

IC 31-33-26

Chapter 26. Child Protection Index

IC 31-33-26-1

"Child care provider"; "index"

Sec. 1. (a) As used in this chapter, "child care provider" means a person who:

- (1) provides child care (as defined in IC 12-7-2-28.2) regardless of whether the person is required to be licensed or registered under IC 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 IC 31-27.

(b) As used in this chapter, "index" refers to the child protection index established under section 2 of this chapter.

As added by P.L.138-2007, SEC.67.

IC 31-33-26-2

Establishment and maintenance of child protection index

Sec. 2. 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 this article.

As added by P.L.138-2007, SEC.67.

IC 31-33-26-3

Index components

Sec. 3. In addition to the 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 a 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 the 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.

As added by P.L.138-2007, SEC.67. Amended by P.L.131-2009, SEC.56; P.L.128-2012, SEC.156.

IC 31-33-26-4

Case history file; automatic search requirements

Sec. 4. (a) In addition to the components described in section 3 of this chapter, the index must have the capability to maintain a case history file.

(b) 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 this chapter.

(c) 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.

As added by P.L.138-2007, SEC.67.

IC 31-33-26-5

Establish access restrictions; maintain confidentiality; read only access by child services ombudsman

Sec. 5. (a) The department shall establish access restrictions in order to maintain the security and confidentiality of the index as required by this chapter.

(b) The department of child services ombudsman established by IC 4-13-19-3 shall have read only access to the index concerning:

(1) children who are the 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.

As added by P.L.138-2007, SEC.67. Amended by P.L.182-2009(ss), SEC.383; P.L.162-2011, SEC.47.

IC 31-33-26-6

Data storage and retrieval requirements

Sec. 6. 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.
- (7) The name of the child's guardian or custodian if applicable.

As added by P.L.138-2007, SEC.67.

IC 31-33-26-7

Adoption of rules

Sec. 7. The department may adopt rules under IC 4-22-2 to ensure that the confidentiality of and access to reports of child abuse or neglect are maintained as provided in this chapter.

As added by P.L.138-2007, SEC.67.

IC 31-33-26-8

Notification after index entry; notice to perpetrators; request for administrative hearing

Sec. 8. (a) This section does not apply to substantiated reports if a court has determined that a child is a child in need of services based on:

- (1) a report of child abuse or neglect that names the perpetrator as the individual who committed the child abuse or neglect; or
- (2) facts presented to the court at a hearing in a child in need of services case commenced under IC 31-34 that are consistent with the facts and conclusions stated in the report, if the department approved the substantiated report after the court's determination.

(b) Not later than thirty (30) days after the department enters a substantiated child abuse or neglect report into the index, the department shall notify:

- (1) the parent, guardian, or custodian of the child who is named in the report as the victim of the child abuse or neglect; and
- (2) any person identified as the perpetrator, if other than the child's parent, guardian, or custodian;

that the department has entered the report into the index.

(c) The department shall state the following in a notice to the perpetrator of a substantiated report under subsection (b):

- (1) The report has been classified as substantiated.
- (2) The perpetrator may request that a substantiated report be amended or expunged at an administrative hearing if the perpetrator does not agree with the classification of the report unless a court is in the process of making a determination.
- (3) The perpetrator's request for an administrative hearing to contest the classification of a substantiated report must be received by the department not more than thirty (30) days after the notice is served on the perpetrator as provided in IC 4-21.5-3-1(b). Time shall be computed as provided in IC 4-21.5-3-2.

(d) If the perpetrator fails to request an administrative hearing

within the time specified in subsection (c)(3), the perpetrator named in a substantiated report may request an administrative hearing to contest the classification of the report if the perpetrator demonstrates that the failure to request an administrative hearing was due to excusable neglect or fraud. The Indiana Rules of Civil Procedure provide the standard for excusable neglect or fraud.

As added by P.L.138-2007, SEC.67.

IC 31-33-26-9

Administrative hearings; evidentiary standards; consideration of hearsay; amendment or expungement of reports; confidentiality; decisions provided to the department of education

Sec. 9. (a) Except as provided in sections 11 and 12 of this chapter, the department shall conduct an administrative hearing upon a request made under section 8 of this chapter.

(b) At the administrative hearing, the department must prove by a preponderance of credible evidence that the perpetrator is responsible for the child's abuse or neglect.

(c) During an administrative hearing under this section, the administrative hearing officer shall consider hearsay evidence to be competent evidence and may not exclude hearsay based on the technical rules of evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence.

(d) If the department fails to carry the burden of proof under subsection (b), the department shall amend or expunge the report as ordered by the administrative hearing officer within the period provided under section 15 of this chapter.

(e) The department shall maintain the confidentiality of an abuse or a neglect report during the administrative process.

(f) The administrative hearing shall be closed.

(g) The administrative files shall be closed and not disclosed to the public.

(h) The department shall provide a copy of a decision resulting from an administrative hearing under this section to the department of education if:

- (1) the alleged perpetrator is licensed by the department of education; or
- (2) the incident happened on school property or at a school function.

