

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1194

AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 10-13-3-6, AS ADDED BY P.L.2-2003, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) As used in this chapter, "criminal justice agency" means any agency or department of any level of government whose principal function is:

- (1) the apprehension, prosecution, adjudication, incarceration, probation, rehabilitation, or representation of criminal offenders;
- (2) the location of parents with child support obligations under 42 U.S.C. 653;
- (3) the licensing and regulating of riverboat gambling operations;
- or
- (4) the licensing and regulating of pari-mutuel horse racing operations.

(b) The term includes the following:

- (1) The office of the attorney general.
- (2) The Medicaid fraud control unit, for the purpose of investigating offenses involving Medicaid.
- (3) A nongovernmental entity that performs as its principal function the:
 - (A) apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders;

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(B) location of parents with child support obligations under 42 U.S.C. 653;

(C) licensing and regulating of riverboat gambling operations; or

(D) licensing and regulating of pari-mutuel horse racing operations;

under a contract with an agency or department of any level of government.

(4) The division of family and children or a juvenile probation officer conducting a criminal history check (as defined in IC 31-9-2-29.7) under IC 12-14-25.5-3, IC 31-34, or IC 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.

SECTION 2. IC 12-7-2-28, AS AMENDED BY P.L.34-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 28. "Child" means the following:

(1) For purposes of IC 12-13-15, the meaning set forth in IC 12-13-15-1.

(2) For purposes of IC 12-13-15.1, the meaning set forth in IC 12-13-15.1-1.

(3) For purposes of IC 12-17.2 and IC 12-17.4, an individual who is less than eighteen (18) years of age.

~~(3)~~ **(4)** For purposes of IC 12-26, the meaning set forth in IC 31-9-2-13(d).

SECTION 3. IC 12-7-2-76.7, AS ADDED BY P.L.34-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 76.7. **(a)** "Emergency medical services", for purposes of IC 12-13-15, has the meaning set forth in IC 12-13-15-2.

(b) "Emergency medical services", for purposes of IC 12-13-15.1, has the meaning set forth in IC 12-13-15.1-2.

SECTION 4. IC 12-7-2-124.5, AS ADDED BY P.L.34-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 124.5. **(a)** "Local child fatality review team", for purposes of IC 12-13-15, has the meaning set forth in IC 12-13-15-3.

(b) "Local child fatality review team", for purposes of IC 12-13-15.1, has the meaning set forth in IC 12-13-15.1-3.

SECTION 5. IC 12-7-2-129.5, AS ADDED BY P.L.34-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2004]: Sec. 129.5. (a) "Mental health provider", for purposes of IC 12-13-15, has the meaning set forth in IC 12-13-15-4.

(b) "Mental health provider", for purposes of IC 12-13-15.1, has the meaning set forth in IC 12-13-15.1-4.

SECTION 6. IC 12-7-2-186.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 186.5. "Statewide child fatality review committee", for purposes of IC 12-13-15.1, has the meaning set forth in IC 12-13-15.1-5.

SECTION 7. IC 12-13-15-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6.5. A local child fatality review team may request that the statewide child fatality review committee make a fatality review of a child from the area served by the local child fatality review team if a majority of the members of a local child fatality review team vote to make the request.

SECTION 8. IC 12-13-15.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 15.1. Statewide Child Fatality Review Committee

Sec. 1. As used in this chapter, "child" means an individual less than eighteen (18) years of age.

Sec. 2. As used in this chapter, "emergency medical services" means emergency ambulance services or other services, including extrication and rescue services, provided to an individual in need of immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

Sec. 3. As used in this chapter, "local child fatality review team" refers to a county or regional child fatality review team established under IC 12-13-15.

Sec. 4. As used in this chapter, "mental health provider" means any of the following:

- (1) A registered nurse or licensed practical nurse licensed under IC 25-23.
- (2) A clinical social worker licensed under IC 25-23.6-5.
- (3) A marriage and family therapist licensed under IC 25-23.6-8.
- (4) A psychologist licensed under IC 25-33.
- (5) A school psychologist licensed by the Indiana state board of education.

Sec. 5. As used in this chapter, "statewide child fatality review

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committee" refers to the statewide child fatality review committee established by section 6 of this chapter.

Sec. 6. (a) The statewide child fatality review committee is established for the purpose of reviewing a child's death that is:

- (1) sudden;
- (2) unexpected; or
- (3) unexplained;

if the county where the child died does not have a local child fatality review team or if the local child fatality review team requests a review of the child's death by the statewide committee.

(b) The statewide child fatality review committee may also review the death of a child upon request by an individual.

(c) A request submitted under subsection (b) must set forth:

- (1) the name of the child;
- (2) the age of the child;
- (3) the county where the child died;
- (4) whether a local child fatality review team reviewed the death; and
- (5) the cause of death of the deceased child.

