

CHAPTER EIGHT

INITIAL INVESTIGATION

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CHAPTER EIGHT

INITIAL INVESTIGATION

I. PURPOSE OF JUVENILE LAW ON REPORTING AND INVESTIGATION OF ABUSE AND NEGLECT

Pursuant to Ind. Code § 31-33-1-1, the purpose of Ind. Code § 31-33 is to:

- (1) Encourage effective reporting of suspected or known incidents of child abuse or neglect;
- (2) Provide effective child services to quickly investigate reports of child abuse or neglect;
- (3) Provide protection for an abused or a neglected child from further abuse or neglect;
- (4) Provide rehabilitation services for an abused or a neglected child and the child's parent, guardian, or custodian; and
- (5) Establish a centralized statewide child abuse registry and an automated child protection system.

II. INITIATING AN ABUSE OR NEGLECT INVESTIGATION

A. DUTY TO REPORT ALLEGED CHILD ABUSE OR NEGLECT

An individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report as required by Ind. Code § 31-33-5. Ind. Code § 31-33-5-1.

A violation of the statute requiring reporting of child abuse does not result in negligence as a matter of law. J.A.W. v. Roberts, 627 N.E.2d 802, 813 (Ind. 1994).

H.B. v. State, 713 N.E.2d 300, 302-03 (Ind. Ct. App. 1999) (Caseworkers for DCS were acting to assist juvenile court in decisions regarding care and custody of children who were subjects of CPS proceedings, and therefore had common law judicial immunity from children's civil suit claiming the caseworkers were negligent in ordering their reunification with mother and in failing to report to law enforcement their molestation by mother's boyfriend.).

However, recent high profile civil cases have seen large DCS settlements for alleged abuses by DCS caseworkers and supervisors. See <https://www.theindianalawyer.com/articles/44344>. "Damages in DCS abuse cases piling up" Indiana Lawyer.com (July 26, 2017).

Therapist is not required to advise client of the existence of child abuse reporting statute prior to counseling, and admission of statements made by client to therapist does not violate privilege against self-incrimination. Hayes v. State, 667 N.E.2d 222, 226 (Ind. Ct. App. 1996).

Hayes v. State, 667 N.E.2d 222, 226 (Ind. Ct. App. 1996) (Ind. Code § 31-32-11-1 abrogates the counselor/client privilege in proceedings resulting from reports of child abuse).

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| PRACTICE POINTER: There is no statutory exception for attorneys reporting child abuse or neglect. |
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1. Individual May Also Be Required to Report to Management or Agent

If an individual is required to make a report under Ind. Code § 31-33-5-1 in the individual's capacity as a member of the staff of a medical or other public or private institution, school,

facility, or agency, the individual shall immediately notify the individual in charge of the institution, school, facility, or agency or the designated agent of the individual in charge of the institution, school, facility, or agency. Ind. Code § 31-33-5-2(a).

a. Business or Agent Has Duty to Report

An individual notified under Ind. Code § 31-33-5-2(a) shall immediately report or cause a report to be made to (1) the department; or (2) the local law enforcement agency. Ind. Code § 31-33-5-2(b).

b. Report to Business or Agent Does Not Relieve Individual Duty to Report

An individual is not relieved of the duty to report on the individual's own behalf, unless a report has already been made to the best of the individual's belief. Ind. Code § 31-33-5-3.

2. Individual Reporting is Immune from Liability

Pursuant to Ind. Code § 31-33-6-1(a), except as provided by Ind. Code § 31-33-6-2, a person, other than a person accused of child abuse or neglect, who:

- (1) Makes or causes to be made a report of a child who may be a victim of child abuse or neglect;
- (2) Is a health care provider and detains a child for the purposes of causing photographs, x-rays, or a physical medical examination to be made under Ind. Code § 31-33-10;
- (3) Makes any other report of a child who may be a victim of child abuse or neglect;
- (4) Participates in or assists with an investigation by the department or a law enforcement agency resulting from a report that a child may be a victim of child abuse or neglect, including by transferring photographs, x-rays, or medical examination records completed under Ind. Code § 31-33-6-1(a)(2);
- (5) is a health care provider and provides professional intervention resulting from a report that a child may be a victim of child abuse or neglect, including: (A) providing care or treatment to the child; (B) participating in a case review concerning the child; (C) providing advice or consultation concerning the child; (D) disclosing medical records and other health information concerning the child, in accordance with federal or state law governing the disclosure of medical records; (E) providing information to a child fatality review team; or (F) recommending judicial action concerning a child; or
- (6) Participates, including testifying as a witness, in any judicial proceeding or other proceeding: (A) Resulting from a report that a child may be a victim of child abuse or neglect; or (B) Relating to the subject matter of the report;

is immune from any civil or criminal liability that might otherwise be imposed because of such actions, even if the reported child abuse or neglect is classified by the department as unsubstantiated.

Anonymous Hospital v. A.K., 920 N.E.2d 704, 711 (Ind. Ct. App. 2010) (Hospital's immunity from liability in a medical malpractice action for making a report of possible child abuse, extended to the examination, tests and diagnosis, as there would have been no report without the examination, testing, and diagnosis.).

a. Exception for Malice or Bad Faith

Immunity does not attach for a person who has acted with gross negligence or willful or wanton misconduct. Ind. Code § 31-33-6-2.

b. Presumption of Good Faith

A person making a report that a child may be a victim of child abuse or neglect or assisting in any requirement of this article is presumed to have acted in good faith. Ind. Code § 31-33-6-3.

