the person.
- (14) An employee of the department, a caseworker, or a juvenile probation officer conducting a criminal history check under Ind. Code § 31-26-5, Ind. Code § 31-34, or Ind. Code § 31-37 to determine the appropriateness of an out-of-home placement for a: (A) child at imminent risk of placement; (B) child in need of services; or (C) delinquent child. The results of a criminal history check conducted under this subsection must be disclosed to a court determining the placement of a child described in clauses (A) through (C).

- (15) A local child fatality review team established by Ind. Code § 16-49-2.
- (16) The statewide child fatality review committee established by Ind. Code § 16-49-4.
- (17) The department.
- (18) The division of family resources, if the investigation report:
 - (A) Is classified as substantiated; and
 - (B) Concerns: (i) an applicant for a license to operate; (ii) a person licensed to operate; (iii) an employee of; or (iv) a volunteer providing services at:
 - a child care center licensed under Ind. Code § 12-17.2-4 or a child care home licensed under Ind. Code § 12-17.2-5.
- (19) A citizen review panel established under Ind. Code § 31-25-2-20.4.
- (20) The department of child services ombudsman established by Ind. Code § 4-13-19-3.
- (21) The state superintendent of public instruction with protection for the identity of:
 - (A) Any person reporting known or suspected child abuse or neglect; and
 - (B) Any other person if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of the person.
- (22) The state child fatality review coordinator employed by the state department of health under Ind. Code § 16-49-5-1.
- (23) A person who operates a child caring institution, group home, or secure private facility if all the following apply:
 - (A) The child caring institution, group home, or secure private facility is licensed under Ind. Code § 31-27.
 - (B) The report or other materials concern: (i) an employee of; (ii) a volunteer providing services at; or (iii) a child placed at; the child caring institution, group home, or secure private facility.
 - (C) The allegation in the report occurred at the child caring institution, group home, or secure private facility.
- (24) A person who operates a child placing agency if all the following apply:
 - (A) The child placing agency is licensed under Ind. Code § 31-27.
 - (B) The report or other materials concern:
 - (i) A child placed in a foster home licensed by the child placing agency;
 - (ii) A person licensed by the child placing agency to operate a foster family home;
 - (iii) An employee of the child placing agency or a foster family home licensed by the child placing agency; or
 - (iv) A volunteer providing services at the child placing agency or a foster family home licensed by the child placing agency.
 - (C) The allegations in the report occurred in the foster family home or in the course of employment or volunteering at the child placing agency or foster family home.

- (25) The National Center for Missing and Exploited Children.
- (26) A local domestic violence fatality review team established under Ind. Code § 12-18-8, as determined by the department to be relevant to the death or near fatality that the local domestic violence fatality review team is reviewing.
- (27) The statewide domestic violence fatality review committee established under Ind. Code § 12-18-9-3, as determined by the department to be relevant to the death or near fatality that the statewide domestic violence fatality review committee is reviewing.
- (28) The statewide maternal mortality review committee established under Ind. Code § 16-50-1-3, as determined by the department to be relevant to the case of maternal morbidity or maternal mortality that the statewide maternal mortality review committee is reviewing.
- (29) A local fetal-infant mortality review team established under Ind. Code § 16-49-6, as determined by the department to be relevant to the case of fetal or infant fatality that the local fetal-infant mortality review team is reviewing.

DCS confidential preliminary inquiry and investigation could not be made available to a media representative under statute limiting persons to whom an investigatory report could be made available as the list did not include media representatives. In re K.B., 894 N.E.2d 1013, 1015-16 (Ind. Ct. App. 2008).

Statute permits a court access to the records if the court finds the records may be necessary for determination of an issue before it, and further permits the court to allow disclosure if the court finds it necessary for resolution of an issue pending before it; the legislature did not intend to allow discovery of identity of reporter of child abuse, unless there is evidence that the person who reported the abuse did not act in good faith. Kinder v. Doe, 540 N.E.2d 111, 115-16 (Ind. Ct. App. 1989).

Court does not have right to inspect court records, histories, and papers by DCS of all dependent, neglected, or delinquent children. State ex rel. County Welfare Bd. of Starke County v. Starke Circuit Court, 147 N.E.2d 585, 588 (Ind. 1958).

The DCS may forward confidential information to police and prosecutor as part of the discovery process in a criminal case under certain circumstances. Sturgill v. State, 497 N.E.2d 1070, 1072-73 (Ind. Ct. App. 1986). See also Pilarski v. State, 635 N.E.2d 166, 171 (Ind. 1994).