Sec. 7. A child fatality review conducted by the statewide child fatality review committee under this chapter must consist of determining:

- (1) whether similar future deaths could be prevented; and
- (2) agencies or resources that should be involved to adequately prevent future deaths of children.

Sec. 8. The statewide child fatality review committee consists of the following members appointed by the governor:

- (1) a coroner or deputy coroner;
- (2) a representative from:
 - (A) the state department of health established by IC 16-19-1-1;
 - (B) a local health department established under IC 16-20-2; or
 - (C) a multiple county health department established under IC 16-20-3;
- (3) a pediatrician;
- (4) a representative of law enforcement;
- (5) a representative from an emergency medical services provider;
- (6) a director of an office of family and children;
- (7) a representative of a prosecuting attorney;

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- (8) a pathologist with forensic experience who is licensed to practice medicine in Indiana;**
- (9) a mental health provider;**
- (10) a representative of a child abuse prevention program;**
- and**
- (11) a representative of the department of education.**

Sec. 9. (a) The chairperson of the statewide child fatality review committee shall be selected by the governor.

(b) The statewide child fatality review committee shall meet at the call of the chairperson.

(c) The statewide child fatality review committee chairperson shall determine the agenda for each meeting.

Sec. 10. (a) Except as provided in subsection (b), meetings of the statewide child fatality review committee are open to the public.

(b) Except as provided in subsection (d), a meeting of the statewide child fatality review committee that involves:

- (1) confidential records; or**
- (2) identifying information regarding the death of a child that is confidential under state or federal law;**

shall be held as an executive session.

(c) If a meeting is held as an executive session under subsection (b), each individual who:

- (1) attends the meeting; and**
- (2) is not a member of the statewide child fatality review committee;**

shall sign a confidentiality statement prepared by the division. The statewide child fatality review committee shall keep all confidentiality statements signed under this subsection.

(d) A majority of the members of the statewide child fatality review committee may vote to disclose any report or part of a report regarding a fatality review to the public if the information is in the general public interest as determined by the statewide child fatality review committee.

Sec. 11. Members of the statewide child fatality review committee and individuals who attend a meeting of the statewide child fatality review team as an invitee of the chairperson:

- (1) may discuss among themselves confidential matters that are before the statewide child fatality review committee;**
- (2) are bound by all applicable laws regarding the confidentiality of matters reviewed by the statewide child fatality review committee; and**

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- (3) except when acting:**
 - (A) with malice;**
 - (B) in bad faith; or**
 - (C) with gross negligence;**

are immune from any civil or criminal liability that might otherwise be imposed as a result of communicating among themselves about confidential matters that are before the statewide child fatality review committee.

Sec. 12. The division shall provide training to the statewide child fatality review committee.

Sec. 13. (a) The division shall collect and document information surrounding the deaths of children reviewed by the statewide child fatality review committee. The division shall develop a data collection form that includes:

- (1) identifying and nonidentifying information;**
- (2) information regarding the circumstances surrounding a death;**
- (3) factors contributing to a death; and**
- (4) findings and recommendations.**

(b) The data collection form developed under this section must also be provided to:

- (1) the appropriate community child protection team established under IC 31-33-3; and**
- (2) the appropriate:**
 - (A) local health department established under IC 16-20-2;**
 - or**
 - (B) multiple county health department established under IC 16-20-3.**

Sec. 14. The affirmative votes of the voting members of a majority of the statewide child fatality review committee are required for the committee to take action on any measure.

Sec. 15. The expenses of the statewide child fatality review committee shall be paid from funds appropriated to the division.

Sec. 16. The testimony of a member of the statewide child fatality review committee is not admissible as evidence concerning an investigation by the statewide child fatality review committee.

SECTION 9. IC 12-14-25.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. **(a)** Family preservation services may provide:

- (1) comprehensive, coordinated, flexible, and accessible services;**
- (2) intervention as early as possible with emphasis on establishing**

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a safe and nurturing environment;

(3) services to families who have members placed in care settings outside the nuclear family; **and**

(4) planning options for temporary placement outside the family if it would endanger the child to remain in the home.

(b) Unless authorized by a juvenile court, family preservation services may not include a temporary out-of-home placement if a person who:

(1) is currently residing in the location designated as the out-of-home placement; or

(2) in the reasonable belief of family preservation services is expected to be residing in the location designated as the out-of-home placement during the time the child at imminent risk of placement would be placed in the location;

has committed an act resulting in a substantiated report of child abuse or neglect or has a juvenile adjudication or a conviction for a felony listed in IC 12-17.4-4-11.

(c) Before placing a child at imminent risk of placement in a temporary out-of-home placement, the county office of family and children shall conduct a criminal history check (as defined in IC 31-9-2-29.7) for each person described in subsection (b)(1) and (b)(2). However, the county office of family and children is not required to conduct a criminal history check under this section if the temporary out-of-home placement is made to an entity or facility that is not a residence (as defined in IC 3-5-2-42.5) or that is licensed by the state.

