



January 29, 2010

SENATE BILL No. 149

DIGEST OF SB 149 (Updated January 27, 2010 2:33 pm - DI 106)

Citations Affected: IC 10-13; IC 29-3; IC 31-19; IC 31-27; IC 31-30; IC 31-33; IC 31-34; IC 31-35.

Synopsis: Department of child services. Removes the department of child services (DCS) from the entities to which a clerk of the court must forward a petition for adoption. Removes language regarding a child protection team being required to provide diagnostic and prognostic services for DCS or a juvenile court. Specifies how a child's death or near fatality may be determined to have been the result of abuse, abandonment, or neglect for purposes of certain records. Removes certain duties of the office of the secretary of family and social services regarding child welfare. Adds additional information required in certain petitions. Requires DCS to be notified of certain guardianship petitions and to be allowed to participate in a hearing on certain guardianship petitions. Permits a court to add conditions for a parent to terminate or modify a guardianship. Requires a court to notify DCS if certain petitions to terminate or modify a guardianship are filed. Removes the requirement that certain guardianship petitions be sent to the prosecuting attorney. Allows a juvenile court to request a probate court that retains jurisdiction over a guardianship to conduct additional proceedings. Provides that DCS may petition a court if a parent, guardian, or custodian refuses to allow a child to be interviewed. Prohibits the state police department from charging a fee for: (1) fingerprinting expenses related to criminal history checks conducted by the department; and (2) certain limited criminal history background checks conducted by the department. Requires juvenile courts or the department to pay the Federal Bureau of Investigation for costs of
(Continued next page)

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Effective: July 1, 2010.

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January 5, 2010, read first time and referred to Committee on Judiciary.
January 28, 2010, amended, reported favorably — Do Pass.

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Digest Continued

certain fingerprinting. Provides that if a juvenile court issues an order: (1) establishing or modifying a guardianship; (2) modifying child custody or visitation; or (3) creating or modifying the establishment of paternity; the court in which the original action was filed, or an appropriate court, shall assume primary jurisdiction and shall conduct additional proceedings. Makes a technical correction. Adds child caring institutions, group homes, private secure facilities and child placing agencies to the list of entities that may submit a report of suspected child abuse or neglect and then later receive a report from DCS regarding the investigation of the report. Reduces the time for when a prosecutor or DCS attorney must inform parties of the intent to have child testimony outside the courtroom. Makes other changes.

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January 29, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 149

A BILL FOR 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:

1 SECTION 1. IC 10-13-3-27.5, AS AMENDED BY P.L.138-2007,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2010]: Sec. 27.5. (a) If:
4 (1) exigent circumstances require the emergency placement of a
5 child; and
6 (2) the department will be unable to obtain criminal history
7 information from the Interstate Identification Index before the
8 emergency placement is scheduled to occur;
9 upon request of the department of child services established by
10 IC 31-25-1-1, a caseworker, or a juvenile probation officer, the
11 department may conduct a national name based criminal history record
12 check of each individual who is at least eighteen (18) years of age and
13 who is currently residing in the location designated as the out-of-home
14 placement at the time the child will reside in the location. The
15 department shall promptly transmit a copy of the report it receives from

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1 the Interstate Identification Index to the agency or person that
2 submitted a request under this section.

3 (b) Not later than seventy-two (72) hours after the department of
4 child services, the caseworker, or the juvenile probation officer
5 receives the results of the national name based criminal history record
6 check, the department of child services, the caseworker, or the juvenile
7 probation officer shall provide the department with a complete set of
8 fingerprints for each individual who is at least eighteen (18) years of
9 age and who is currently residing in the location designated as the
10 out-of-home placement at the time the child will be placed in the
11 location. The department shall:

12 (1) use fingerprint identification to positively identify each
13 individual whose fingerprints are provided to the department
14 under this subsection; or

15 (2) submit the fingerprints to the Federal Bureau of Investigation
16 not later than fifteen (15) calendar days after the date on which
17 the national name based criminal history record check was
18 conducted.

19 The child shall be removed from the location designated as the
20 out-of-home placement if an individual who is at least eighteen (18)
21 years of age and who is currently residing in the location designated as
22 the out-of-home placement at the time the child will reside in the
23 location fails to provide a complete set of fingerprints to the department
24 of child services, the caseworker, or the juvenile probation officer.

25 (c) The department and the person or agency that provided
26 fingerprints shall comply with all requirements of 42 U.S.C. 5119a and
27 any other applicable federal law or regulation regarding:

28 (1) notification to the subject of the check; and
29 (2) the use of the results obtained based on the check of the
30 person's fingerprints.

31 (d) If an out-of-home placement is denied as the result of a national
32 name based criminal history record check, an individual who is the
33 subject of the name based criminal history record check may contest
34 the denial by submitting to the department of child services, the
35 caseworker, or the juvenile probation officer:

36 (1) a complete set of the individual's fingerprints; and
37 (2) written authorization permitting the department of child
38 services, the caseworker, or the juvenile probation officer to
39 forward the fingerprints to the department for submission to the
40 Federal Bureau of Investigation;

41 not later than five (5) days after the out-of-home placement is denied.

42 (e) The

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1 (1) department and
 2 (2) Federal Bureau of Investigation
 3 may charge a reasonable fee for processing a national name based
 4 criminal history record check. The department shall adopt rules under
 5 IC 4-22-2 to establish a reasonable fee for processing a national name
 6 based criminal history record check and for collecting fees owed under
 7 this subsection.

8 (f) The:
 9 (1) department of child services, for an out-of-home placement
 10 arranged by a caseworker or the department of child services; or
 11 (2) juvenile court, for an out-of-home placement ordered by the
 12 juvenile court;

13 shall pay the fee described in subsection (e), arrange for fingerprinting,
 14 and pay the **Federal Bureau of Investigation for the** costs of
 15 fingerprinting, if any.

16 **(g) The department may not charge a fee for responding to a**
 17 **request for a fingerprint based national criminal history**
 18 **background check made by the department of child services under**
 19 **this section.**

20 SECTION 2. IC 10-13-3-39, AS AMENDED BY P.L.3-2008,
 21 SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2010]: Sec. 39. (a) The department is designated as the
 23 authorized agency to receive requests for, process, and disseminate the
 24 results of national criminal history background checks that comply with
 25 this section and 42 U.S.C. 5119a.