3. Disclosure to Qualified Researchers

Pursuant to Ind. Code § 31-33-18-3(a), Ind. Code § 31-33-18-2 does not prevent the local office or the department from disclosing to a qualified individual engaging in good faith research project either:

- (1) Information of a general nature, including the incidents of reported child abuse or neglect or other statistical or social data used in connection with studies, reports, or surveys, and information related to their function and activities; or
- (2) Information relating to case histories of child abuse or neglect if:
 - (A) The information disclosed does not identify or reasonably tend to identify the persons involved; and
 - (B) The information is not subject to pending litigation.

To implement this section, the department shall adopt under Ind. Code § 4-22-2 rules to govern dissemination of information to qualifying researchers.

D. ACCESS TO CONFIDENTIAL CHILD PROTECTION INDEX INFORMATION

See additional information about Child Protection Index above and in Ch. 8 – Initial Investigation and Removal of Child.

Except as provided in Ind. Code § 31-33-26-16 or in rules adopted under Ind. Code § 31-33-26-16(c), the department may not disclose information used in connection with the department's activities under Ind. Code § 31-33-26-16. Ind. Code § 31-33-26-16(b).

1. Adoption of Rules of Procedure for Disclosure

The department shall adopt rules under Ind. Code § 4-22-2 relating to the procedure for disclosure of information described in Ind. Code § 31-33-26-16. Ind. Code § 31-33-26-16(c).

2. Persons or Organizations Who May Access Index Information

Pursuant to Ind. Code § 31-33-26-16(a), a person of an organization may have access to information contained in the index as follows:

- (1) A law enforcement agency may have access to a substantiated report for purposes of investigating or criminally prosecuting a person identified as a perpetrator of child abuse or neglect.
- (2) A child care provider, upon submitting a written consent for release of information signed by an individual who:
 - (A) Is employed by or who has applied for employment with the child care provider;
 - (B) Has volunteered to provide services to the child care provider in a capacity that would place the individual in direct contact, on a regular and continuous basis, with children who are or will be under the direct supervision of the child care provider; or
 - (C) Is at least eighteen (18) years of age and resides in the home of the child care provider;may have access to any information relating to a substantiated report of child abuse or neglect that names the employee, applicant, volunteer, or household resident as the perpetrator of child abuse or neglect.
- (3) A person may have access to any information that is contained in the index pertaining to the person, with protection for the identity of: (A) a person who reports the child abuse or neglect; and (B) any other appropriate person.
- (4) A person or an agency to whom child abuse and neglect reports are available under Ind. Code § 31-33-18 may have access to information contained in the index.
- (5) Representatives of the division of family resources designated by the director of the division may have access to and use any information relating to a substantiated report of child abuse or neglect that would constitute a basis for denial or revocation of a license for a child care center under Ind. Code § 12-17.2-4 or a child care home under Ind. Code § 12-17.2-5.
- (6) Representatives of the department designated by the director may have access to and use any information relating to a substantiated report of child abuse or neglect that would constitute a basis for denial or revocation of a license for a child caring institution, foster family home, group home, or child placing agency under Ind. Code § 31-27.

- (7) Any representative of the department, a court having juvenile jurisdiction, and any party in a case under Ind. Code § 31-34 or Ind. Code § 31-37 may have access to and use any information relating to a substantiated report of child abuse or neglect in connection with a determination of an appropriate out of home placement for a child under any applicable provision of Ind. Code § 31-34 or Ind. Code § 31-37 that requires a criminal history check (as described in Ind. Code § 31-9-2-22.5) concerning any person.
 - (8) The department shall provide any information contained in a substantiated report of child abuse or neglect that is included in the index to an authorized agency of another state that requests information concerning a prospective foster or adoptive parent, or any other adult living in the home of a prospective foster or adoptive parent, in accordance with 42 U.S.C. § 671(a)(20)(C).
 - (9) The department shall transmit or provide to a national index of substantiated cases of child abuse or neglect established in accordance with 42 U.S.C. § 16990:
 - (A) A copy of any substantiated report and related information entered into the index; and
 - (B) Information concerning expungement or amendment of any substantiated report as provided in Ind. Code § 31-33-26-14 or Ind. Code § 31-33-26-15.
 - (10) To determine the eligibility of a child care provider to receive a voucher payment (as defined in Ind. Code § 12-17.2-3.5-3), the division of family resources may use information contained in the index concerning whether a child has been found by a court to be a child in need of services based on a report of child abuse or neglect naming an individual described in Ind. Code § 12-17.2-3.5-4.1(a) as a perpetrator.
- “Child care provider” means a person who: (1) provides child care (as defined in Ind. Code § 12-7-2-28.2) regardless of whether the person is required to be licensed or registered under Ind. Code § 12-17.2; or (2) is a child caring institution, a foster family home, a group home, or a child placing agency that is licensed or required to be licensed under Ind. Code § 31-27. Ind. Code § 31-33-26-1(a).