SECTION 10. IC 31-9-2-29.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 29.7. "Criminal history check", for purposes of IC 31-34 and IC 31-37, means a report consisting of:**

(1) criminal history data (as defined in IC 10-13-3-5);

(2) each substantiated report of child abuse or neglect reported in a jurisdiction where the county office of family and children has reason to believe the subject resided; and

(3) each adjudication for a delinquent act described in IC 31-37-1-2 reported in a jurisdiction where the county office of family and children has reason to believe the subject resided.

SECTION 11. IC 31-9-2-58.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



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[EFFECTIVE JULY 1, 2004]: **Sec. 58.5. "Indicated", for purposes of IC 31-33-8-12, means facts obtained during an investigation of suspected child abuse or neglect that:**

(1) provide:

(A) significant indications that a child may be at risk for abuse or neglect; or

(B) evidence that abuse or neglect previously occurred; and

(2) cannot be classified as substantiated or unsubstantiated.

SECTION 12. IC 31-33-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 2. The local child protection service:**

(1) must have sufficient qualified and trained staff to fulfill the purpose of this article; and

(2) must be organized to maximize the continuity of responsibility, care, and service of individual caseworkers toward individual children and families;

(3) must provide training to representatives of the child protective services system regarding the legal duties of the representatives, which may consist of various methods of informing the representatives of their duties, in order to protect the legal rights and safety of children and families from the initial time of contact during the investigation through treatment; and

(4) must provide training to representatives of the child protective services system regarding the constitutional rights of the child's family, including a child's guardian or custodian, that is the subject of an investigation of child abuse or neglect consistent with the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Constitution of the State of Indiana.

SECTION 13. IC 31-33-8-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 12. (a) Upon completion of an investigation, the local child protection service shall classify reports as substantiated, indicated, or unsubstantiated.**

(b) Except as provided in subsection (c), a local child protection service shall expunge investigation records one (1) year after a report has been classified as indicated under subsection (a).

(c) If a local child protection service has:

(1) classified a report under subsection (a) as indicated; and

(2) not expunged the report under subsection (b);

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and the subject of the report is the subject of a subsequent report, the one (1) year period in subsection (b) is tolled for one (1) year after the date of the subsequent report.

SECTION 14. IC 31-33-18-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. **(a) Except as provided in section 1.5 of this chapter,** the following are confidential:

- (1) Reports made under this article (or IC 31-6-11 before its repeal).
- (2) Any other information obtained, reports written, or photographs taken concerning the reports in the possession of:
 - (A) the division of family and children;
 - (B) the county office of family and children; or
 - (C) the local child protection service.

(b) Except as provided in section 1.5 of this chapter, all records held by:

- (1) the division of family and children;
- (2) a county office of family and children;
- (3) a local child protection service;
- (4) a local child fatality review team established under IC 12-13-15; or
- (5) the statewide child fatality review committee established under IC 12-13-15.1-6;

regarding the death of a child determined to be a result of abuse, abandonment, or neglect are confidential and may not be disclosed.

SECTION 15. IC 31-33-18-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1.5. **(a) This section applies to records held by:**

- (1) the division of family and children;
- (2) a county office of family and children;
- (3) a local child protection service;
- (4) a local child fatality review team established under IC 12-13-15; or
- (5) the statewide child fatality review committee established under IC 12-13-15.1-6;

regarding the death of a child determined to be a result of abuse, abandonment, or neglect.

(b) As used in this section, "identifying information" means information that identifies an individual, including an individual's:

- (1) name, address, date of birth, occupation, place of employment, employer identification number, mother's

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maiden name, Social Security number, or any identification number issued by a governmental entity;

(2) unique biometric data, including the individual's fingerprint, voice print, or retina or iris image;

(3) unique electronic identification number, address, or routing code;

(4) telecommunication identifying information; or

(5) telecommunication access device, including a card, a plate, a code, a telephone number, 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.

(c) Unless information in a record is otherwise confidential under state or federal law, a record described in subsection (a) that has been redacted in accordance with this section is not confidential and may be disclosed to any person who requests the record. The person requesting the record may be required to pay the reasonable expenses of copying the record.

(d) When a person requests a record described in subsection (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 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.

(e) Upon receipt of the record described in subsection (a), the court shall, within thirty (30) days, redact the record to exclude identifying information of a person or other information not relevant to establishing the facts and circumstances leading to the death of the child. However, the court shall not redact the record to exclude information that relates to an employee of the division of family and children, an employee of a county office of family and children, or an employee of a local child protection service.

(f) The court shall disclose the record redacted in accordance with subsection (e) 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 IC 5-14-3-8; and

(2) to the court, the reasonable expenses of copying the record.

(g) The court's determination under subsection (e) that certain identifying information or other information is not relevant to

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establishing the facts and circumstances leading to the death of a child is not admissible in a criminal proceeding or civil action.