26 (b) A qualified entity may contact the department to request a
 27 national criminal history background check on any of the following
 28 persons:

29 (1) A person who seeks to be or is employed with the qualified
 30 entity. A request under this subdivision must be made not later
 31 than three (3) months after the person is initially employed by the
 32 qualified entity.

33 (2) A person who seeks to volunteer or is a volunteer with the
 34 qualified entity. A request under this subdivision must be made
 35 not later than three (3) months after the person initially volunteers
 36 with the qualified entity.

37 (3) A person for whom a national criminal history background
 38 check is required under any law relating to the licensing of a
 39 home, center, or other facility for purposes of day care or
 40 residential care of children.

41 (4) A person for whom a national criminal history background
 42 check is required for purposes of placement of a child in a foster

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1 family home, a prospective adoptive home, or the home of a
 2 relative or other caretaker, or for purposes of a report concerning
 3 an adoption as required by IC 31-19-8.

4 (c) A qualified entity must submit a request under subsection (b) in
 5 the form required by the department and provide a set of the person's
 6 fingerprints and any required fees with the request. **The department**
 7 **may not charge a fee for responding to a request for a national**
 8 **criminal history background check made by the department of**
 9 **child services if the request is made as a part of a background**
 10 **investigation of an applicant for purposes of placement of a child**
 11 **in a foster family home, a prospective adoptive home, or the home**
 12 **of a relative or other caretaker.**

13 (d) If a qualified entity makes a request in conformity with
 14 subsection (b), the department shall submit the set of fingerprints
 15 provided with the request to the Federal Bureau of Investigation for a
 16 national criminal history background check. The department shall
 17 respond to the request in conformity with:

- 18 (1) the requirements of 42 U.S.C. 5119a; and
- 19 (2) the regulations prescribed by the Attorney General of the
 20 United States under 42 U.S.C. 5119a.

21 (e) Subsection (f):

- 22 (1) applies to a qualified entity that:
 - 23 (A) is not a school corporation or a special education
 24 cooperative; or
 - 25 (B) is a school corporation or a special education cooperative
 26 and seeks a national criminal history background check for a
 27 volunteer; and
- 28 (2) does not apply to a qualified entity that is a:
 - 29 (A) home health agency licensed under IC 16-27-1; or
 - 30 (B) personal services agency licensed under IC 16-27-4.

31 (f) After receiving the results of a national criminal history
 32 background check from the Federal Bureau of Investigation, the
 33 department shall make a determination whether the person who is the
 34 subject of a request has been convicted of:

- 35 (1) an offense described in IC 20-26-5-11;
- 36 (2) in the case of a foster family home, an offense described in
 37 IC 31-27-4-13(a);
- 38 (3) in the case of a prospective adoptive home, an offense
 39 described in IC 31-19-11-1(c);
- 40 (4) any other felony; or
- 41 (5) any misdemeanor;

42 and convey the determination to the requesting qualified entity.

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- 1 (g) This subsection applies to a qualified entity that:
 2 (1) is a school corporation or a special education cooperative; and
 3 (2) seeks a national criminal history background check to
 4 determine whether to employ or continue the employment of a
 5 certificated employee or a noncertificated employee of a school
 6 corporation or an equivalent position with a special education
 7 cooperative.

8 After receiving the results of a national criminal history background
 9 check from the Federal Bureau of Investigation, the department may
 10 exchange identification records concerning convictions for offenses
 11 described in IC 20-26-5-11 with the school corporation or special
 12 education cooperative solely for purposes of making an employment
 13 determination. The exchange may be made only for the official use of
 14 the officials with authority to make the employment determination. The
 15 exchange is subject to the restrictions on dissemination imposed under
 16 P.L.92-544, (86 Stat. 1115) (1972).

17 (h) This subsection applies to a qualified entity (as defined in
 18 IC 10-13-3-16) that is a public agency under IC 5-14-1.5-2(a)(1). After
 19 receiving the results of a national criminal history background check
 20 from the Federal Bureau of Investigation, the department shall provide
 21 a copy to the public agency. Except as permitted by federal law, the
 22 public agency may not share the information contained in the national
 23 criminal history background check with a private agency.

- 24 (i) This subsection applies to a qualified entity that is a:
 25 (1) home health agency licensed under IC 16-27-1; or
 26 (2) personal services agency licensed under IC 16-27-4.

27 After receiving the results of a national criminal history background
 28 check from the Federal Bureau of Investigation, the department shall
 29 make a determination whether the applicant has been convicted of an
 30 offense described in IC 16-27-2-5(a) and convey the determination to
 31 the requesting qualified entity.

32 SECTION 3. IC 29-3-5-1 IS AMENDED TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Any person may file a petition
 34 for the appointment of a person to serve as guardian for an
 35 incapacitated person or minor under this chapter or to have a protective
 36 order issued under IC 29-3-4. The petition must state the following:

- 37 (1) The name, age, residence, and post office address of the
 38 alleged incapacitated person or minor for whom the guardian is
 39 sought to be appointed.
 40 (2) The nature of the incapacity.
 41 (3) The approximate value and description of the property of the
 42 incapacitated person or minor, including any compensation,