E. INTERNET POSTING OF NON-IDENTIFYING INFORMATION FOR ADOPTION

1. When Disclosure of Information is Authorized

This section applies after: (1) a court authorizes the filing of a petition to terminate the parent-child relationship; or (2) a petition to terminate the parent-child relationship is filed; in relation to a child in need of services. Ind. Code § 31-34-21-7.3(a).

2. Non-identifying Information that May Be Disclosed

Pursuant to Ind. Code § 31-34-21-7.3(b), the department shall post the following non-identifying information on the Internet to facilitate potential adoptive placement of the child:

- (1) The child’s age, gender, and summary of the child’s educational, social, and medical background, including known disabilities.
- (2) The reason the child was removed from the child’s home.
- (3) Whether a person has expressed an interest in adopting the child.
- (4) The name, address, and telephone number of a contact person from: (A) the department; (B) the appropriate local office; or (C) licensed child placing agency; where a person who may be interested in adopting the child may obtain further information about adopting the child.

- (5) Whether a petition to terminate parental rights of the child's parents has been authorized or filed, and whether the rights of the child's parents have been terminated.
 - (6) An address and telephone number of: (A) the department; (B) the appropriate local office; or (C) license child placing agency;
- where a person who may be interested in adopting the child may obtain further information about adopting the child.

3. Information that May Not Be Disclosed

The information posted under Ind. Code § 31-34-21-7.3(b) may not identify the name of any of the following persons: (1) the child; (2) the child's biological or adoptive parents; (3) a sibling of the child; (4) a caretaker of the child. Ind. Code § 31-34-21-7.3(c).

4. DCS to Maintain the Information

Pursuant to Ind. Code § 31-34-21-7.3(d), the department shall update any relevant information under Ind. Code § 31-34-21-7.3 after either of the following: (1) Each of the child's periodic reviews that occur after the information under Ind. Code § 31-34-21-7.3 is required to be posted. (2) The rights of the child's parents have been terminated.

a. Removal of Information from the Internet

The department shall remove the information required under Ind. Code § 31-34-21-7.3(b) from the Internet whenever the child is reunited with the child's family or an adoption of the child is filed under Ind. Code § 31-19-2. Ind. Code § 31-34-21-7.3(e).

b. DCS May Disclose Internet Address

Upon request, the department shall inform the person making the request of the address of the Internet website containing the information described in Ind. Code § 31-34-21-7.3. Ind. Code § 31-34-21-7.3(f).

III. EXPUNGEMENT OF RECORDS

A. DEFINITIONS

1. "Expunge" or "Expungement"

As used in Ind. Code § 31-33-27, "expunge" or "expungement" means: (1) the removal or deletion of all information maintained by the department concerning a report, assessment, or determination under Ind. Code § 31-33 relating to an incident or condition of child abuse or neglect; and (2) the destruction or delivery of the information to a person to whom the information pertains. Ind. Code § 31-33-27-1.

2. "Information"

As used in Ind. Code § 31-33-27, "information" includes all files and records created or maintained by the department. The term includes the original and copies of documents, correspondence, messages, photographs, videotapes, audio recordings, audiovisual recordings, and any other material contained in electronic, paper, or digital form or in other media. Ind. Code § 31-33-27-2.

B. EXPUNGEMENT OF UNSUBSTANTIATED ASSESSMENT REPORT

1. Expungement of Unsubstantiated Report from DCS Records When Child Turns 24 Years Old

The department shall expunge child abuse and neglect information not later than twenty-four (24) years after the date of the birth of the youngest child named in the department's assessment report as an alleged victim of child abuse or neglect, if the department approved the assessment as unsubstantiated. Ind. Code § 31-33-27-3(a)(1).

2. Expungement of Unsubstantiated Report Possible at Other Times

The department may, upon the request of an interested person, expunge information relating to an unsubstantiated assessment of child abuse or neglect at any time, if the department determines that the probative value of the information does not justify its retention in the records of the department. Ind. Code § 31-33-27-3(b).