SECTION 16. IC 31-33-18-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. The reports and other material described in ~~section 1~~ **section 1(a)** of this chapter **and the unredacted reports and other material described in section 1(b) of this chapter** shall be made available only to the following:

- (1) Persons authorized by this article.
- (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 section 1.5 of this chapter, or upon the court's finding that**

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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 section 1.5 of this chapter**, 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 the child protective service or legislation carrying out the official's official functions.

(12) A foster care review board established by a juvenile court under IC 31-34-21-9 (or IC 31-6-4-19 before its repeal) upon the court's determination that access to the records is necessary to enable the foster care review board to carry out the board's purpose under IC 31-34-21.

(13) The community child protection team appointed under IC 31-33-3 (or IC 31-6-11-14 before its repeal), upon request, to enable the team to carry out the team's purpose under IC 31-33-3.

(14) 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.

(15) An employee of the division of family and children, a caseworker, or a juvenile probation officer conducting a criminal history check under IC 12-14-25.5-3, IC 31-34, or IC 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 subdivision must be disclosed to a court determining the placement of a child described in clauses (A) through (C).

(16) A local child fatality review team established under IC 12-13-15-6.

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(17) The statewide child fatality review committee established by IC 12-13-15.1-6.

SECTION 17. IC 31-33-22-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. **(a)** An individual who

- ~~(1)~~ knowingly requests, obtains, or seeks to obtain child abuse or neglect information under false pretenses or
- ~~(2)~~ knowingly falsifies child abuse or neglect information or records;

commits a Class B misdemeanor.

(b) A person who knowingly or intentionally:

- (1) falsifies child abuse or neglect information or records; or**
 - (2) obstructs or interferes with a child abuse investigation, including an investigation conducted by a local child fatality review team or the statewide child fatality review committee;**
- commits obstruction of a child abuse investigation, a Class A misdemeanor.**

SECTION 18. IC 31-34-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) If a child alleged to be a child in need of services is taken into custody under an order of the court under this chapter, the court shall consider placing the child with a suitable and willing blood or adoptive relative caretaker, including a grandparent, an aunt, an uncle, or an adult sibling, before considering any other out-of-home placement.

(b) Before placing a child in need of services with a blood relative or an adoptive relative caretaker, the court may order the division of family and children to:

- (1) complete a home study of the relative's home; and
- (2) provide the court with a placement recommendation.

(c) Except as provided in subsection (e), before placing a child in need of services in an out-of-home placement, including placement with a blood or an adoptive relative caretaker, the court shall order the division of family and children to conduct a criminal history check of each person who is:

- (1) currently residing in the location designated as the out-of-home placement; or**
- (2) in the reasonable belief of the division of family and children, expected to be residing in the location designated as the out-of-home placement during the time the child would be placed in the location.**

(d) Except as provided in subsection (f), a court may not order

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an out-of-home placement if a person described in subsection (c)(1) or (c)(2) has:

- (1) committed an act resulting in a substantiated report of child abuse or neglect; or
- (2) been convicted of a felony listed in IC 12-17.4-4-11 or had a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult.

(e) The court is not required to order the division of family and children to conduct a criminal history check under subsection (c) if the court orders an out-of-home placement to an entity or a facility that is not a residence (as defined in IC 3-5-2-42.5) or that is licensed by the state.

(f) A court may order an out-of-home placement if:

- (1) a person described in subsection (c)(1) or (c)(2) has:
 - (A) committed an act resulting in a substantiated report of child abuse or neglect; or
 - (B) been convicted or had a juvenile adjudication for:
 - (i) reckless homicide (IC 35-42-1-5);
 - (ii) battery (IC 35-42-2-1) as a Class C or D felony;
 - (iii) criminal confinement (IC 35-42-3-3) as a Class C or D felony;
 - (iv) arson (IC 35-43-1-1) as a Class C or D felony;
 - (v) a felony involving a weapon under IC 35-47 or IC 35-47.5 as a Class C or D felony;
 - (vi) a felony relating to controlled substances under IC 35-48-4 as a Class C or D felony; or
 - (vii) a felony that is substantially equivalent to a felony listed in items (i) through (vi) for which the conviction was entered in another state; and
- (2) the court makes a written finding that the person's commission of the offense, delinquent act, or act of abuse or neglect described in subdivision (1) is not relevant to the person's present ability to care for a child, and that the placement is in the best interest of the child.

However, a court may not order an out-of-home placement if the person has been convicted of a felony listed in IC 12-17.4-4-11 that is not specifically excluded under subdivision (1)(B), or has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult that is not specifically excluded under subdivision (1)(B).

(g) In making its written finding under subsection (f), the court

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shall consider the following:

- (1) The length of time since the person committed the offense, delinquent act, or abuse or neglect.
- (2) The severity of the offense, delinquent act, or abuse or neglect.
- (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

SECTION 19. IC 31-34-18-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6.1. (a) The predispositional report prepared by a probation officer or caseworker shall include the following information:

- (1) A description of all dispositional options considered in preparing the report.
- (2) An evaluation of each of the options considered in relation to the plan of care, treatment, rehabilitation, or placement recommended under the guidelines described in section 4 of this chapter.
- (3) The name, occupation and position, and any relationship to the child of each person with whom the preparer of the report conferred as provided in section 1.1 of this chapter.

