

IC 31-27-3

Chapter 3. Regulation of Child Caring Institutions

IC 31-27-3-1

License required for operation

Sec. 1. (a) A person may not operate a child caring institution without a license issued under this article.

(b) The state or a political subdivision of the state may not operate a child caring institution or receive children for placement in a child caring institution without a license issued under this article.

(c) A person may not operate a child caring institution if:

(1) the number of children maintained on the premises at any one (1) time is greater than the number authorized by the license; or

(2) the children are maintained in a building or place not designated by the license.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-2

Conditions for issuance of license

Sec. 2. (a) A license may be issued only if the child caring institution is in substantial compliance with food, health, safety, and sanitation standards under rules adopted by the department under IC 31-27-2-4 or in accordance with a variance or waiver approved by the department under IC 31-27-2-8.

(b) A license may be issued only if the child caring institution is in compliance with the fire and life safety rules as determined by the state fire marshal under rules adopted by the department under IC 31-27-2-4 or in accordance with a variance or waiver approved by the department under IC 31-27-2-8.

(c) The department may issue a waiver or variance regarding a determination by the state fire marshal under subsection (b).

(d) Except as provided in subsection (e), the department may not issue a license under this chapter unless the child caring institution is staffed by, when children are being cared for, at least one (1) child care provider who is annually certified in a program on pediatric cardiopulmonary resuscitation and pediatric airway obstruction under the American Heart Association's Basic Life Support Course D or any other comparable course approved by the department.

(e) The requirement under subsection (d) does not apply to a child caring institution that only serves children who are at least thirteen (13) years of age and less than twenty-one (21) years of age. However, a child caring institution that only serves children who are at least thirteen (13) years of age and less than twenty-one (21) years of age must have on duty, when children are being cared for, at least one (1) child care provider who is annually certified in a program on cardiopulmonary resuscitation as required by the department.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-3

Apply for licenses; criminal history checks

Sec. 3. (a) An applicant must apply for a child caring institution license on forms provided by the department.

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

(c) The applicant must submit with the application a statement attesting the following:

(1) That the applicant has not been convicted of:

(A) a felony; or

(B) a misdemeanor relating to the health and safety of children.

(2) That the applicant has not been charged with:

(A) a felony; or

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

during the pendency of the application.

(d) The department, on behalf of an applicant, or, at the discretion of the department, an applicant, shall conduct a criminal history check of the following:

(1) Each individual who is an applicant.

(2) The director or manager of a facility where children will be placed.

(3) An employee or a volunteer of the applicant who has or will have direct contact on a regular and continuing basis with a child who is or will be placed in a facility operated by the applicant.

(e) If the applicant conducts a criminal history check under subsection (d), the applicant shall:

(1) maintain records of the information it receives concerning each individual who is the subject of a criminal history check; and

(2) submit to the department a copy of the information it receives concerning each person described in subsection (d)(1) through (d)(3).

(f) If the department conducts a criminal history check on behalf of an applicant under subsection (d), the department shall:

(1) determine whether the subject of a national fingerprint based criminal history check has a record of:

(A) a conviction for a felony;

(B) a conviction for a misdemeanor relating to the health and safety of a child; or

(C) a juvenile adjudication for an act listed in IC 31-27-4-13(a) that, if committed by an adult, would be a felony;

(2) notify the applicant of the determination under subdivision

(1) without identifying a specific offense or other identifying information concerning a conviction or juvenile adjudication contained in the national criminal history record information;

(3) submit to the applicant a copy of any state limited criminal history report that the department receives on behalf of any

person described in subsection (d); and

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

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

(h) A criminal history check of a person described in subsection (d)(2) or (d)(3) must be completed on or before the date the person is employed or assigned as a volunteer. However, a fingerprint based criminal history background check under IC 31-9-2-22.5(1)(B) for a person described in subsection (d)(3) must be completed not later than the conclusion of the first ninety (90) days of employment in or assignment of a volunteer to a position described in subsection (d)(3). If a person described in this subsection has been the subject of a criminal history check (as described in IC 31-9-2-22.5) that was conducted not more than one (1) year before the date the license application is submitted to the department, a new criminal history check of that person is not required.