3. Penalty for Failure to Make a Report

a. Failure to Report to DCS

A person who knowingly fails to make a report required by Ind. Code § 31-33-5-1 commits a Class B misdemeanor. Ind. Code § 31-33-22-1(a).

b. Failure to Report to Individual in Charge of Organization

A person who knowingly fails to make a report required by Ind. Code § 31-33-5-2 commits a Class B misdemeanor. This penalty is in addition to the penalty imposed by Ind. Code § 31-33-22-1(a). Ind. Code § 31-33-22-1(b).

4. Penalty for Obtaining Information Under False Pretenses

An individual who knowingly requests, obtains, or seeks to obtain child abuse or neglect information under false pretenses commits a Class B misdemeanor. Ind. Code § 31-33-22-2(a).

5. False Reports

A person who knowingly or intentionally: (1) falsifies child abuse or neglect information or records; or (2) obstructs or interferes with a child abuse assessment, including an assessment conducted by a local child fatality review team or the statewide child fatality review committee; commits obstruction of a child abuse assessment, a Class A Misdemeanor. Ind. Code § 31-33-22-2(b).

A person who intentionally communicates to: (1) a law enforcement agency; or (2) the department; a report of child abuse or neglect knowing the report to be false commits a Class A misdemeanor. However the offense is a Level 6 felony if the person has a previous unrelated conviction for making a report of child abuse or neglect knowing the report to be false. Ind. Code § 31-33-22-3(a).

a. DCS Duty to Notify Prosecuting Attorney About Possible False Report

The director or the director's designee shall, after review by the department's attorney, notify the prosecuting attorney whenever the director or the director's designee and the department's attorney have reason to believe that a person has violated Ind. Code § 31-33-22. Ind. Code § 31-33-22-3(c).

b. Public May File Complaint with Prosecuting Attorney about Possible False Report

A person who: (1) has reason to believe that the person is a victim of a false report of child abuse or neglect under Ind. Code § 31-33-22; and (2) is not named in a pending criminal charge or under assessment relating to the report; may file a complaint with the prosecuting attorney. Ind. Code § 31-33-22-3(d).

c. Prosecuting Attorney Must Review Records of Possible False Report

The prosecuting attorney shall review the relevant child abuse or neglect records of the department and any other relevant evidence. Ind. Code § 31-33-22-3(d).

d. Civil Liability Possible

A person who intentionally communicates to: (1) a law enforcement agency; or (2) the department; a report of child abuse or neglect knowing the report to be false is liable to the person accused of child abuse or neglect for actual damages. The finder of fact may award punitive damages and attorney's fees in an amount determined by the finder of fact against the person. Ind. Code § 31-33-22-3(b).

In re V.C. v. Carlson, 867 N.E.2d 167, 182-83 (Ind. Ct. App. 2007) (Mother was liable for damages equal to father's legal fees from the time the CHINS petition was filed through trial for intentionally communicating to authorities child abuse allegation that was knowingly false; mother liable even though therapist made report when mother coached the child to report sexual abuse allegation and knew that therapist had a duty to report.).

e. Access to False Report by Accused

A person who is accused of committing child abuse or neglect is entitled to access to a report relevant to an alleged false accusation filed under Ind. Code § 31-33-22 if a court finds that the report: (1) is unsubstantiated; and (2) was intentionally communicated to a law enforcement agency or the department by a person who knew the report was false. Ind. Code § 31-33-22-5.

B. METHOD OF REPORTING ALLEGED CHILD ABUSE OR NEGLECT

A person who has a duty to report that a child may be a victim of child abuse or neglect shall immediately make an oral report to: (1) DCS; or (2) the local law enforcement agency. Ind. Code § 31-33-5-4.

Smith v. State, 8 N.E. 3d 668 (Ind. 2014) (Where school principal reported alleged rape of student four hours after alleged attack, evidence supported conviction for failure to immediately report.).

1. Law Enforcement Must Immediately Report to DCS

When a law enforcement agency receives an initial report under Ind. Code § 31-33-5-4 that a child may be a victim of child abuse or neglect, the law enforcement agency shall immediately communicate the report to DCS, whether or not the law enforcement agency has reason to believe there exists an imminent danger to the child's health or welfare. Ind. Code § 31-33-7-7(a)(1).

2. Child Abuse Hotline

a. System must be Available at All Times

The department shall arrange for receipt, on a twenty-four (24) hour, seven (7) day per week basis, of all reports of suspected abuse or neglect. Ind. Code § 31-33-7-1.

b. Standardized System across All Counties

DCS must use a phone access system for receiving all calls that is standardized among all counties. The department shall adopt rules under Ind. Code § 4-22-2 for the administration of this system. Ind. Code § 31-33-7-2.

c. Number Must Be Advertised

Pursuant to Ind. Code § 31-33-7-3, DCS shall cause to be inserted in each local telephone directory in the county a listing of the child abuse hotline's telephone number under the name "child abuse hotline." The child abuse hotline number must be included with the other emergency numbers listed in the directory.