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- 1 pension, insurance, or allowance to which the incapacitated
- 2 person or minor may be entitled.
- 3 (4) If a limited guardianship is sought, the particular limitations
- 4 requested.
- 5 (5) Whether a guardian has been appointed or is acting for the
- 6 incapacitated person or minor in any state.
- 7 (6) The residence and post office address of the proposed
- 8 guardian and the proposed guardian's relationship to the alleged
- 9 incapacitated person.
- 10 (7) The names and addresses, as far as known or as can
- 11 reasonably be ascertained, of the persons most closely related by
- 12 blood or marriage to the person for whom the guardian is sought
- 13 to be appointed.
- 14 (8) The name and address of the person or institution having the
- 15 care and custody of the person for whom the guardian is sought
- 16 to be appointed.
- 17 (9) The names and addresses of any other incapacitated persons
- 18 or minors for whom the proposed guardian is acting if the
- 19 proposed guardian is an individual.
- 20 (10) The reasons the appointment of a guardian is sought and the
- 21 interest of the petitioner in the appointment.
- 22 (11) The name and business address of the attorney who is to
- 23 represent the guardian.
- 24 **(12) A statement whether a child in need of services petition**
- 25 **or a program of informal adjustment has been filed regarding**
- 26 **the minor for whom a guardianship is sought, and, if so,**
- 27 **whether the case is open at the time the guardianship petition**
- 28 **is filed.**
- 29 (b) Notice of a petition under this section for the appointment of a
- 30 guardian and the hearing on the petition shall be given under IC 29-3-6.
- 31 (c) After the filing of a petition, the court shall set a date for hearing
- 32 on the issues raised by the petition. Unless an alleged incapacitated
- 33 person is already represented by counsel, the court may appoint an
- 34 attorney to represent the incapacitated person.
- 35 (d) A person alleged to be an incapacitated person must be present
- 36 at the hearing on the issues raised by the petition and any response to
- 37 the petition unless the court determines by evidence that:
- 38 (1) it is impossible or impractical for the alleged incapacitated
- 39 person to be present due to the alleged incapacitated person's
- 40 disappearance, absence from the state, or similar circumstance;
- 41 (2) it is not in the alleged incapacitated person's best interest to be
- 42 present because of a threat to the health or safety of the alleged

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1 incapacitated person as determined by the court;

2 (3) the incapacitated person has knowingly and voluntarily
3 consented to the appointment of a guardian or the issuance of a
4 protective order and at the time of such consent the incapacitated
5 person was not incapacitated as a result of a mental condition that
6 would prevent that person from knowingly and voluntarily
7 consenting; or

8 (4) the incapacitated person has knowingly and voluntarily
9 waived notice of the hearing and at the time of such waiver the
10 incapacitated person was not incapacitated as a result of a mental
11 condition that would prevent that person from making a knowing
12 and voluntary waiver of notice.

13 (e) A person alleged to be an incapacitated person may present
14 evidence and cross-examine witnesses at the hearing. The issues raised
15 by the petition and any response to the petition shall be determined by
16 a jury if a jury is requested no later than seventy-two (72) hours prior
17 to the original date and time set for the hearing on the petition.
18 However, in no event may a request for a jury trial be made after thirty
19 (30) days have passed following the service of notice of a petition.

20 (f) Any person may apply for permission to participate in the
21 proceeding, and the court may grant the request with or without hearing
22 upon determining that the best interest of the alleged incapacitated
23 person or minor will be served by permitting the applicant's
24 participation. The court may attach appropriate conditions to the
25 permission to participate.

26 **(g) The department shall be notified and be allowed to**
27 **participate in a hearing under this section if there:**

28 **(1) has been a child in need of services case filed; or**

29 **(2) is a program of informal adjustment pending;**

30 **involving the alleged incapacitated person or minor.**

31 SECTION 4. IC 29-3-8-9 IS ADDED TO THE INDIANA CODE
32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
33 1, 2010]: **Sec. 9. (a) A probate or juvenile court may include in its**
34 **order creating a guardianship of a minor the following**
35 **requirements:**

36 **(1) That the minor must reside with the guardian until the**
37 **guardianship is terminated or modified.**

38 **(2) Any terms and conditions that a parent must meet in order**
39 **to seek modification or termination of the guardianship.**

40 **(b) Except as provided in IC 29-3-12, if an order creating a**
41 **guardianship contains conditions described in subsection (a)(2), the**
42 **court may modify or terminate the guardianship only if the parent:**

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1 (1) complies with the terms and conditions; and
 2 (2) proves the parent's current fitness to assume all parental
 3 obligations by clear and convincing evidence.
 4 (c) If:
 5 (1) a petition is filed for modification, resignation, or removal
 6 of the guardian or termination of the guardianship before the
 7 terms and conditions described in subsection (a)(2) are
 8 proven; and
 9 (2) the child:
 10 (A) was the subject of a petition alleging the child to be a
 11 child in need of services; or
 12 (B) is in a program of informal adjustment;
 13 the petition shall be referred to the department of child services to
 14 determine placement of the child in accordance with the best
 15 interests of the child.
 16 (d) A court shall notify the department if:
 17 (1) a guardianship is created concerning a child who is subject
 18 to a:
 19 (A) petition alleging the child to be a child in need of
 20 services; or
 21 (B) program of informal adjustment; and
 22 (2) at least one (1) of the following petitions is filed:
 23 (A) A petition to modify or terminate the guardianship.
 24 (B) Any petitions regarding the:
 25 (i) death;
 26 (ii) resignation; or
 27 (iii) removal;
 28 of the guardian and any related hearings.
 29 (e) At a hearing regarding a petition filed under this section and
 30 if the child was the subject of a petition alleging the child to be a
 31 child in need of services or is in a program of informal adjustment,
 32 the court shall:
 33 (1) consider the position of the department; and
 34 (2) if requested by the department, allow the department to
 35 present evidence regarding:
 36 (A) whether the guardianship should be modified or
 37 terminated;
 38 (B) the fitness of the parent to provide for the care and
 39 supervision of the minor at the time of the hearing;
 40 (C) the appropriate care and placement of the child; and
 41 (D) the best interests of the child.
 42 SECTION 5. IC 31-19-2-12, AS AMENDED BY P.L.131-2009,

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1 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2010]: Sec. 12. As soon as a petition for adoption is found to
3 be in proper form, the clerk of the court shall forward one (1) copy of
4 the petition for adoption to

5 ~~(1)~~ a licensed child placing agency as described in IC 31-19-7-1,
6 with preference to be given to the agency, if any, sponsoring the
7 adoption, as shown by the petition for adoption. ~~and~~

8 ~~(2) the department.~~

9 SECTION 6. IC 31-19-9-14 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14. **Except as**
11 **provided in section 17(b) of this chapter**, a putative father whose
12 consent to adoption of a child is implied under this chapter or
13 IC 31-19-5-18 is not entitled to establish paternity under IC 31-14.

14 SECTION 7. IC 31-27-4-5, AS AMENDED BY P.L.138-2007,
15 SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2010]: Sec. 5. (a) An applicant must apply for a foster family
17 home license on forms provided by the department.