C. EXPUNGEMENT OF ASSESSMENT REPORT IF NO TRUE FINDING

The department shall expunge child abuse and neglect information not later than twenty-four (24) years after the date of the birth of the youngest child named in the department's assessment report as an alleged victim of child abuse or neglect, if the court in a child in need of services case entered a final judgment based on a finding that child abuse or neglect did not occur. Ind. Code § 31-33-27-3(a)(2).

D. EXPUNGEMENT OF SUBSTANTIATED REPORTS FROM THE CHILD PROTECTION INDEX

1. Immediate Amendment or Expungement Due to Inaccurate Report

The department shall immediately amend or expunge from the index a substantiated report containing an inaccuracy arising from an administrative or a clerical error. Ind. Code § 31-33-26-14.

2. Expungement Within 10 Days

The department shall expunge child abuse or neglect information relating to a substantiated report not later than the time specified for expungement of the report from the child protection index under Ind. Code § 31-33-26-15. Ind. Code § 31-33-27-4(a).

Pursuant to Ind. Code § 31-33-26-15(a)(1), the department shall expunge a substantiated report contained within the index not later than ten (10) working days after any of the following occurs:

- (1) A court having jurisdiction over a child in need of services proceeding determines that child abuse or neglect has not occurred.
- (2) An administrative hearing officer under Ind. Code § 31-33-26 finds that the child abuse or neglect report is unsubstantiated.
- (3) A court having juvenile jurisdiction enters an order for expungement of the report under Ind. Code § 31-33-27-5. Ind. Code § 31-33-26-15(a).

3. Amendment of Substantiated Report to Delete Name of Alleged Perpetrator

The department shall amend information relating to a substantiated report by deleting the name of a person as an alleged perpetrator if: (a) a court having jurisdiction over a child in need of services proceeding; or (b) an administrative hearing officer under Ind. Code § 31-33-26-9; finds that the person was not a perpetrator of the child abuse or neglect that occurred. Ind. Code § 31-33-27-4(b).

The department shall amend a substantiated report contained in the index by deleting the name of an alleged perpetrator if: (1) a court having jurisdiction over a child in need of services proceeding; or (2) an administrative hearing officer under Ind. Code § 31-33-26; finds that the person was not a perpetrator of the child abuse or neglect that occurred. Ind. Code § 31-33-26-15(b).

E. EXPUNGEMENT OF SUBSTANTIATED CHILD ABUSE OR NEGLECT REPORT

Ind. Code § 31-33-27-5 applies to information relating to substantiated reports in any records of the department. Ind. Code § 31-33-27-5(a).

1. Perpetrator May Request an Expungement

An individual identified as a perpetrator of child abuse or neglect in a substantiated report may file a petition with a court exercising juvenile jurisdiction in the county in which the individual resides, requesting that the court order the department to expunge the substantiated report and related information. Ind. Code § 31-33-27-5(b).

a. Expungement Petition

The petitioner shall: (1) name the department as respondent in the petition; and (2) serve the department with a copy of the petition and a summons. Ind. Code § 31-33-27-5(c).

2. Court Shall Hold a Hearing on the Expungement Petition

The court shall hold a hearing on the petition and any response filed by the department, unless a hearing is waived by agreement of the parties. Ind. Code § 31-33-27-5(d).

a. Considerations in Granting the Petition

Pursuant to Ind. Code § 31-33-27-5(e), in considering whether to grant a petition filed under Ind. Code § 31-33-27-5, the court may review:

- (1) The factors listed in Ind. Code § 31-39-8-3 in relation to the petitioner, if the substantiated report was the subject of a juvenile court case; and
- (2) Any facts relating to the petitioner's current status, activities, employment, contacts with children, or other circumstances relevant to consideration of whether the petition should be granted.

b. Factors by Clear and Convincing Evidence

Pursuant to Ind. Code § 31-33-27-5(f), the court may grant the petition if the court finds, by clear and convincing evidence, that:

- (1) There is little likelihood that the petitioner will be a future perpetrator of child abuse or neglect; and
- (2) The information has insufficient current probative value to justify its retention in records of the department for future reference.

F. USE OF EXPUNGED RECORDS IN CIVIL ACTION

Pursuant to Ind. Code § 31-33-27-6, if the department expunges child abuse or neglect information under Ind. Code § 31-33-27:

- (1) At the request of a perpetrator named in an assessment report;
- (2) At or after the time for expungement specified in Ind. Code § 31-33-27-4(a); or
- (3) Under a court order under Ind. Code § 31-33-27-5;

Ind. Code § 31-39-8-7 applies to any civil action brought against the department or any other agency, entity, or individual, if the content of the expunged information may be relevant to any issue in the civil action.