3. Judge May Directly Contact DCS After Making Hotline Report

Pursuant to Ind. Code § 31-33-1-2, when confronted with a potential case of child abuse or neglect, a judge who wishes to contact the department shall first use the child abuse hotline to report the suspected child abuse or neglect to the department. If the: (1) Judge does not obtain a response from the child abuse hotline; or (2) Response the judge obtains from the hotline will not, in the opinion of the judge, serve the best interests of the child; the judge may contact a local office of the department directly to report the suspected child abuse or neglect.

C. WRITTEN REPORT BY DCS OF ABUSE OR NEGLECT ALLEGATION

1. Written Report Must Be Generated Within 48 Hours of Receipt of Oral Report

DCS shall make a written report of a child who may be a victim of child abuse or neglect not later than forty-eight (48) hours after receipt of the oral report required of individuals by Ind. Code § 31-33-5-4. Ind. Code § 31-33-7-4(a).

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| PRACTICE POINTER: This report is called the 310 Report. |
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2. Format of DCS Report

Written reports under Ind. Code § 31-33-7 must be made on forms supplied by the DCS administrator. Ind. Code § 31-33-7-4(b).

3. Content of DCS Report

Pursuant to Ind. Code § 31-33-7-4(b), the written reports must include, if known, the following information:

- (1) The names and addresses of the following: (A) the child and (B) the child's parents, guardian, custodian, or other person responsible for the child's care.
- (2) The child's age and sex.
- (3) The nature and apparent extent of the child's injuries, abuse, or neglect, including any evidence of prior: (A) injuries of the child; or (B) abuse or neglect of the child or the child's siblings.
- (4) The name of the person allegedly responsible for causing the injury, abuse, or neglect.
- (5) The source of the report.
- (6) The person making the report and where the person can be reached.
- (7) The actions taken by the reporting source, including the following: (A) taking of photographs and x-rays; (B) removal or keeping of the child; (C) notifying the coroner.
- (8) The written documentation required by Ind. Code § 31-34-2-3 if a child was taken into custody without a court order.

- (9) Any other information that: (A) the director requires by rule; or (B) the person making the report believes might be helpful.

4. Distribution of DCS Report

Pursuant to Ind. Code § 31-33-7-5, a copy of the written report of the department shall immediately be made available to: (1) The appropriate law enforcement agency; (2) The prosecuting attorney; and (3) In a case involving death, the coroner for the coroner's consideration.

D. CORONER'S INVESTIGATION AND REPORT

Pursuant to Ind. Code § 31-33-7-6, upon receiving a written report from DCS under Ind. Code § 31-33-7-5(3), the coroner shall: (1) Accept a report for investigation; and (2) Report the coroner's findings to: (A) The appropriate law enforcement agency; (B) The prosecuting attorney; (C) The department; and (D) The hospital, if the institution making the report is a hospital.

III. INVESTIGATION OF ABUSE/NEGLECT ALLEGATIONS

A. LAW ENFORCEMENT AGENCY INVESTIGATION

1. Law Enforcement Must Be Notified by DCS

Upon the receipt of each report of known or suspected child abuse, DCS shall contact the law enforcement agency in the appropriate jurisdiction. Ind. Code § 31-33-8-2(a).

2. Law Enforcement Must Conduct Immediate Assessment

The law enforcement agency shall conduct an immediate, onsite assessment of the report along with DCS whenever the law enforcement agency has reason to believe that an offense has been committed. Ind. Code § 31-33-7-7(a)(2); Ind. Code § 31-33-8-2(b).

3. Joint Investigation of Certain Childcare Ministries

If a report alleges abuse or neglect and involves a child care ministry that is exempt from licensure under Ind. Code § 12-17.2-6, DCS and the appropriate law enforcement agency shall jointly conduct an investigation. The investigation shall be conducted under the requirements of Ind. Code § 31-33-8-1 and Ind. Code § 31-33-8-2(b). Ind. Code § 31-33-8-1(i).

4. Manner of Law Enforcement Investigation

The law enforcement agency shall investigate the alleged child abuse or neglect in the same manner that the law enforcement agency conducts any other criminal investigation. Ind. Code § 31-33-8-2(b).

a. Photographs

If the law enforcement agency participates in the assessment, the law enforcement agency shall cause the color photographs to be taken as provided by Ind. Code § 31-33-8-3(a). Ind. Code § 31-33-8-3(b).

5. Compelling Child Interviews Requires Evidentiary Showing of Need

Ind. Code § 31-33-8-7 lets DCS interview children to classify reports of neglect as substantiated or unsubstantiated, but DCS is not required to interview the children as part of the assessment, and the trial court is not required to issue an order allowing an interview over a parent's objection. The trial court *may* issue the order if DCS shows good cause on the record. F.S. v. Indiana Dept. of Child Services, 53 N.E.3d 582 (Ind. Ct. App. 2016).

F.S. v. Indiana Dept. of Child Services, 53 N.E.3d 582 (Ind. Ct. App. 2016) (trial court erred in compelling Mother to consent to DCS interviewing two of her children without evidence suggesting abuse or neglect; order violated Mother's 14th Amendment due process right to raise her family without undue interference by the State).