18 (b) An applicant must submit the required information as part of the
19 application.

20 (c) An applicant must submit with the application a statement
21 attesting the following:

22 (1) ~~That Whether~~ the applicant has ~~not~~ been convicted of:
23 (A) a felony; or
24 (B) a misdemeanor relating to the health and safety of
25 children.

26 (2) ~~That Whether~~ the applicant has ~~not~~ been charged with:
27 (A) a felony; or
28 (B) a misdemeanor relating to the health and safety of
29 children;

30 during the pendency of the application.

31 (d) An applicant shall submit the necessary information, forms, or
32 consents for the department to conduct a criminal history check for
33 each individual who is an applicant.

34 (e) The department or, at the discretion of the department, an
35 applicant, shall conduct a criminal history check of:

36 (1) the applicant's employees and volunteers who have or will
37 have direct contact, on a regular and continuing basis, with
38 children who are or will be under the direct supervision of the
39 applicant; and

40 (2) all household members who are at least fourteen (14) years of
41 age.

42 (f) If the applicant conducts criminal history checks under

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1 subsection (e), the applicant shall maintain records of the information
2 received concerning each individual subject of a criminal history
3 check.

4 (g) If the department conducts a criminal history check on behalf of
5 an applicant under subsection (e), the department shall:

6 (1) make a determination whether the subject of a national
7 fingerprint based criminal history check has a record of a
8 conviction for:

9 (A) a felony; or

10 (B) a misdemeanor relating to the health and safety of a child;

11 (2) notify the applicant of the determination under subdivision (1)
12 without identifying a specific offense or other identifying
13 information concerning a conviction contained in the national
14 criminal history record information;

15 (3) submit to the applicant a copy of any state limited criminal
16 history report that the department receives on behalf of any person
17 described in subsection (e); and

18 (4) maintain a record of every report and all information the
19 department receives concerning a person described in subsection
20 (e).

21 (h) Except as provided in subsection (i), a criminal history check
22 described in subsection (e) is required only at the time an application
23 for a new license or the renewal of an existing license is submitted.

24 (i) With the exception of a fingerprint based criminal history
25 background check under IC 31-9-2-22.5(1)(B) for a person described
26 in subsection (e)(1), a criminal history check concerning a person
27 described in subsection (e) must be completed on or before the date on
28 which the subject of the check is first employed or assigned as a
29 volunteer in a position described in subsection (e)(1) or first becomes
30 a resident of the applicant's household as described in subsection
31 (e)(2). A fingerprint based criminal history background check under
32 IC 31-9-2-22.5(1)(B) for a person described in subsection (e)(1) must
33 be completed not later than the conclusion of the first ninety (90) days
34 of employment in or assignment of a volunteer. However, if a person
35 described in this subsection has been the subject of a criminal history
36 check that was conducted not more than one (1) year before the date
37 the license application is submitted to the department, a new criminal
38 history check of that person is not required.

39 (j) An applicant or a licensee described in subsection (e)(1) may
40 provisionally employ an individual or assign a volunteer for whom a
41 criminal history check is required during the period after the process of
42 requesting fingerprint based criminal history background check

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1 information has been initiated by or on behalf of the applicant or
 2 licensee but before the determination is obtained by or communicated
 3 to the applicant or licensee. If the determination is not received by not
 4 later than ninety (90) days after the effective date of hire or volunteer
 5 assignment, the employee or volunteer relationship must be terminated
 6 or suspended until a determination is received. An employee or
 7 volunteer whose determination has not yet been received may not have
 8 direct contact with a child who is or will be placed at a facility operated
 9 by the applicant or licensee unless the direct contact occurs only in the
 10 presence of a volunteer or employee of the applicant or licensee who
 11 has been the subject of a completed and approved criminal history
 12 check. In determining whether to provisionally hire or assign as a
 13 volunteer an individual described in subsection (e)(1), the applicant or
 14 licensee shall consider the following:

- 15 (1) The training time required by an employee or a volunteer.
- 16 (2) The safety and security of the children under the supervision
- 17 of the applicant or licensee.
- 18 (3) The safety and security of the other staff and volunteers
- 19 working under the supervision of the applicant or licensee.
- 20 (4) The staffing concerns of the applicant or licensee.
- 21 (5) Any other factor relating to the safety and security of the
- 22 applicant's or licensee's operations.

23 (k) The department shall, at the applicant's request, inform the
 24 applicant whether the department has or does not have a record of the
 25 person who is the subject of a criminal history background check and
 26 if the department has identified the person as an alleged perpetrator of
 27 abuse or neglect. The department may not provide to the applicant any
 28 details or personally identifying information contained in any child
 29 protective investigation report.

30 (l) A person who is the subject of a criminal history check
 31 conducted in accordance with this section may request the state police
 32 department to provide the person with a copy of any state or national
 33 criminal history report concerning the person.

34 SECTION 8. IC 31-30-1-6, AS AMENDED BY P.L.145-2006,
 35 SECTION 275, IS AMENDED TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) Subject to subsections (b) and
 37 (c), this article does not prohibit a probate court from exercising its
 38 jurisdiction over guardianship of a person who is less than eighteen
 39 (18) years of age.

40 (b) If allegations in the petition for guardianship or allegations
 41 produced at guardianship proceedings indicate that the person for
 42 whom the guardianship is requested meets the definition of a child in

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1 need of services under IC 31-34-1, the probate court on its own motion
2 or at the request of a party shall:

3 (1) send the petition for guardianship or the record of
4 guardianship proceedings, or both, to ~~the prosecuting attorney or~~
5 the attorney for the department of child services; and

6 (2) direct the ~~prosecuting attorney or the~~ attorney for the
7 department of child services to initiate an investigation and
8 proceedings in the juvenile court to determine whether the person
9 for whom the guardianship is requested is a child in need of
10 services.

11 (c) The probate court retains jurisdiction over the matter until the
12 juvenile court authorizes the filing of a petition under IC 31-34-9.

