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**Child Abuse and Neglect Hotline: 800-800-5556**

June 30, 2011

To: Regional Managers  
Directors, Local Offices, Department of Child Services

From: James W. Payne, Director  
Angela Green, Deputy Director Practice Support  
David Judkins, Deputy Director Field Operations  
Jeff Lozer, General Counsel  
Department of Child Services

Subject: 2011 Legislative Changes  
DCS-11-06

The Indiana Department of Child Services (DCS) would like to thank you for your continued commitment to ensuring the safety of Indiana's children. In keeping with the value that "We believe every person has value, worth and dignity," recent legislative changes have been enacted to strengthen our achievement of this value. This Administrative letter outlines various legislative changes that are effective July 1, 2011.

#### **Legal Guardianships IC 29-3-5-1**

This section adds language to allow the court to set terms and conditions a parent must meet before they can seek termination of a guardianship. It also requires for guardianships created during the course of an Informal Adjustment (IA) or Child In Need of Services (CHINS), open or closed, that DCS be notified if a guardianship petition is filed, modified or terminated. In cases involving a CHINS, the court shall allow DCS to present evidence in the guardianship hearing. This section also requires the child(ren) to remain in home until guardianship termination. Whenever the juvenile court establishes a guardianship, the court where the original action was filed shall reassume primary jurisdiction for any additional proceedings.

#### **Fatality Reports Technical Correction IC 31-9-2-10.9**

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 under IC 31-33-18-1.5 subsection (b)(2) to the Department. This law adds clarifying language to remove the conflict with the expungement statute, and removes references to records DCS cannot access from



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Division of Family Resources (DFR) and Family & Social Services Administration (FSSA). This language conflicted with the current expungement statute and also required DCS to provide information that it cannot access. Additionally, language has been included to define “case” and “contact” for the purposes of IC 31-33-18-1.5, has the meaning set forth in IC 31-33-18-1.5(d).

“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 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 DCS is notified of a fatality or near fatality;

“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.

This section also changes the data and information in a record disclosed under IC 31-33-18-1.5 to include whether the DCS had any contact with the child or the perpetrator before the fatality or near fatality, the frequency of the contact with the child or the perpetrator before the fatality or near fatality and also the date of closure and the reasons that the case was closed. DCS has to provide items 1-5 below for any prior contact (not just substantiated history) for the prior contact where the fatality/near fatality child had been previously listed as a victim, or when any alleged perpetrator in the fatality/near fatality assessment had been listed as a perpetrator.

1. Frequency of contact (face to face),
2. Date of last contact prior to fatality/near fatality report,
3. Was the “case” (intake, assessment, case) closed at time of fatality/near fatality,
4. Reason case (intake, assessment, case) was closed,
5. Date of closure.

Please see IC 31-33-18-1.5 for complete requirements.

### **Fingerprint Exception if an Individual Cannot be Fingerprinted IC 31-9-2-22.5**

State and Federal law requires national fingerprint based criminal history checks on each adult residing, working or volunteering with children under the care and supervision of DCS. Federal law allows States to have an exception to this requirement when a person has a disability or their fingerprints are otherwise not obtainable. This law amends statute to allow DCS to use a name based criminal history check for individuals who cannot be fingerprinted because they have a disability or their fingerprints are otherwise not obtainable.

### **Definition of Custodian IC 31-9-2-2-31**

The current statutory definition of custodian limits the ability of DCS to investigate and substantiate child abuse and neglect to specifically designated individuals. This change adds to the definition those individuals who may not be specifically designated, but who serve as functional custodians.



The new definition is as follows, “an individual who has or intends to have contact, on a direct and continuing basis with a child for whom the individual provides care and supervision”.

### **Align Background Check Requirements for Adoptions, Placement, Licensing and Probation SEA 465**

State and federal law requires DCS to conduct background checks for adoptions, residential licensing, out-of-home placement, and foster care licensing. Current Indiana statutory language pertaining to these areas was inconsistent and is also stricter than Federal law. As a result, DCS instituted policy to be consistent with statute in all these areas.

### **Foster Home Licensure Issue Technical Correction IC 31-27-4-5**

This section adds language regarding the statement of attestation for foster home licensure to require applicants to attest to whether or not they have been charged with or convicted of a felony or a misdemeanor relating to the health and safety of children. The current language requires the applicant to attest to the fact that they have not been convicted of a felony or a misdemeanor relating to the health and safety of children, which an applicant cannot do if they have such a conviction.