But a different panel of the Court of Appeals found no requirement of a showing of need:

Ind. Dep't of Child Servs. (In re A.H.), 992 N.E.2d 960, 967-68 (Ind. Ct. App. 2013) (The Court declined to find due process requires DCS to “conduct an assessment or a portion of an assessment in order to obtain information which would provide a basis supporting the accuracy or reliability of the report, prior to interviewing the child or children. “No requirement to verify a petition or be at the point of substantiation before the interview, as it is part of the initial assessment.”).

6. Written Assessment Required of Law Enforcement Assessment

If a law enforcement agency participates in the assessment, the law enforcement agency shall also make a complete written report of the assessment. Ind. Code § 31-33-8-8(c).

7. Law Enforcement Must Forward Resulting Information

In all cases, the law enforcement agency shall forward any information, including copies of assessment reports, on incidents of cases in which a child may be a victim of child abuse or neglect, whether or not obtained under Ind. Code § 31-33-7, to: (1) the department; and (2) the juvenile court under Ind. Code § 31-34-7. Ind. Code § 31-33-7-7(b).

B. DCS INVESTIGATION

1. Child Protection Assessment Required for Each Report

DCS shall initiate an appropriately thorough child protection assessment of every report of known or suspected child abuse or neglect DCS receives, whether in accordance with Ind. Code § 31-33 or otherwise. Ind. Code § 31-33-8-1(a).

a. Investigation of Childcare Ministry

If a report alleges abuse or neglect and involves a childcare ministry that is exempt from licensure under Ind. Code § 12-17.2-6, the department and the appropriate law enforcement agency shall jointly conduct an investigation. The investigation shall be conducted under the requirements of Ind. Code § 31-33-8-1 and Ind. Code § 31-33-8-2(b). Ind. Code § 31-33-8-1(i).

b. Investigation of Report by Judge or Prosecutor

If a report of known or suspected child abuse is received from a judge or prosecutor requesting DCS to initiate a child protection assessment, DCS shall initiate an assessment in accordance with Ind. Code § 31-33-8. Ind. Code § 31-33-8-1(b).

c. Investigation of Report by Certain Other Officials or Personnel

If a report of known or suspected child abuse is received from: (1) medical personnel; (2) school personnel; (3) a social worker; (4) law enforcement officials or personnel; (5) judiciary personnel; or (6) prosecuting attorney personnel; DCS shall forward the report to the local office to determine if DCS will initiate an assessment in accordance with Ind. Code § 31-33-8. Ind. Code § 31-33-8-1(c).

2. Purpose of Assessment

The primary purpose of the assessment is the protection of the child. Ind. Code § 31-33-8-6.

3. Timeframe for Child Protection Assessment

DCS shall promptly make a thorough assessment upon either the oral or written report. Ind. Code § 31-33-8-6.

a. If Imminent Danger Exists, Assessment within One Hour

If DCS believes that a child is in imminent danger of serious bodily harm, DCS shall initiate an onsite assessment immediately, but not later than two (2) hours, after receiving the report. Ind. Code § 31-33-8-1(d).

b. If Child Abuse is Alleged, Assessment Within 24 Hours

If the report alleges a child may be a victim of child abuse, the assessment shall be initiated immediately, but not later than twenty-four hours, after receipt of the report. Ind. Code § 31-33-8-1(e).

c. If Child Neglect is Alleged, Assessment Within Five Days

If reports of child neglect are received, the assessment shall be initiated within a reasonably prompt time, but not later than five (5) days, with the primary consideration being the well-being of the child who is the subject of the report. Ind. Code § 31-33-8-1(f).

d. If Child Lives With Certain Convicts, Assessment within Five Days

Pursuant to Ind. Code § 31-33-8-1(g), if the report alleges that a child lives with a parent, guardian, or custodian who is married to or lives with a person who: (1) Has been convicted of: (A) neglect of a dependent under Ind. Code § 35-46-1-4; or (B) a battery offense under Ind. Code § 35-42-4; or (2) Is required to register as a sex or violent offender under Ind. Code § 11-8-8; DCS shall initiate an assessment within a reasonably prompt time, but not later than five (5) days after DCS receives the report, with the primary consideration being the well-being of the child who is the subject of the report.

e. When Assessments Must be Done Any Time of Day

If the safety or well-being of a child appears to be endangered or the facts otherwise warrant, the assessment shall be initiated regardless of the time of day. Ind. Code § 31-33-8-1(h).

4. Designation of Agency to Investigate When Child Under Care of Institution

a. Written Protocol or Agreement Designating Agency

Pursuant to Ind. Code § 31-33-9-1(a), through a written protocol or agreement, the department shall designate the public or private agencies primarily responsible for investigating reports involving a child who: (1) May be a victim of child abuse or neglect; and (2) Is under the care of a public or private institution.

b. Agency May be DCS or Law Enforcement, Not Prosecutor

Pursuant to Ind. Code § 31-33-9-1(b), the designated agency must be different from and separately administered from the agency involved in the alleged act or omission. Subject to this limitation, the agency: (1) May be: (A) the department; or (B) a law enforcement agency; and (2) May not be the office of the prosecuting attorney.

c. Terms or Conditions of Protocol or Agreement

Pursuant to Ind. Code § 31-33-9-2, the protocol or agreement must describe the specific terms or conditions of the designation, including the following:

- (1) The manner in which reports of a child who may be a victim of child abuse or neglect and who is under the care of a public or private institution will be received.
- (2) The manner in which the reports will be investigated.
- (3) The remedial action that will be taken.
- (4) The manner in which the department will be kept fully informed on the progress, findings, and disposition of the investigation.

d. Purchase of Services Authorized

The department may purchase the services of the public or private agency designated to investigate reports of child abuse or neglect. Ind. Code § 31-33-9-3.