(i) An applicant or licensee may provisionally employ an individual or assign a volunteer described in subsection (d)(3) for whom a criminal history check is required under subsection (d)(3) during the period after the process of requesting fingerprint based criminal history background check information has been initiated by or on behalf of the applicant or licensee but before the determination is obtained by or communicated to the applicant or licensee. If the determination is not received by not later than the ninety (90) days after the effective date of hire or volunteer assignment, the employee or volunteer relationship must be terminated or suspended until a determination is received. An employee or volunteer whose determination has not yet been received may not have direct contact with a child who is or will be placed at a facility operated by the applicant or licensee unless the direct contact occurs only in the presence of a volunteer or employee of the applicant or licensee who has been the subject of a completed and approved criminal history check. In determining whether to provisionally hire or assign as a volunteer an individual described in subsection (d)(3), the applicant or licensee shall consider the following:

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

(j) The department shall, at the applicant's request, inform the applicant whether the department has or does not have a record of the person who is the subject of a criminal history background check and if the department has identified the person as an alleged perpetrator

of abuse or neglect. The department may not provide to the applicant any details or personally identifying information contained in any child protective services investigation report.

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

As added by P.L.145-2006, SEC.273. Amended by P.L.138-2007, SEC.47; P.L.162-2011, SEC.23.

IC 31-27-3-4

Child caring institution established by county; operation

Sec. 4. (a) A county may establish a child caring institution. The child caring institution may be operated by:

(1) the county; or

(2) a public or private agency under contract with the county; and must be operated under the rules adopted by the director under this article.

(b) This section does not affect the following:

(1) IC 31-31-1-1 or IC 31-40, requiring the county fiscal body to appropriate sufficient money to pay for services ordered by the juvenile court.

(2) IC 31-31-8, authorizing the juvenile court to establish detention and shelter care facilities.

(3) IC 12-13-5 and IC 12-19-1, requiring the division of family resources, the office, and the county departments to provide care and treatment for delinquent children and children in need of services.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-5

Grounds for denial of license applications; waiver

Sec. 5. (a) The following constitute sufficient grounds for a denial of a license application:

(1) A determination by the department of child abuse or neglect by:

(A) the applicant; or

(B) an employee or a volunteer of the applicant who has direct contact, on a regular and continuous basis, with children who are under the direct supervision of the applicant.

(2) A criminal conviction of the applicant, or the director or manager of a facility where children will be placed by the applicant, of:

(A) a felony;

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

(C) a misdemeanor for operating a child caring institution, foster family home, group home, or child placing agency without a license under this article (or IC 12-17.4 before its repeal); or

(D) a misdemeanor for operating a child care center or child care home without a license under IC 12-17.2.

(3) A determination by the department that the applicant made false statements in the applicant's application for licensure.

(4) A determination by the department that the applicant made false statements in the records required by the department.

(5) A determination by the department that:

(A) the applicant; or

(B) an employee or a volunteer of the applicant who has direct contact, on a regular and continuous basis, with children who are under the direct supervision of the applicant;

previously operated a home or facility without a license required under any applicable provision of this article (or IC 12-17.4 before its repeal) or IC 12-17.2.

(6) A juvenile adjudication of the applicant for an act listed in IC 31-27-4-13(a) that, if committed by an adult, would be a felony.

(b) An application for a license may also be denied if an employee or a volunteer of the applicant who has direct contact on a regular and continuous basis with children who are under the direct supervision of the applicant has had any of the following:

(1) A conviction of a felony described in IC 31-27-4-13(a).

(2) A conviction of any other felony or a misdemeanor relating to the health and safety of a child, unless the applicant is granted a waiver by the department to employ or assign the person as a volunteer in a position described in this subsection.

(3) A juvenile adjudication for an act listed in IC 31-27-4-13(a) that, if committed by an adult, would be a felony, unless the applicant is granted a waiver by the department to employ or assign the person as a volunteer in a position described in this subsection.

(c) In determining whether to grant a waiver under subsection (b), the department shall consider the following factors:

(1) The length of time that has passed since the disqualifying conviction.

(2) The severity, nature, and circumstances of the offense.

(3) Evidence of rehabilitation.