### **Foster Care Licensing Rules 465 IAC 2-1**

New Foster Care Licensing rules went into effect on 5-18-11. As a result of the changes there have been revisions to some of the licensing forms. For a complete list of the new foster care rules, please visit <http://www.in.gov/legislative/iac/T04650/A00020.PDF>.

### **Definition of Therapeutic Foster Family Home IC 31-9-2-1.5**

See Administrative Letter: Legislation Changes - Foster Family Home Licensing  
DCS-11-05

### **Foster Care License Capacity IC 31-27-4-2 and IC 31-27-4-3**

See Administrative Letter: Legislation Changes - Foster Family Home Licensing  
DCS-11-05

### **Child Protection Team Technical Correction IC 31-33-3-5**

Removes language that states the child protection team shall provide diagnostic and prognostic services for the Department or the juvenile court.

### **Remove 90 Day Reporting Requirement IC 31-33-7-8**

Previously, IC 31-33-7-8 required that when DCS received a report of child abuse or neglect from certain professional report sources that the Department report back to them with both a 30 and 90 day report on the status of the DCS assessment. Beginning on July 1, no later than 30 days after the Department initiates a new assessment or investigation, DCS shall send a 30 day report to certain professional report sources. The 90 day requirement as well as some items included on the 30/90 day report has been repealed. See section on Professional Report Sources for reporting requirements.



### **Professional Report Sources IC 31-33-3-5**

When DCS receives a report of child abuse or neglect from certain professional report sources the Department is required to send a report back to them on the status of the assessment within 30 days. The language in this section adds child caring institutions, group homes, private secure facilities and child placing agency's to the list of agencies/organizations that DCS shall send the report. This section will also amend the information DCS is required to send to the professional report source to more accurately reflect the information that is known at the time and to include only that information which is appropriate for the report source to have. The report must contain:

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 was prepared, and
7. other information that the Department may prescribe.

A revised copy of the 30 Day Report (previously referred to as the 30/90 day letter) will be available in the Indiana Child Welfare Information System (ICWIS) and via hardcopy by July 1, 2011. Please note that linking an assessment report may eliminate the ability to automatically generate each 30 Day Report. If more than one report is received by a the agencies listed in IC 31-33-7-8, it is the responsibility of the Family Case Manger (FCM) to generate a 30 Day Report for each professional report source and include the statutorily required information.

### **Standby Guardian HEA 1055**

This law allows a parent or guardian of a minor to designate a Standby Guardian for up to 90 days that becomes effective upon death or incapacity of the parent. Incapacity includes things such as insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influences of others on the individual or other incapacity; or has a developmental disability (as defined in IC 12-7-2-61). Its requires DCS to consider the Standby Guardianship in its decision making. This allows for the creation of a legally recognized form of guardianship that is effective without court involvement.

If a FCM has reason to believe they have an assessment and/or case involving a Standby Guardian they need to staff the assessment/case with their local office attorney.

### **Use of Telecommunication Device while Driving – HEA 1129**

This law makes it a class C infraction to text or email while driving. It allows individuals to transmit a text message or email with the use of a hands free device. It also allows individuals to call 911.



**Synthetic Cannabinoids and Salvia HEA 1102 and SEA 57**

The possession, sale and use of Salvia and Synthetic cannabinoid is now illegal. Synthetic cannabis is a psychoactive herbal and chemical product which, when consumed mimics the effects of cannabis. It is best known by the brand names K2 and Spice.

**Official Misconduct SEA 217**

This law states that a public servant commits official misconduct if the public servant knowingly or intentionally commits a crime in the performance of the public servants official duties.

**Interviewing Child(ren) IC 31-33-8-7(d)**

If the custodial parent, guardian or custodian of a child refuses to allow the Department to interview that child after the FCM has attempted to obtain consent from the custodial parent, guardian or custodian, DCS may petition a court to order the custodial parent, a guardian or custodian to make the child available to be interviewed. The court may grant the motion to interview the child, either with or without the custodial parent, guardian or custodian being present. If the court finds that the custodial parent, guardian or custodian has been informed of the hearing on a petition and the Department has made a reasonable and unsuccessful effort to obtain the consent of the custodial parent guardian or custodian, the court shall specify in the order the efforts the Department made to obtain the consent of the custodial parent, guardian or custodian.

The DCS Policy Manual will be revised to reflect these important changes. If you have any questions regarding the information presented in this administrative letter, please address them to the DCS policy mailbox at [DCS.Policy@dcs.in.gov](mailto:DCS.Policy@dcs.in.gov) .

Sincerely,

James W. Payne, Director  
Department of Child Services



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