5. Scope of DCS Investigation

a. Required Assessment Information

The department shall make a complete written report of the assessment. Ind. Code § 31-33-8-8(b).

b. Compelling Interview with Children Requires Evidentiary Showing of Need

Ind. Code § 31-33-8-7 allows DCS to interview children to classify reports of neglect as substantiated or unsubstantiated, but DCS is not required to interview the children as part of the assessment, and the trial court is not required to issue an order allowing an interview over a parent's objection. The trial court *may* issue the order if DCS shows good cause on the record. F.S. v. Indiana Dept. of Child Services, 53 N.E.3d 582 (Ind. Ct. App. 2016).

F.S. v. Indiana Dept. of Child Services, 53 N.E.3d 582 (Ind. Ct. App. 2016) (trial court erred in compelling Mother to consent to DCS interviewing two of her children without evidence suggesting abuse or neglect; order violated Mother's 14th Amendment due process right to raise her family without undue interference by the State).

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Ind. Dep't of Child Servs. (In re A.H.), 992 N.E.2d 960, 967-68 (Ind. Ct. App. 2013) (The Court declined to find due process requires DCS to "conduct an assessment or a portion of an assessment in order to obtain information which would provide a basis supporting the accuracy or reliability of the report, prior to interviewing the child or children. "No requirement to verify a petition or be at the point of substantiation before the interview, as it is part of the initial assessment.).

c. Mandatory Written Report Contents

Pursuant to Ind. Code § 31-33-8-7(a), DCS's assessment, to the extent that is reasonably possible, must include the following:

- (1) The nature, extent, and cause of the known or suspected child abuse or neglect.
- (2) The identity of the person allegedly responsible for the child abuse or neglect.
- (3) The names and conditions of other children in the home.
- (4) An evaluation of the parent, guardian, custodian, or person responsible for the care of the child.

- (5) The home environment and the relationship of the child to the parent, guardian, or custodian or other persons responsible for the child's care.
- (6) All other data considered pertinent.

(1) Report must be Classified as Substantiated or Unsubstantiated

Upon completion of an assessment, the department shall classify reports as substantiated or unsubstantiated. Ind. Code § 31-33-8-12.

(2) Discretionary Assessment Contents

Pursuant to Ind. Code § 31-33-8-7(b), the assessment may include the following: (1) A visit to the child's home; (2) An interview with the subject child; and/or (3) A physical, psychological, or psychiatric examination of any child in the home.

V.H. v. Ind. Dep't of Child Servs. (In re A.H.), 992 N.E.2d 960, 967-68 (Ind. Ct. App. 2013) (During assessment, DCS asked to speak with the children and the mother refused until she spoke to her attorney because the children had been through a lot. A few days later, the mother contacted DCS and again stated that she did not want the children interviewed. The trial court ordered mother to make the children available for DCS to interview and mother appealed. Ind. Code § 31-33-8-7(b)(2) allows an interview of the subject child. An interview of the child as part of the initial evaluation may provide the information needed for DCS to classify a report as substantiated or unsubstantiated. The Court declined to find due process requires DCS to "conduct an assessment or a portion of an assessment in order to obtain information which would provide a basis supporting the accuracy or reliability of the report, prior to interviewing the child or children.").

(3) Photographs and X-Rays of Trauma

(a) Duties to Make or Request Photographs or X-rays

DCS shall: (1) cause color photographs to be taken of the areas of trauma visible on a child who is subject to a report; and (2) if medically indicated, cause a radiological examination of the child to be performed. Ind. Code § 31-33-8-3(a).

If the law enforcement agency participates in the assessment, the law enforcement agency shall cause the color photographs to be taken. Ind. Code § 31-33-8-3(b).

A person who: (1) is required to report cases of known or suspected child abuse or neglect; and (2) is also a health care provider or a person in charge of a hospital or similar medical institution treating the child; shall cause photographs to be taken of the areas of trauma visible on the child who is the subject of a report. Ind. Code § 31-33-10-1.

(b) DCS to Reimburse for Costs

The department shall reimburse the expenses of the photographs and x-rays. Ind. Code § 31-33-8-3(c).

(c) Medical or Radiological Exam Possible

If medically indicated, a physician may cause a radiological examination or physical medical examination, or both, of the child to be performed. Ind. Code § 31-33-10-1(b).

(d) Who Must Receive Photos and X-Rays

All photographs taken and a summary of x-rays and other medical care shall be sent to the department at the time the written report is sent or as soon thereafter as possible. Ind. Code § 31-33-10-3.

