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Date: March 15, 2021

To: All DCS Staff

From: Rachel Russell, Interim General Counsel, Deputy General Counsel
Sarah Sailors, Deputy Director of Field Operations

Subject: Definition of and Possession of Child Pornography by DCS employees
DCS-21-04

This Administrative Letter is intended to inform Department of Child Services (DCS) employees of the definitions of child pornography and the laws pertaining to possession of child pornography and to outline a process to standardize how DCS employees treat material which they may come into contact in the course of their employment that may be child pornography.

DCS and its employees will not possess child pornography. Both Indiana and Federal law make it illegal to possess child pornography. There is no exception for any DCS employee to possess material that is considered to be child pornography. It may only be possessed in criminal proceedings by law enforcement or the court. Ind. Code 35-36-10 and 18 U.S.C. 3509(m).

However, to thoroughly document assessments of Child Abuse and/or Neglect (CA/N) and to have the evidence necessary to prove allegations of CA/N during the Administrative Review Process, the Administrative Appeals Process, and in court in Child in Need of Services (CHINS) and Termination of Parental Rights (TPR) Proceedings, there will be circumstances during which DCS employees will come into contact with material that might be child pornography.

The Indiana Code defines “child pornography” as an image that depicts or describes sexual conduct by a child who is under 18 or appears to be under 18. “Sexual conduct” includes sexual intercourse, oral sex, anal sex, penetration of the genitals or anus by an object, sadomasochistic abuse, or exhibition of uncovered genitals, female breast intended to satisfy or arouse the sexual desires of any person. IC 35-42-4-4(d) and (a)(4).

How should DCS employees deal with child pornography?



Children will live in safe, healthy and supportive families and communities.

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1. Contact law enforcement immediately so that they may take possession of the material.
2. If law enforcement is not available or declines to take possession of the material, document the communication in the Preliminary Inquiry (PI) report and/or case record indicating that the request was made. Contact your local office attorney as soon as possible to determine next steps.
3. Do not attempt to duplicate, copy, or in any way possess the material.
4. The Family Case Manager (FCM) should be very descriptive in their PI report and/or case record about what the image depicts.

Material that is not child pornography

Photographs and other material taken for the purpose of documenting a child's injuries are not child pornography. In order to thoroughly assess and investigate allegations of CA/N, photographs of the child's injuries should be taken, even if the injuries are to the child's genitals, buttocks, or other private areas. If a DCS employee creates or comes into possession of a photo or video that depicts a child's injury as described above, that material should be protected by handling and storing it in a secure manner.

Sincerely,

Rachel D Russell

Rachel Russell, Interim General Counsel, Deputy General Counsel

Sarah Sailors, MSW

Sarah Sailors, Deputy Director of Field Operations