(b) If a probation officer or a caseworker is considering an out-of-home placement, including placement with a blood or an adoptive relative caretaker, the probation officer or caseworker shall conduct a criminal history check for each person who:

- (1) is currently residing in the location designated as the out-of-home placement; or
- (2) in the reasonable belief of the probation officer or caseworker, is expected to be residing in the location designated as the out-of-home placement during the time the child would be placed in the location.

The results of the criminal history check must be included in the predispositional report.

(c) A probation officer or caseworker is not required to conduct a criminal history check under this section if:

- (1) the probation officer or caseworker is considering only an out-of-home placement to an entity or facility that:
 - (A) is not a residence (as defined in IC 3-5-2-42.5); or
 - (B) is licensed by the state; or
- (2) placement under this section is undetermined at the time the predispositional report is prepared.

SECTION 20. IC 31-34-19-7 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) Except as provided in subsection (d), a court may not enter a dispositional decree under subsection (b) if a person who is:

- (1) currently residing in the location designated as the out-of-home placement; or
- (2) reasonably expected to be residing in the location designated as the out-of-home placement during the time the child would be placed in the location;

has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult, or has a conviction for a felony listed in IC 12-17.4-4-11. If a criminal history check has not been conducted before a dispositional decree is entered under this section, the court shall order the probation officer or caseworker who prepared the predispositional report to conduct a criminal history check in the manner set forth in IC 31-34-18-6.1.

(b) In addition to the factors under section 6 of this chapter, if the court enters a dispositional decree regarding a child in need of services that includes an out-of-home placement, the court shall consider whether the child should be placed with the child's suitable and willing blood or adoptive relative caretaker, including a grandparent, an aunt, an uncle, or an adult sibling, before considering other out-of-home placements for the child.

(c) The court is not required to order a probation officer or caseworker to conduct a criminal history check under subsection (a) if the court orders an out-of-home placement to an entity or a facility that is not a residence (as defined in IC 3-5-2-42.5) or that is licensed by the state.

(d) A court may enter a dispositional decree under subsection (b) if:

- (1) a person described in subsection (a)(1) or (a)(2) has:
 - (A) committed an act resulting in a substantiated report of child abuse or neglect; or
 - (B) been convicted or had a juvenile adjudication for:
 - (i) reckless homicide (IC 35-42-1-5);
 - (ii) battery (IC 35-42-2-1) as a Class C or D felony;
 - (iii) criminal confinement (IC 35-42-3-3) as a Class C or D felony;
 - (iv) arson (IC 35-43-1-1) as a Class C or D felony;
 - (v) a felony involving a weapon under IC 35-47 or

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- IC 35-47.5 as a Class C or D felony;
- (vi) a felony relating to controlled substances under IC 35-48-4 as a Class C or D felony; or
- (vii) a felony that is substantially equivalent to a felony listed in items (i) through (vi) for which the conviction was entered in another state; and

(2) the court makes a written finding that the person's commission of the offense, delinquent act, or act of abuse or neglect described in subdivision (1) is not relevant to the person's present ability to care for a child, and the dispositional decree is in the best interest of the child.

However, a court may not enter a dispositional decree if the person has been convicted of a felony listed in IC 12-17.4-4-11 that is not specifically excluded under subdivision (1)(B), or has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult that is not specifically excluded under subdivision (1)(B).

(e) In making its written finding under subsection (d), the court shall consider the following:

- (1) The length of time since the person committed the offense, delinquent act, or act that resulted in the conviction, adjudication, or substantiated report of abuse or neglect.
- (2) The severity of the offense, delinquent act, or abuse or neglect.
- (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

SECTION 21. IC 31-34-20-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. **Subject to section 1.5 of this chapter**, if a child is a child in need of services, the juvenile court may enter one (1) or more of the following dispositional decrees:

- (1) Order supervision of the child by the probation department or the county office of family and children.
- (2) Order the child to receive outpatient treatment:
 - (A) at a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or
 - (B) from an individual practitioner.
- (3) Remove the child from the child's home and place the child in another home or shelter care facility. Placement under this subdivision includes authorization to control and discipline the child.
- (4) Award wardship to a person or shelter care facility. Wardship

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under this subdivision does not include the right to consent to the child's adoption.

(5) Partially or completely emancipate the child under section 6 of this chapter.

(6) Order:

(A) the child; or

(B) the child's parent, guardian, or custodian;

to receive family services.

(7) Order a person who is a party to refrain from direct or indirect contact with the child.