All photographs taken and a summary of x-rays and other medical care shall be sent, upon request, to a law enforcement agency that investigates the alleged child abuse or neglect, at the time the written report is sent or as soon thereafter as possible. Ind. Code § 31-33-10-3.

d. DCS Must Give Notice of Existence of Photos and X-Rays

The department shall give notice of the existence of photographs, x-rays, and physical medical examination reports in accordance with Ind. Code § 31-25-2-12. Ind. Code § 31-3-10-3.

e. Juvenile Court May Order Certain Examinations

Pursuant to Ind. Code § 31-33-8-7(c), if: (1) Admission to the home, the school, or any other place the child may be; or (2) Permission of the parent, guardian, custodian, or other persons responsible for the child for the physical, psychological, or psychiatric evaluation; cannot be obtained, the juvenile court, upon good cause shown, shall follow the procedures under Ind. Code § 31-32-12.

f. In Death Cases, Failure to Submit to Drug or Alcohol Test May Be Used

Pursuant to Ind. Code § 31-34-12-7(a), for purposes of an assessment by the department, if:

- (1) A parent, guardian, or custodian had care, custody, and control of the child immediately before the child died;
- (2) A law enforcement officer or an employee of the department had probable cause to believe the parent, guardian, or custodian was impaired, intoxicated, or under the influence of drugs or alcohol immediately before or at the time of the child's death;
- (3) A law enforcement officer or an employee of the department requests, not later than three (3) hours after the death of the child, the parent, guardian, or custodian to submit to a drug or alcohol screen test; and
- (4) The parent, guardian, or custodian did not submit to a drug or alcohol screen test within three (3) hours after the request by a law enforcement officer or an employee of the department;

the failure to submit to the drug or alcohol test may be used to determine that the parent, guardian, or custodian was intoxicated or under the influence of alcohol or drugs at the time of the child's death for the purpose of the determination required under Ind. Code § 31-33-8-12.

g. Drug or Alcohol Test Evidence Not Admissible in Criminal Trial

Evidence from a drug or alcohol screen test administered under Ind. Code § 31-34-12-7(a) is not admissible as evidence in a criminal proceeding. Ind. Code § 31-34-12-7(b).

6. Notice and Distribution of Assessment Report(s)

a. Notice to Court by DCS

The department's reports of alleged abuse or neglect under Ind. Code § 31-33-8-8 shall be made available to the appropriate court upon request. Ind. Code § 31-33-8-9(a)(1).

b. Notice to Law Enforcement by DCS

The department's reports of alleged abuse or neglect under Ind. Code § 31-33-8-8 shall be made available to the appropriate law enforcement agency upon request. Ind. Code § 31-33-8-9(a)(3).

c. Notice to DCS by Law Enforcement

In all cases, the law enforcement agency shall release information on an incident in which a child may be a victim of alleged child abuse or neglect, whether obtained under Ind. Code § 31-33-8 or not, to the department. Ind. Code § 31-33-8-11.

d. Notice to Prosecuting Attorney by Law Enforcement and/or DCS

(1) By Law Enforcement

(a) Immediate Notice by Law Enforcement, if Child's Death Involved

The law enforcement agency shall: (1) give telephone notice; and (2) immediately forward a copy; of reports made that involve the death of a child to the appropriate prosecuting attorney. Ind. Code § 31-33-8-4.

(b) Law Enforcement Investigation Reports

If the law enforcement agency participates in the child abuse or neglect assessment, the law enforcement agency shall forward all information, including copies of a DCS assessment report under Ind. Code § 31-33-8-7, on an incident in which a child may be a victim of alleged child abuse or neglect, whether obtained under Ind. Code § 31-33 or not, to the office of the prosecuting attorney. Ind. Code § 31-33-8-10.

(2) By DCS

(a) DCS Assessment Reports Forwarded, upon request

The department's report under Ind. Code § 31-33-8-8 shall be made available to the prosecuting attorney upon request. Ind. Code § 31-33-8-9(a)(2).

(b) Routine Forwarding of All Reports, if Requested in Writing

DCS shall immediately forward a copy of all assessment reports to the appropriate prosecuting attorney if the prosecuting attorney has made a prior request to the service in writing for the copies. Ind. Code § 31-33-8-5.

(3) Substantiated DCS Reports

If child abuse or neglect is substantiated after an assessment is conducted under Ind. Code § 31-33-8-7, DCS shall forward its report to the office of the prosecuting attorney having jurisdiction in the county in which the alleged child abuse or neglect occurred. Ind. Code § 31-33-8-9(b).

e. Notice to Community Child Protection Team by DCS

If the assessment substantiates a finding of child abuse or neglect as determined by the department, a report shall be sent to the coordinator of the community child protection team under Ind. Code § 31-33-3. Ind. Code § 31-33-8-9(c).

f. Notice to Health Care Providers and Schools by DCS

(1) Who Must be Notified by DCS

Notice must be given if the department receives a report of suspected child abuse or neglect from: (1) a hospital; (2) a community mental health center; (3) a managed care provider (as defined by Ind. Code § 12-7-2-127); (4) a referring physician; (5) a dentist; (6) a licensed psychologist; or (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). Ind. Code § 31-33-7-8(a).

The administrator, director, referring physician, dentist, licensed psychologist, or principal may appoint a designee to receive the report. Ind. Code § 31-33-7-8(c).