13 **(d) If a juvenile court issues an order establishing or modifying**
14 **a guardianship over a minor:**

15 **(1) the probate court that retains jurisdiction over the case; or**

16 **(2) an appropriate court in that county;**

17 **shall conduct additional proceedings if the juvenile court requests**
18 **the additional proceedings.**

19 SECTION 9. IC 31-30-1-12 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 12. (a) Subject to
21 subsection (b), a court having jurisdiction under IC 31-17-2 of a child
22 custody proceeding in a marriage dissolution has concurrent original
23 jurisdiction with the juvenile court for the purpose of modifying
24 custody of a child who is under the jurisdiction of the juvenile court
25 because:

26 (1) the child is the subject of a child in need of services
27 proceeding;

28 (2) the child is the subject of a juvenile delinquency proceeding
29 that does not involve an act described under IC 31-37-1-2; or

30 (3) the child is the subject of a paternity proceeding.

31 (b) Whenever the court having child custody jurisdiction under
32 IC 31-17-2 in a marriage dissolution modifies child custody as
33 provided by this section, the modification is effective only when the
34 juvenile court:

35 (1) enters an order approving the child custody modification; or

36 (2) terminates the child in need of services proceeding, the
37 juvenile delinquency proceeding, or the paternity proceeding.

38 **(c) If a juvenile court issues an order modifying child custody or**
39 **visitation under this section, the court in which the original action**
40 **was filed shall reassume primary jurisdiction and shall conduct**
41 **any additional proceeding after the order was transmitted to the**
42 **court in which the original action was filed.**

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1 SECTION 10. IC 31-30-1-13 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 13. (a) Subject to
3 subsection (b), a court having jurisdiction under IC 31-14 of a child
4 custody proceeding in a paternity proceeding has concurrent original
5 jurisdiction with another juvenile court for the purpose of modifying
6 custody of a child who is under the jurisdiction of the other juvenile
7 court because:

- 8 (1) the child is the subject of a child in need of services
9 proceeding; or
10 (2) the child is the subject of a juvenile delinquency proceeding
11 that does not involve an act described under IC 31-37-1-2.

12 (b) Whenever the court having child custody jurisdiction under
13 IC 31-14 in a paternity proceeding modifies child custody as provided
14 by this section, the modification is effective only when the juvenile
15 court with jurisdiction over the child in need of services proceeding or
16 juvenile delinquency proceeding:

- 17 (1) enters an order approving the child custody modification; or
18 (2) terminates the child in need of services proceeding or the
19 juvenile delinquency proceeding.

20 **(c) If a juvenile court issues an order creating or modifying the**
21 **establishment of paternity under this section:**

- 22 **(1) the court in which the original action was filed; or**
23 **(2) an appropriate court in that county;**

24 **shall reassume primary jurisdiction and shall conduct any**
25 **additional proceeding after the order is transmitted to the court in**
26 **which the original action was filed.**

27 **(d) If no paternity action was pending when the juvenile court**
28 **determined paternity, an appropriate court in that county shall**
29 **accept the case and conduct additional proceedings if necessary.**

30 SECTION 11. IC 31-33-3-5, AS AMENDED BY P.L.234-2005,
31 SECTION 104, IS AMENDED TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 2010]: Sec. 5. The community child protection
33 team

- 34 ~~(1) shall provide diagnostic and prognostic services for the~~
35 ~~department or the juvenile court; and~~
36 ~~(2) may recommend to the department that a petition be filed in~~
37 ~~the juvenile court on behalf of the subject child if the team~~
38 ~~believes this would best serve the interests of the child.~~

39 SECTION 12. IC 31-33-7-8, AS AMENDED BY P.L.131-2009,
40 SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2010]: Sec. 8. (a) This section applies if the department
42 receives a report of suspected child abuse or neglect from:

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- 1 (1) a hospital;
- 2 (2) a community mental health center;
- 3 (3) a managed care provider (as defined in IC 12-7-2-127(b));
- 4 (4) a referring physician;
- 5 (5) a dentist;
- 6 (6) a licensed psychologist; or
- 7 (7) a school;
- 8 **(8) a child caring institution licensed under IC 31-27;**
- 9 **(9) a group home licensed under IC 31-27 or IC 12-28-4;**
- 10 **(10) a private secure facility; or**
- 11 **(11) a child placing agency.**
- 12 (b) Not later than thirty (30) days after the date the department
- 13 receives a report of suspected child abuse or neglect from a person
- 14 described in subsection (a), the department shall send a report to:
- 15 (1) the administrator of the hospital;
- 16 (2) the community mental health center;
- 17 (3) the managed care provider;
- 18 (4) the referring physician;
- 19 (5) the dentist; or
- 20 (6) the principal of the school;
- 21 **(7) the licensed psychologist;**
- 22 **(8) the child caring institution;**
- 23 **(9) the group home;**
- 24 **(10) the private secure facility; or**
- 25 **(11) the child placing agency.**
- 26 The report must contain the items listed in subsection (e) that are
- 27 known at the time the report is sent.
- 28 (c) Not later than ninety (90) days after the date the department
- 29 receives a report of suspected child abuse or neglect, the department
- 30 shall send a report that contains any additional items listed in
- 31 subsection (e) that were not covered in the prior report if available.
- 32 (d) The administrator, director, referring physician, dentist, licensed
- 33 psychologist, or principal may appoint a designee to receive the report.
- 34 (e) A report made by the department under this section must contain
- 35 the following information:
- 36 (1) The name of the alleged victim of child abuse or neglect.
- 37 (2) The name of the alleged perpetrator and the alleged
- 38 perpetrator's relationship to the alleged victim.
- 39 (3) Whether the case is closed.
- 40 (4) Whether information concerning the case has been expunged.
- 41 (5) The name of any agency to which the alleged victim has been
- 42 referred.