SECTION 22. IC 31-34-20-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 1.5. (a) Except as provided in subsection (c), the juvenile court may not enter a dispositional decree placing a child in another home under section 1(3) of this chapter or awarding wardship to a county office of family and children that will place the child with a person under section 1(4) of this chapter if a person who is:**

(1) currently residing in the home in which the child would be placed under section 1(3) or 1(4) of this chapter; or

(2) reasonably expected to be residing in the home in which the child would be placed under section 1(3) or 1(4) of this chapter during the time the child would be placed in the home;

has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult, or has a conviction for a felony listed in IC 12-17.4-4-11.

(b) The juvenile court shall order the probation officer or caseworker who prepared the predispositional report to conduct a criminal history check to determine if a person described in subsection (a)(1) or (a)(2) has committed an act resulting in a substantiated report of child abuse or neglect has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult, or has a conviction for a felony listed in IC 12-17.4-4-11. However, the juvenile court is not required to order a criminal history check under this section if criminal history information under IC 31-34-4-2, IC 31-34-18-6.1, or IC 31-34-19-7 establishes whether a person described in subsection (a)(1) or (a)(2) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile

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adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult, or has a conviction for a felony listed in IC 12-17.4-4-11.

(c) A court may enter a dispositional decree placing a child in another home or award wardship to a county office of family and children if:

- (1) a person described in subsection (a)(1) or (a)(2) has:
 - (A) committed an act resulting in a substantiated report of child abuse or neglect; or
 - (B) been convicted or had a juvenile adjudication for:
 - (i) reckless homicide (IC 35-42-1-5);
 - (ii) battery (IC 35-42-2-1) as a Class C or D felony;
 - (iii) criminal confinement (IC 35-42-3-3) as a Class C or D felony;
 - (iv) arson (IC 35-43-1-1) as a Class C or D felony;
 - (v) a felony involving a weapon under IC 35-47 or IC 35-47.5 as a Class C or D felony;
 - (vi) a felony relating to controlled substances under IC 35-48-4 as a Class C or D felony; or
 - (vii) a felony that is substantially equivalent to a felony listed in items (i) through (vi) for which the conviction was entered in another state; and
- (2) the court makes a written finding that the person's commission of the offense, delinquent act, or act of abuse or neglect described in subdivision (1) is not relevant to the person's present ability to care for a child, and that the dispositional decree placing a child in another home or awarding wardship to a county office of family and children is in the best interest of the child.

However, a court may not enter a dispositional decree placing a child in another home or award wardship to a county office of family and children if the person has been convicted of a felony listed in IC 12-17.4-4-11 that is not specifically excluded under subdivision (1)(B), or has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult that is not specifically excluded under subdivision (1)(B).

(d) In making its written finding under subsection (c), the court shall consider the following:

- (1) The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect.

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(2) The severity of the offense, delinquent act, or abuse or neglect.

(3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

SECTION 23. IC 31-34-21-7.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7.5. **(a) Except as provided in subsection (d), the juvenile court may not approve a permanency plan under subsection (c)(1)(D) or (c)(1)(E) if a person who is:**

(1) currently residing with a person described in subsection (c)(1)(D) or (c)(1)(E); or

(2) reasonably expected to be residing with a person described in subsection (c)(1)(D) or (c)(1)(E) during the time the child would be placed in the location;

has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult, or has a conviction for a felony listed in IC 12-17.4-4-11.

(b) The juvenile court shall order the probation officer or caseworker who prepared the predispositional report to conduct a criminal history check to determine if a person described in subsection (a)(1) or (a)(2) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult, or has a conviction for a felony listed in IC 12-17.4-4-11. However, the juvenile court is not required to order a criminal history check under this section if criminal history information under IC 31-34-4-2, IC 31-34-18-6.1, IC 31-34-19-7, or IC 31-34-20-1.5 establishes whether a person described in subsection (a)(1) or (a)(2) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult, or has a conviction for a felony listed in IC 12-17.4-4-11.

(c) A permanency plan under this chapter includes the following:

(1) The intended permanent or long term arrangements for care and custody of the child that may include any of the following arrangements that the court considers most appropriate and consistent with the best interests of the child:

(A) Return to or continuation of existing custodial care within the home of the child's parent, guardian, or custodian or

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placement of the child with the child's noncustodial parent.
 (B) Initiation of a proceeding by the agency or appropriate person for termination of the parent-child relationship under IC 31-35.

(C) Placement of the child for adoption.

(D) Placement of the child with a responsible person, including:

- (i) an adult sibling;
- (ii) a grandparent;
- (iii) an aunt;
- (iv) an uncle; or
- (v) ~~other~~ **another** relative;

who is able and willing to act as the child's permanent custodian and carry out the responsibilities required by the permanency plan.

(E) Appointment of a legal guardian. The legal guardian appointed under this section is a caretaker in a judicially created relationship between the child and caretaker that is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child:

- (i) Care, custody, and control of the child.
- (ii) Decision making concerning the child's upbringing.

(F) Placement of the child in another planned, permanent living arrangement.

(2) A time schedule for implementing the applicable provisions of the permanency plan.