(2) Deadline for Initial Notice from DCS

Not later than forty-five (45) days after the date the department initiates an assessment or investigation of a report of suspected child abuse or neglect from a person described in Ind. Code § 31-33-7-8(a), the department shall send a report to: (1) the administrator of the hospital; (2) the community mental health clinic; (3) the managed care provider; (4) the referring physician; (5) the dentist; (6) the principal of the school; (7) a licensed psychologist; (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). Ind. Code § 31-33-7-8(b).

(3) Contents of Notice

Pursuant to Ind. Code § 31-33-7-8(d), a report made by the department under Ind. Code § 31-33-7 must contain the following information:

- (1) The name of the alleged victim of child abuse or neglect.
- (2) The name of the alleged perpetrator and the alleged perpetrator's relationship to the alleged victim.
- (3) Whether the assessment is closed.
- (4) Whether the department has made an assessment of the case and has not taken any further action.
- (5) The caseworker's name and telephone number.
- (6) The date the report is prepared.
- (7) Other information that the department may prescribe.

(4) Notice is Confidential

A report made under Ind. Code § 31-33-7: (1) is confidential; and (2) may be made available only to: (A) the agencies named in Ind. Code § 31-33-7-8(a); and (B) the persons and agencies listed in Ind. Code § 31-33-18-2. Ind. Code § 31-33-7-8(e).

g. Notice to Parent of Alleged Victim of Sexual Abuse

The DCS is required to not only initiate an immediate and appropriate thorough child protection investigation of every report, but to also give verbal and written notice to each parent, guardian, or custodian of the child; failure to do so may subject DCS to liability. F.D. v. Ind. Dep't of Child Servs., 1 N.E.3d 131 (Ind. 2013).

F.D. v. Ind. Dep't of Child Servs., 1 N.E.3d 131 (Ind. 2013) (Negligence lawsuit against DCS and police. DCS did not notify the parents of an alleged victim of an allegation of sexual abuse, which prevented the parents from seeking treatment for the alleged child victim. Court granted summary judgment in favor of police, but not DCS finding that they were not immune under the government immunity statutes. Remanded for further proceedings.).

IV. PRELIMINARY INQUIRY

Pursuant to Ind. Code § 31-34-7-1, a person may give an intake officer written information indicating that a child is a child in need of services. If the intake officer completing the preliminary inquiry has reason to believe that the child is a child in need of services, the intake officer shall make a preliminary inquiry to determine whether the interests of the child require further action.

A. PRELIMINARY INQUIRY CONTENTS

1. Information About Child

Whenever practicable, the preliminary inquiry should include information on the child's background, current status, and school performance. Ind. Code § 31-34-7-1.

2. Intake Officer Shall Make Recommendation

Pursuant to Ind. Code § 31-34-7-2, the intake officer shall send to the attorney for the department a copy of the preliminary inquiry. The intake officer shall recommend whether to:

- (1) File a petition;
- (2) File a petition and recommend that the child be referred for an assessment by a dual status assessment team as described in Ind. Code § 31-41-1-5;
- (3) Informally adjust the case;
- (4) Informally adjust the case and recommend that the child be referred for an assessment by the dual status assessment team as described in Ind. Code § 31-41-1-5;
- (5) Refer the child to another agency; or
- (6) Dismiss the case.

B. DCS ATTORNEY DECIDES WHETHER TO REQUEST CHINS PETITION

Pursuant to Ind. Code § 31-34-7-3, the person representing the interests of the state and receiving the preliminary inquiry and recommendations shall decide whether to request authorization to file a petition. This decision is final only as to the office of the person making the decision.

C. ACCUSED HAS ACCESS TO PRELIMINARY INQUIRY

A person who is accused of committing child abuse or neglect is entitled under Ind. Code § 31-33-18-2(13) to access to a report relevant to an alleged accusation. Ind. Code § 31-34-7-4.

V. REFERRAL OF THE CASE AFTER INVESTIGATION

Pursuant to Ind. Code § 31-33-14-1, if the department determines that the best interests of the child require action in the juvenile or criminal court, the department shall: (1) Refer the case to the juvenile court under Ind. Code § 31-34-7; or (2) Make a referral to the prosecuting attorney if criminal prosecution is desired.

VI. APPOINTMENT OF GAL/CASA

In every judicial proceeding under Ind. Code § 31-33, the court may appoint for the child a guardian ad litem or a court appointed special advocate, or both, under Ind. Code § 31-32-3. Ind. Code § 31-33-15-1.

Note: If the investigation leads to the filing of a CHINS Petition, a GAL/CASA must be appointed by the court. Ind. Code § 31-34-10-3.

A. ACCESS TO REPORTS

Pursuant to Ind. Code § 31-33-15-2, the guardian ad litem or court appointed special advocate, or both shall be given access under Ind. Code § 31-39 to: (1) All reports relevant to the case; and (2) Any reports of examinations of the child's parents or other person responsible for the child's welfare.

B. COSTS OF SERVICES OF GAL/CASA

Any costs related to the services of the guardian ad litem shall be paid according to Ind. Code § 31-40. Ind. Code § 31-33-15-3.

VII. SUBSTANTIATED REPORTS ENTRY INTO CHILD PROTECTION INDEX

For additional information about the Child Protection Index records, also see Ch. 3 – Records, Confidentiality, and Expungement.