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- 1 (6) Whether the department has made an assessment of the case
- 2 and has not taken any further action.
- 3 (7) Whether a substantiated case of child abuse or neglect was
- 4 informally adjusted.
- 5 (8) Whether the alleged victim was referred to the juvenile court
- 6 as a child in need of services.
- 7 (9) Whether the alleged victim was returned to the victim's home.
- 8 (10) Whether the alleged victim was placed in residential care
- 9 outside the victim's home.
- 10 (11) Whether a wardship was established for the alleged victim.
- 11 (12) Whether criminal action is pending or has been brought
- 12 against the alleged perpetrator.
- 13 (13) A brief description of any casework plan that has been
- 14 developed by the department.
- 15 (14) The caseworker's name and telephone number.
- 16 (15) The date the report is prepared.
- 17 (16) Other information that the department may prescribe.
- 18 (f) A report made under this section:
- 19 (1) is confidential; and
- 20 (2) may be made available only to:
- 21 (A) the agencies named in this section; and
- 22 (B) the persons and agencies listed in IC 31-33-18-2.
- 23 SECTION 13. IC 31-33-8-7, AS AMENDED BY P.L.131-2009,
- 24 SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 25 JULY 1, 2010]: Sec. 7. (a) The department's assessment, to the extent
- 26 that is reasonably possible, must include the following:
- 27 (1) The nature, extent, and cause of the known or suspected child
- 28 abuse or neglect.
- 29 (2) The identity of the person allegedly responsible for the child
- 30 abuse or neglect.
- 31 (3) The names and conditions of other children in the home.
- 32 (4) An evaluation of the parent, guardian, custodian, or person
- 33 responsible for the care of the child.
- 34 (5) The home environment and the relationship of the child to the
- 35 parent, guardian, or custodian or other persons responsible for the
- 36 child's care.
- 37 (6) All other data considered pertinent.
- 38 (b) The assessment may include the following:
- 39 (1) A visit to the child's home.
- 40 (2) An interview with the subject child.
- 41 (3) A physical, psychological, or psychiatric examination of any
- 42 child in the home.

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- (c) If:
 - (1) admission to the home, the school, or any other place that 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 examination;

under subsection (b) cannot be obtained, the juvenile court, upon good cause shown, shall follow the procedures under IC 31-32-12.

(d) If a custodial parent, guardian, or custodian refuses to allow the department to interview a child after the family case manager has attempted to obtain parental consent to interview the child, the department may petition a court to order the parent, guardian, or custodian to make the child available to be interviewed by the family case manager. The court may, after giving notice to the parent, guardian, or custodian, authorize the child to be interviewed without a parent, guardian, or custodian present for the interview. If the court finds that the department has made reasonable efforts to obtain parental consent to interview the child, the court shall specify in the order the efforts the department made to obtain parental consent and shall grant the motion to interview the child, either with or without the parent, guardian, or custodian being present.

SECTION 14. IC 31-33-18-1.5, AS AMENDED BY P.L.182-2009(ss), SECTION 379, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. (a) This section applies to records held by:

- ~~(1) the division of family resources;~~
- ~~(2) (1) a county office;~~
- ~~(3) (2) the department;~~
- ~~(4) (3) a local child fatality review team established under IC 31-33-24;~~
- ~~(5) (4) the statewide child fatality review committee established under IC 31-33-25; or~~
- ~~(6) (5) the department of child services ombudsman established by IC 4-13-19-3;~~

regarding a child whose death or near fatality may have been the result of abuse, abandonment, or neglect.

(b) For purposes of subsection (a), a child's death or near fatality may have been the result of abuse, abandonment, or neglect if:

- (1) an entity described in subsection (a) determines that the child's death or near fatality is the result of abuse, abandonment, or neglect; or

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- 1 (2) a prosecuting attorney files:
- 2 (A) an indictment or information; or
- 3 (B) a complaint alleging the commission of a delinquent act;
- 4 that, if proven, would cause a reasonable person to believe that
- 5 the child's death or near fatality may have been the result of
- 6 abuse, abandonment, or neglect.

7 Upon the request of any person, or upon its own motion, the court
 8 exercising juvenile jurisdiction in the county in which the child's death
 9 or near fatality occurred shall determine whether the allegations
 10 contained in the indictment, information, or complaint described in
 11 subdivision (2), if proven, would cause a reasonable person to believe
 12 that the child's death or near fatality may have been the result of abuse,
 13 abandonment, or neglect.

14 **(c) If the juvenile court finds that the conditions of subsection**
 15 **(b)(2)(B) are met, the court shall make written findings and**
 16 **provide a copy of the findings and the indictment, information, or**
 17 **complaint to the department.**

18 ~~(c)~~ (d) As used in this section:

- 19 (1) "case" means:
- 20 (A) any intake report generated by the department;
- 21 (B) any investigation or assessment conducted by the
- 22 department; or
- 23 (C) ongoing involvement between the department and a
- 24 child or family that is the result of:
- 25 (i) a program of informal adjustment;
- 26 (ii) a child in need of services action; or
- 27 (iii) a service referral agreement;
- 28 that has not been expunged as required by another law or
- 29 by a court at the time and date when the department is
- 30 notified of a fatality or near fatality;

- 31 (2) "contact" means in person communication with a family
- 32 case manager in a case in which:
- 33 (A) the child who is the victim of a fatality or near fatality
- 34 is alleged to be a victim; or
- 35 (B) the perpetrator of the fatality or near fatality is alleged
- 36 to be the perpetrator;

- 37 ~~(3)~~ (3) "identifying information" means information that identifies
- 38 an individual, including an individual's:
- 39 (A) name, address, date of birth, occupation, place of
- 40 employment, and telephone number;
- 41 (B) employer identification number, mother's maiden name,
- 42 Social Security number, or any identification number issued by