(3) Provisions for temporary or interim arrangements for care and custody of the child, pending completion of implementation of the permanency plan.

(4) Other items required to be included in a case plan under IC 31-34-15 or federal law, consistent with the permanent or long term arrangements described by the permanency plan.

(d) A juvenile court may approve a permanency plan if:

(1) a person described in subsection (a)(1) or (a)(2) has:

(A) committed an act resulting in a substantiated report of child abuse or neglect; or

(B) been convicted or had a juvenile adjudication for:

- (i) reckless homicide (IC 35-42-1-5);**
- (ii) battery (IC 35-42-2-1) as a Class C or D felony;**
- (iii) criminal confinement (IC 35-42-3-3) as a Class C or**

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- D felony;**
- (iv) arson (IC 35-43-1-1) as a Class C or D felony;**
- (v) a felony involving a weapon under IC 35-47 or IC 35-47.5 as a Class C or D felony;**
- (vi) a felony relating to controlled substances under IC 35-48-4 as a Class C or D felony; or**
- (vii) a felony that is substantially equivalent to a felony listed in items (i) through (vi) for which the conviction was entered in another state; and**

(2) the court makes a written finding that the person's commission of the offense, delinquent act, or act of abuse or neglect described in subdivision (1) is not relevant to the person's present ability to care for a child, and that approval of the permanency plan is in the best interest of the child.

However, a court may not approve a permanency plan if the person has been convicted of a felony listed in IC 12-17.4-4-11 that is not specifically excluded under subdivision (1)(B), or has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult that is not specifically excluded under subdivision (1)(B).

(e) In making its written finding under subsection (d), the court shall consider the following:

- (1) The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect.**
- (2) The severity of the offense, delinquent act, or abuse or neglect.**
- (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.**

SECTION 24. IC 31-37-17-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6.1. (a) The predispositional report prepared by a probation officer or caseworker shall include the following information:

- (1) A description of all dispositional options considered in preparing the report.**
- (2) An evaluation of each of the options considered in relation to the plan of care, treatment, rehabilitation, or placement recommended under the guidelines described in section 4 of this chapter.**
- (3) The name, occupation and position, and any relationship to the child of each person with whom the preparer of the report**

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conferred as provided in section 1.1 of this chapter.

(b) If a probation officer or a caseworker is considering an out-of-home placement, including placement with a blood or an adoptive relative caretaker, the probation officer or caseworker must conduct a criminal history check for each person who:

- (1) is currently residing in the location designated as the out-of-home placement; or**
- (2) in the reasonable belief of the probation officer or caseworker, is expected to be residing in the location designated as the out-of-home placement during the time the child would be placed in the location.**

The results of the criminal history check must be included in the predispositional report.

(c) A probation officer or caseworker is not required to conduct a criminal history check under this section if:

- (1) the probation officer or caseworker is considering only an out-of-home placement to an entity or a facility that:**
 - (A) is not a residence (as defined in IC 3-5-2-42.5); or**
 - (B) is licensed by the state; or**
- (2) placement under this section is undetermined at the time the predispositional report is prepared.**

SECTION 25. IC 31-37-19-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. **Subject to section 6.5 of this chapter**, if a child is a delinquent child under IC 31-37-2, the juvenile court may enter one (1) or more of the following dispositional decrees:

- (1) Order supervision of the child by the probation department or the county office of family and children.
- (2) Order the child to receive outpatient treatment:
 - (A) at a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or
 - (B) from an individual practitioner.
- (3) Remove the child from the child's home and place the child in another home or shelter care facility. Placement under this subdivision includes authorization to control and discipline the child.
- (4) Award wardship to a person or shelter care facility. Wardship under this subdivision does not include the right to consent to the child's adoption.
- (5) Partially or completely emancipate the child under section 27 of this chapter.

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(6) Order:

(A) the child; or

(B) the child's parent, guardian, or custodian;

to receive family services.

(7) Order a person who is a party to refrain from direct or indirect contact with the child.

SECTION 26. IC 31-37-19-6, AS AMENDED BY P.L.1-2003, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) This section applies if a child is a delinquent child under IC 31-37-1.

(b) Except as provided in section 10 of this chapter **and subject to section 6.5 of this chapter**, the juvenile court may:

(1) enter any dispositional decree specified in section 5 of this chapter; and

(2) take any of the following actions:

(A) Award wardship to:

(i) the department of correction for housing in a correctional facility for children; or

(ii) a community based correctional facility for children.

Wardship under this subdivision does not include the right to consent to the child's adoption.

(B) If the child is less than seventeen (17) years of age, order confinement in a juvenile detention facility for not more than the lesser of:

(i) ninety (90) days; or

(ii) the maximum term of imprisonment that could have been imposed on the child if the child had been convicted as an adult offender for the act that the child committed under IC 31-37-1 (or IC 31-6-4-1(b)(1) before its repeal).