A. NOTIFICATION OF ENTRY INTO CHILD PROTECTION INDEX

Pursuant to Ind. Code § 31-33-26-8(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.

1. Contents of Notice

Pursuant to Ind. Code § 31-33-26-8(c), the department shall state the following in a notice to the perpetrator of a substantiated report under Ind. Code § 31-33-26-8(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 Ind. Code § 4-21.5-3-1(b). Time shall be computed as provided in Ind. Code § 4-21.5-3-2.

2. Not applicable in Specified Circumstances

Pursuant to Ind. Code § 31-33-26-8(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 Ind. Code § 31-33-26-11 and Ind. Code § 31-33-26-12, the department shall conduct an administrative hearing upon request made under Ind. Code § 31-33-26-8. Ind. Code § 31-33-26-9(a).

B. ADMINISTRATIVE HEARING CHALLENGING ENTRY INTO THE CHILD PROTECTION INDEX

Except as provided by Ind. Code § 31-33-26-11 and Ind. Code § 31-33-26-12, the department shall conduct an administrative hearing upon request made under Ind. Code § 31-33-26-8. Ind. Code § 31-33-26-9(a).

1. Adoption of Rules for Administrative Hearing

Pursuant to Ind. Code § 31-33-26-13, the department shall adopt rules under Ind. Code § 4-22-2:

- (1) To provide procedures not inconsistent with Ind. Code § 31-33-26-9 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 by Ind. Code § 31-33-26;
- (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.

2. Persons Not Entitled to Administrative Hearing

a. If Court Determines that Abuse or Neglect Did Not Occur

A person named as a perpetrator in a report of suspected child abuse or neglect is not entitled to an administrative hearing under Ind. Code § 31-33-26 if a court determined that the alleged child abuse or neglect did not occur. Ind. Code § 31-33-26-11(c)(1).

b. If Court Determines that Person is Not Perpetrator

A person named as a perpetrator in a report of suspected child abuse or neglect is not entitled to an administrative hearing under Ind. Code § 31-33-26 if a court determines that the person was not a perpetrator of the alleged child abuse or neglect. Ind. Code § 31-33-26-11(c)(2).

c. If Perpetrator is Convicted Based on Same Facts

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 Ind. Code § 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 Ind. Code § 31-33-26. Ind. Code § 31-33-26-12(b).

3. Timeframes

a. Request for Hearing within 30 days of Notice Served

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 Ind. Code § 4-21.5-3-1(b). Time shall be computed as provided in Ind. Code § 4-21.5-3-2. Ind. Code § 31-33-26-8(c)(3).

b. Late Request Only if Due to Excusable Neglect or Fraud

If the perpetrator fails to request an administrative hearing within the hearing specified in Ind. Code § 31-33-26-8(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. Ind. Code § 31-33-26-8(d).

4. Hearsay Evidence is Admissible

During the administrative hearing under Ind. Code § 31-33-26-9, 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. Ind. Code § 31-33-26-9(c).

5. Court Determination is Binding

Pursuant to Ind. Code § 31-33-26-11(a), if a court having jurisdiction over a child in need of services case under Ind. Code § 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.

6. Administrative Hearing Stayed Pending Court Action

a. Juvenile Court Jurisdiction

The administrative hearing under Ind. Code § 31-33-26-11 shall be stayed pending an anticipated action by the court [having juvenile court jurisdiction]. Ind. Code § 31-33-26-11(b).

b. Criminal Court Jurisdiction

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 Ind. Code § 31-33-26 shall be stayed pending disposition of the criminal charges. Ind. Code § 31-33-26-12(a).

7. Administrative Hearing Stayed Pending Informal Adjustment

The administrative hearing under Ind. Code § 31-33-26-11 shall be stayed pending the conclusion of any program of informal adjustment entered into by the perpetrator of the alleged child abuse or neglect. Ind. Code § 31-33-26-11(d).

8. Burden of Proof

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. Ind. Code § 31-33-26-9(b).

a. If Department Fails to Meet Burden, Entry Shall be Amended or Expunged

If the department fails to carry the burden of proof under Ind. Code § 31-33-26-9(b), the department shall amend or expunge the report as ordered by the administrative hearing officer within the period provided under Ind. Code § 31-33-26-15. Ind. Code § 31-33-26-9(d).

9. Process is Confidential

The department shall maintain the confidentiality of an abuse or a neglect report during the administrative process. Ind. Code § 31-33-26-9(e).

a. Hearings Closed

The administrative hearing shall be closed. Ind. Code § 31-33-26-9(f).

b. Files Closed

The administrative files shall be closed and not disclosed to the public. Ind. Code § 31-33-26-9(g).

10. Distribution of Report to Department of Education

The department shall provide a copy of a decision resulting from an administrative hearing under Ind. Code § 31-33-26 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. Ind. Code § 31-33-26-9(h).

VIII.NAME CHANGES AFTER SUBSTANTIATED ALLEGATION FILES CLOSED

Pursuant to Ind. Code § 31-33-26-17(a), if a court grants a name change under Ind. Code § 34-28-2 (or Ind. Code § 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 Ind. Code § 31-33-26; 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.

A. NOTICE OF NAME CHANGE MUST INCLUDE COURT ORDER

The notice under Ind. Code § 31-33-26-17(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. Ind. Code § 31-33-26-17(b).