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1 a governmental entity;
 2 (C) unique biometric data, including the individual's
 3 fingerprint, voice print, or retina or iris image;
 4 (D) unique electronic identification number, address, or
 5 routing code;
 6 (E) telecommunication identifying information; or
 7 (F) telecommunication access device, including a card, a plate,
 8 a code, an account number, a personal identification number,
 9 an electronic serial number, a mobile identification number, or
 10 another telecommunications service or device or means of
 11 account access; and
 12 ~~(2)~~ (4) "near fatality" has the meaning set forth in 42 U.S.C.
 13 5106a.
 14 ~~(d)~~ (e) Unless information in a record is otherwise confidential
 15 under state or federal law, a record described in subsection (a) that has
 16 been redacted in accordance with this section is not confidential and
 17 may be disclosed to any person who requests the record. The person
 18 requesting the record may be required to pay the reasonable expenses
 19 of copying the record.
 20 ~~(e)~~ (f) When a person requests a record described in subsection (a),
 21 the entity having control of the record shall immediately transmit a
 22 copy of the record to the court exercising juvenile jurisdiction in the
 23 county in which the death or near fatality of the child occurred.
 24 However, if the court requests that the entity having control of a record
 25 transmit the original record, the entity shall transmit the original record.
 26 ~~(f)~~ (g) Upon receipt of the record described in subsection (a), the
 27 court shall, within thirty (30) days, redact the record to exclude:
 28 (1) identifying information described in subsection ~~(c)(1)(B)~~
 29 ~~(c)(3)(B)~~ through ~~(c)(1)(F)~~ (c)(3)(F) of a person; and
 30 (2) all identifying information of a child less than eighteen (18)
 31 years of age.
 32 ~~(g)~~ (h) The court shall disclose the record redacted in accordance
 33 with subsection ~~(f)~~ (g) to any person who requests the record, if the
 34 person has paid:
 35 (1) to the entity having control of the record, the reasonable
 36 expenses of copying under IC 5-14-3-8; and
 37 (2) to the court, the reasonable expenses of copying the record.
 38 ~~(h)~~ (i) The data and information in a record disclosed under this
 39 section must include the following:
 40 (1) A summary of the report of abuse or neglect and a factual
 41 description of the contents of the report.
 42 (2) The date of birth and gender of the child.

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(3) The cause of the fatality or near fatality, if the cause has been determined.

(4) Whether the department ~~or the office of the secretary of family and social services~~ had any contact with the child or ~~a member of the child's family or household~~ **the perpetrator** before the fatality or near fatality, and, if the department ~~or the office of the secretary of family and social services~~ had contact, the following:

(A) The frequency of the contact or communication with the child or ~~a member of the child's family or household~~ **the perpetrator** before the fatality or near fatality and the date on which the last contact or communication occurred before the fatality or near fatality.

(B) A summary of the status of the child's case at the time of the fatality or near fatality, including:

(i) whether the child's case was closed by the department ~~or the office of the secretary of family and social services~~ before the fatality or near fatality; and

(ii) if the child's case was closed as described under item (i), the **date of closure and the** reasons that the case was closed.

~~(f)~~ **(j)** The court's determination under subsection ~~(f)~~ **(g)** that certain identifying information or other information is not relevant to establishing the facts and circumstances leading to the death or near fatality of a child is not admissible in a criminal proceeding or civil action.

SECTION 15. IC 31-34-21-7.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7.7. **(a)** If the juvenile court approves a permanency plan under section 7 of this chapter that provides for the appointment of a guardian for a child, the juvenile court may appoint a guardian of the person and administer a guardianship for the child under IC 29-3.

(b) If a guardianship of the person proceeding for the child is pending in a probate court, the probate court shall transfer the proceeding to the juvenile court.

(c) In creating a guardianship of a minor, a probate or juvenile court may include in an order the requirements set forth in IC 29-3-8-9.

SECTION 16. IC 31-35-5-4, AS AMENDED BY P.L.145-2006, SECTION 334, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. The court may not make an order under section 2 or 3 of this chapter unless:

(1) the testimony to be taken is the testimony of a child who at the

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1 time of the trial is:

2 (A) less than fourteen (14) years of age; or

3 (B) at least fourteen (14) years of age but less than eighteen

4 (18) years of age and has a disability attributable to an

5 impairment of general intellectual functioning or adaptive

6 behavior that:

7 (i) is likely to continue indefinitely;

8 (ii) constitutes a substantial impairment of the child's ability

9 to function normally in society; and

10 (iii) reflects the child's need for a combination and sequence

11 of special, interdisciplinary, or generic care, treatment, or

12 other services that are of lifelong or extended duration and

13 are individually planned and coordinated; and

14 (C) found by the court to be a child who should be permitted

15 to testify outside the courtroom because:

16 (i) a psychiatrist, physician, or psychologist has certified that

17 the child's testifying in the courtroom creates a substantial

18 likelihood of emotional or mental harm to the child;

19 (ii) a physician has certified that the child cannot be present

20 in the courtroom for medical reasons; or

21 (iii) evidence has been introduced concerning the effect of

22 the child's testifying in the courtroom and the court finds

23 that it is more likely than not that the child's testifying in the

24 courtroom creates a substantial likelihood of emotional or

25 mental harm to the child;

26 (2) the prosecuting attorney or the attorney for the department has

27 informed the parties and their attorneys by written notice of the

28 intention to have the child testify outside the courtroom; and

29 (3) the prosecuting attorney or the attorney for the department

30 informed the parties and their attorneys under subdivision (2) at

31 least ~~twenty (20)~~ **seven (7)** days before the proceedings to give

32 the parties and their attorneys a fair opportunity to prepare a

33 response before the proceedings to the motion of the prosecuting

34 attorney or the motion of the attorney for the department to permit

35 the child to testify outside the courtroom.

36 SECTION 17. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 149, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, line 24, delete "If the incapacitated person is less than eighteen (18) years".

Page 6, line 25, delete "of age, a" and insert "A".

Page 6, line 26, after "regarding" insert "**the minor for whom a guardianship is sought,**".

Page 6, line 27, delete "the incapacitated person,".

Page 7, line 40, delete "If" and insert "**Except as provided in IC 29-3-12, if**".

Page 8, line 4, delete "If" and insert "**If:**

(1)".

Page 8, line 6, delete "proven," and insert "**proven; and**

(2) **the child:**

(A) **was the subject of a petition alleging the child to be a child in need of services; or**

(B) **is in a program of informal adjustment;**".

Page 8, line 6, beginning with "the" begin a new line blocked left.

Page 8, line 23, delete "any" and insert "a".

Page 8, line 23, delete "section," and insert "**section and if the child was the subject of a petition alleging the child to be a child in need of services or is in a program of informal adjustment,**".

Page 13, between lines 18 and 19, begin a new paragraph and insert:

"(d) If no paternity action was pending when the juvenile court determined paternity, an appropriate court in that county shall accept the case and conduct additional proceedings if necessary."