(C) If the child is at least seventeen (17) years of age, order confinement in a juvenile detention facility for not more than the lesser of:

(i) one hundred twenty (120) days; or

(ii) the maximum term of imprisonment that could have been imposed on the child if the child had been convicted as an adult offender for the act that the child committed under IC 31-37-1 (or IC 31-6-4-1(b)(1) before its repeal).

(D) Remove the child from the child's home and place the child in another home or shelter care facility. Placement under this subdivision includes authorization to control and discipline the child.

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(E) Award wardship to a person or shelter care facility. Wardship under this subdivision does not include the right to consent to the child's adoption.

(F) Place the child in a secure private facility for children licensed under the laws of a state. Placement under this subdivision includes authorization to control and discipline the child.

(G) Order a person who is a respondent in a proceeding under IC 31-37-16 (before its repeal) or IC 34-26-5 to refrain from direct or indirect contact with the child.

SECTION 27. IC 31-37-19-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 6.5. (a) Except as provided in subsection (c), the juvenile court may not enter a dispositional decree placing a child in another home under section 1(3) or 6(b)(2)(D) of this chapter or awarding wardship to the county office of family and children that results in a placement with a person under section 1(4) or 6(b)(2)(E) of this chapter if a person who is:**

(1) currently residing in the home in which the child would be placed under section 1(3), 1(4), 6(b)(2)(D), or 6(b)(2)(E) of this chapter; or

(2) reasonably expected to be residing in the home in which the child would be placed under section 1(3), 1(4), 6(b)(2)(D), or 6(b)(2)(E) of this chapter during the time the child would be placed in the home;

has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult, or has a conviction for a felony listed in IC 12-17.4-4-11.

(b) The juvenile court shall order the probation officer or caseworker who prepared the predispositional report to conduct a criminal history check to determine if a person described in subsection (a)(1) or (a)(2) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult, or has a conviction for a felony listed in IC 12-17.4-4-11. However, the juvenile court is not required to order a criminal history check under this section if criminal history information under IC 31-37-17-6.1 establishes whether a person described in subsection (a)(1) or (a)(2) has

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committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult, or has a conviction for a felony listed in IC 12-17.4-4-11.

(c) The juvenile court may enter a dispositional decree placing a child in another home under section 1(3) or 6(b)(2)(D) of this chapter or awarding wardship to the county office of family and children that results in a placement with a person under section 1(4) or 6(b)(2)(E) of this chapter if:

- (1) a person described in subsection (a)(1) or (a)(2) has:
 - (A) committed an act resulting in a substantiated report of child abuse or neglect; or
 - (B) been convicted or had a juvenile adjudication for:
 - (i) reckless homicide (IC 35-42-1-5);
 - (ii) battery (IC 35-42-2-1) as a Class C or D felony;
 - (iii) criminal confinement (IC 35-42-3-3) as a Class C or D felony;
 - (iv) arson (IC 35-43-1-1) as a Class C or D felony;
 - (v) a felony involving a weapon under IC 35-47 or IC 35-47.5 as a Class C or D felony;
 - (vi) a felony relating to controlled substances under IC 35-48-4 as a Class C or D felony; or
 - (vii) a felony that is substantially equivalent to a felony listed in items (i) through (vi) for which the conviction was entered in another state; and
- (2) the court makes a written finding that the person's commission of the offense, delinquent act, or act of abuse or neglect described in subdivision (1) is not relevant to the person's present ability to care for a child, and that entry of a dispositional decree placing the child in another home is in the best interest of the child.

However, a court may not enter a dispositional decree placing a child in another home under section 1(3) or 6(b)(2)(D) of this chapter or awarding wardship to the county office of family and children if the person has been convicted of a felony listed in IC 12-17.4-4-11 that is not specifically excluded under subdivision (1)(B), or has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult that is not specifically excluded under subdivision (1)(B).

(d) In making its written finding under subsection (c), the court shall consider the following:

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- (1) The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect.**
- (2) The severity of the offense, delinquent act, or abuse or neglect.**
- (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.**

SECTION 28. IC 31-37-19-17.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 17.4. (a) This section applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be a sex crime listed in IC 35-38-1-7.1(e).**

(b) The juvenile court may, in addition to any other order or decree the court makes under this chapter, order:

- (1) the child; and**
- (2) the child's parent or guardian;**

to receive psychological counseling as directed by the court.

SECTION 29. IC 31-39-2-13.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 13.5. The records of the juvenile court are available without a court order to an employee of the division of family and children, a caseworker, or a juvenile probation officer conducting a criminal history check under IC 12-14-25.5-3, IC 31-34, or IC 31-37 to determine the appropriateness of an out-of-home placement for a:**

- (1) child at imminent risk of placement;**
- (2) child in need of services; or**
- (3) delinquent child.**

SECTION 30. IC 34-30-2-44.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 44.1. IC 12-13-15.1-11 (Concerning members of the statewide child fatality review committee and persons who attend a meeting of the statewide child fatality review committee as invitees of the chairperson).**

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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