As added by P.L.138-2007, SEC.67. Amended by P.L.162-2011, SEC.48; P.L.48-2012, SEC.53.

IC 31-33-26-10

Administration of index

Sec. 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.

As added by P.L.138-2007, SEC.67.

IC 31-33-26-11

Binding court determinations; stay of administrative hearings; perpetrator entitlement to administrative hearings

Sec. 11. (a) If a court having jurisdiction over a child in need of services case under IC 31-34 has determined or is anticipated to determine whether:

(1) a report of suspected child abuse or neglect is properly substantiated;

(2) child abuse or neglect occurred; or

(3) any person was a perpetrator of child abuse or neglect;

the determination of the court is binding.

(b) The administrative hearing under this chapter shall be stayed pending an anticipated action by the court.

(c) A person named as a perpetrator in a report of suspected child abuse or neglect is not entitled to an administrative hearing under this chapter if a court has determined that:

(1) the alleged child abuse or neglect did not occur; or

(2) the person was not a perpetrator of the alleged child abuse or neglect.

(d) The administrative hearing under this chapter shall be stayed pending the conclusion of any program of informal adjustment entered into by the perpetrator of the alleged child abuse or neglect.

As added by P.L.138-2007, SEC.67. Amended by P.L.48-2012, SEC.54.

IC 31-33-26-12

Criminal charges against a perpetrator; entitlement to administrative hearings

Sec. 12. (a) If criminal charges are filed against a perpetrator based on the same facts and circumstances on which the department classified a child abuse or neglect report as substantiated, any administrative hearing requested by the perpetrator under this chapter shall be stayed pending disposition of the criminal charges.

(b) If the criminal charges result in the conviction of the perpetrator and the facts that provided a necessary element for the conviction also provided the basis for the substantiated report under IC 31-33-8-12, the person named in the report as a perpetrator of

child abuse or neglect is not entitled to an administrative hearing under this chapter.

As added by P.L.138-2007, SEC.67.

IC 31-33-26-13

Adoption of rules

Sec. 13. The department shall adopt rules under IC 4-22-2:

- (1) to provide procedures not inconsistent with section 9 of this chapter by which any person identified as a perpetrator in a substantiated report of child abuse or neglect that is entered into the child protection index may request and obtain an administrative hearing as provided in this chapter;
- (2) to establish procedures for the conduct of the administrative hearing; and
- (3) to establish provisions for administrative review by the department of a proposed or approved substantiated report, before or after an administrative hearing is available or conducted.

As added by P.L.138-2007, SEC.67.

IC 31-33-26-14

Amendment or expungement from index of inaccurate report

Sec. 14. The department shall immediately amend or expunge from the index a substantiated report containing an inaccuracy arising from an administrative or a clerical error.

As added by P.L.138-2007, SEC.67.

IC 31-33-26-15

Expungement and amendment of record procedures

Sec. 15. (a) 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 this chapter 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 IC 31-33-27-5.

(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 this chapter;

finds that the person was not a perpetrator of the child abuse or neglect that occurred.

As added by P.L.138-2007, SEC.67. Amended by P.L.131-2009, SEC.57; P.L.48-2012, SEC.55.

IC 31-33-26-16

Access to index information

Sec. 16. (a) A person or 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 IC 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 IC 12-17.2-4 or a child care home under IC 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 IC 31-27.

(7) Any representative of the department, a court having juvenile jurisdiction, and any party in a case under IC 31-34 or IC 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 IC 31-34 or IC 31-37 that requires a criminal history check (as described in IC 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 section 14 or 15 of this chapter.

(10) To determine the eligibility of a child care provider to receive a voucher payment (as defined in IC 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 IC 12-17.2-3.5-4.1(a) as a perpetrator.

(b) Except as provided in this section or in rules adopted under subsection (c), the department may not disclose information used in connection with the department's activities under this section.

(c) The department shall adopt rules under IC 4-22-2 relating to the procedure for disclosure of information described in this section. *As added by P.L.138-2007, SEC.67.*

IC 31-33-26-17

Name changes

Sec. 17. (a) If a court grants a name change under IC 34-28-2 (or IC 34-4-6 before its repeal) to a person:

(1) against whom an allegation of child abuse or neglect has been substantiated; and

(2) whose name is maintained within the index in accordance with this chapter;

the person must notify the department regarding the name change not more than ten (10) business days after the court enters a decree changing the person's name.

(b) The notice under subsection (a) must include a copy of the decree of the court that changes the name of the person, certified under the seal of the clerk of court.

As added by P.L.138-2007, SEC.67.

IC 31-33-26-18

Transfer of records to the index

Sec. 18. On July 1, 2007, all substantiated reports and other documents relating to child abuse or neglect cases contained in the child abuse registry under IC 31-33-17 (before its repeal) and the

automated child protection system under IC 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 this chapter.

As added by P.L.138-2007, SEC.67.