Page 13, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 12. IC 31-33-7-8, AS AMENDED BY P.L.131-2009, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) This section applies 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 in IC 12-7-2-127(b));
- (4) a referring physician;
- (5) a dentist;
- (6) a licensed psychologist; or
- (7) a school;
- (8) **a child caring institution licensed under IC 31-27;**



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- (9) a group home licensed under IC 31-27 or IC 12-28-4;**
- (10) a private secure facility; or**
- (11) a child placing agency.**

(b) Not later than thirty (30) days after the date the department receives a report of suspected child abuse or neglect from a person described in subsection (a), the department shall send a report to:

- (1) the administrator of the hospital;
- (2) the community mental health center;
- (3) the managed care provider;
- (4) the referring physician;
- (5) the dentist; or
- (6) the principal of the school;
- (7) the licensed psychologist;**
- (8) the child caring institution;**
- (9) the group home;**
- (10) the private secure facility; or**
- (11) the child placing agency.**

The report must contain the items listed in subsection (e) that are known at the time the report is sent.

(c) Not later than ninety (90) days after the date the department receives a report of suspected child abuse or neglect, the department shall send a report that contains any additional items listed in subsection (e) that were not covered in the prior report if available.

(d) The administrator, director, referring physician, dentist, licensed psychologist, or principal may appoint a designee to receive the report.

(e) A report made by the department under this section 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 case is closed.
- (4) Whether information concerning the case has been expunged.
- (5) The name of any agency to which the alleged victim has been referred.
- (6) Whether the department has made an assessment of the case and has not taken any further action.
- (7) Whether a substantiated case of child abuse or neglect was informally adjusted.
- (8) Whether the alleged victim was referred to the juvenile court as a child in need of services.
- (9) Whether the alleged victim was returned to the victim's home.
- (10) Whether the alleged victim was placed in residential care

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outside the victim's home.

(11) Whether a wardship was established for the alleged victim.

(12) Whether criminal action is pending or has been brought against the alleged perpetrator.

(13) A brief description of any casework plan that has been developed by the department.

(14) The caseworker's name and telephone number.

(15) The date the report is prepared.

(16) Other information that the department may prescribe.

(f) A report made under this section:

(1) is confidential; and

(2) may be made available only to:

(A) the agencies named in this section; and

(B) the persons and agencies listed in IC 31-33-18-2."

Page 14, line 19, after "may" insert ", **after giving notice to the parent, guardian, or custodian,**".

Page 14, line 21, delete "grants a motion under this subsection," and insert "**finds that the department has made reasonable efforts to obtain parental consent to interview the child,**".

Page 14, line 23, delete "consent." and insert "**consent and shall grant the motion to interview the child, either with or without the parent, guardian, or custodian being present.**".

Page 14, line 26, delete "JULY 1, 2010]:" and insert "UPON PASSAGE]:".

Page 14, line 40, after "if" insert ":".

Page 14, line 41, reset in roman "(1)".

Page 15, line 1, delete "." and insert ";".

Page 15, line 1, reset in roman "or".

Page 15, reset in roman lines 2 through 14.

Page 15, between lines 14 and 15, begin a new paragraph and insert:

"(c) If the juvenile court finds that the conditions of subsection (b)(2)(B) are met, the court shall make written findings and provide a copy of the findings and the indictment, information, or complaint to the department."

Page 15, line 15, strike "(c)" and insert "(d)".

Page 15, line 24, delete "agreement" and insert "**agreement;**".

Page 15, line 24, beginning with "that" begin a new line double block indented.

Page 15, line 25, after "law" insert "**or**".

Page 15, line 30, delete "a child residing in a home is alleged to be a victim; and" and insert "**the child who is the victim of a fatality or near fatality is alleged to be a victim; or**".

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Page 15, line 31, delete "an adult residing in the home" and insert **"the perpetrator of the fatality or near fatality"**.

Page 16, line 10, strike "(d)" and insert **"(e)"**.

Page 16, line 16, strike "(e)" and insert **"(f)"**.

Page 16, line 22, strike "(f)" and insert **"(g)"**.

Page 16, line 28, strike "(g)" and insert **"(h)"**.

Page 16, line 29, strike "(f)" and insert **"(g)"**.

Page 16, line 34, strike "(h)" and insert **"(i)"**.

Page 16, line 42, strike "a member of".

Page 17, line 1, strike "the child's family or household" and insert **"the perpetrator"**.

Page 17, line 5, strike "a member of the child's".

Page 17, line 5, strike "household" and insert **"the perpetrator"**.

Page 17, line 16, strike "(i)" and insert **"(j)"**.

Page 17, line 16, strike "(f)" and insert **"(g)"**.

Page 17, after line 32, begin a new paragraph and insert:

"SECTION 16. IC 31-35-5-4, AS AMENDED BY P.L.145-2006, SECTION 334, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. The court may not make an order under section 2 or 3 of this chapter unless:

(1) the testimony to be taken is the testimony of a child who at the time of the trial is:

(A) less than fourteen (14) years of age; or

(B) at least fourteen (14) years of age but less than eighteen (18) years of age and has a disability attributable to an impairment of general intellectual functioning or adaptive behavior that:

(i) is likely to continue indefinitely;

(ii) constitutes a substantial impairment of the child's ability to function normally in society; and

(iii) reflects the child's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; and

(C) found by the court to be a child who should be permitted to testify outside the courtroom because:

(i) a psychiatrist, physician, or psychologist has certified that the child's testifying in the courtroom creates a substantial likelihood of emotional or mental harm to the child;

(ii) a physician has certified that the child cannot be present in the courtroom for medical reasons; or

(iii) evidence has been introduced concerning the effect of

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the child's testifying in the courtroom and the court finds that it is more likely than not that the child's testifying in the courtroom creates a substantial likelihood of emotional or mental harm to the child;

(2) the prosecuting attorney or the attorney for the department has informed the parties and their attorneys by written notice of the intention to have the child testify outside the courtroom; and

(3) the prosecuting attorney or the attorney for the department informed the parties and their attorneys under subdivision (2) at least ~~twenty (20)~~ **seven (7)** days before the proceedings to give the parties and their attorneys a fair opportunity to prepare a response before the proceedings to the motion of the prosecuting attorney or the motion of the attorney for the department to permit the child to testify outside the courtroom.

SECTION 17. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 149 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 3.

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