(4) The duties and qualifications required for the proposed employment positions or volunteer assignment.

(d) Notwithstanding subsection (a) or (b), if:

(1) a license application could be denied due to a criminal conviction of, or a determination of child abuse or neglect by, an employee or a volunteer of the applicant; and

(2) the department determines that the employee or volunteer has been dismissed by the applicant;

the criminal conviction of, or determination of child abuse or neglect by, the former employee or former volunteer does not constitute a sufficient basis for the denial of a license application.

(e) The department may adopt rules to implement this section.

As added by P.L.145-2006, SEC.273. Amended by P.L.138-2007, SEC.48; P.L.162-2011, SEC.24.

IC 31-27-3-6

Incomplete applications

Sec. 6. The department may not act on an incomplete application. The department shall return an incomplete application with a notation concerning omissions. The return of an incomplete application is without prejudice.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-7

Investigation of applicants

Sec. 7. The department shall investigate a person seeking licensure to determine whether the person is in compliance with this article and the rules adopted under this article. The investigation shall be conducted at a reasonable time and in a reasonable manner, in announced or unannounced visits. Activities may include onsite inspections, record reading, observation, and interviewing. The department may require that evidence of compliance with the rules be presented in a form and manner specified in the rules.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-8

Issuance of license

Sec. 8. The department shall issue a license to a person who meets all of the license requirements when an investigation shows the applicant to be in compliance under this article.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-9

Eligibility for waivers and variances

Sec. 9. A child caring institution may be eligible to receive a waiver or variance from the requirements of this chapter by complying with IC 31-27-2-8.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-10

Waiver of maximum stay for child

Sec. 10. (a) The department may grant a waiver of the sixty (60) day maximum stay for a child if the child caring institution licensed as a shelter care facility applies for the waiver before the expiration of the sixty (60) day period.

(b) The child caring institution shall document in the request for a waiver that the waiver is in the best interest of the child.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-11

Denial of license

Sec. 11. (a) The department shall deny a license when an

applicant fails to meet the requirements for a license.

(b) The department shall send written notice by certified mail that the application has been denied and give the reasons for the denial.

(c) An administrative hearing concerning the denial of a license shall be provided upon written request by the applicant. The request must be made not more than thirty (30) days after receiving the written notice under subsection (b).

(d) An administrative hearing shall be held not more than sixty (60) days after receiving the written request.

(e) An administrative hearing shall be held in accordance with IC 4-21.5-3.

(f) The department shall issue a decision not more than sixty (60) days after the conclusion of a hearing.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-12

Investigation of unlicensed premises

Sec. 12. The department is responsible for investigating any premises that the department has reason to believe are being used for child care without a license in circumstances where a license is required.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-13

Duration of license; limitations; renewal; public display

Sec. 13. (a) A license for a child caring institution expires four (4) years after the date of issuance, unless the license is revoked, modified to a probationary status, or voluntarily returned.

(b) A license issued under this chapter:

(1) is not transferable;

(2) applies only to the licensee and the location stated in the application; and

(3) remains the property of the department.

(c) When a licensee submits a timely application for renewal, the current license remains in effect until the department issues a license or denies the application.

(d) A current license must be publicly displayed.

As added by P.L.145-2006, SEC.273. Amended by P.L.146-2006, SEC.27.

IC 31-27-3-14

Probationary status; duration; expiration; extension

Sec. 14. (a) The department may place a licensee on probationary status if the licensee is temporarily unable to comply with a rule and if:

(1) the noncompliance does not present an immediate threat to the health and well-being of the children;

(2) the licensee files a plan with the department, state department of health, or the state fire marshal to correct the areas of noncompliance within the probationary period; and

(3) the department, state department of health, or state fire marshal approves the plan.

(b) A probationary status period is for not more than six (6) months. However, the department may extend a probationary status period for one (1) additional period of six (6) months.

(c) At the expiration of a probationary status period, the department shall:

(1) reactivate the license to the end of the original term of the license;

(2) extend the probationary status period as permitted under subsection (b); or

(3) revoke the license.

As added by P.L.145-2006, SEC.273. Amended by P.L.146-2006, SEC.28.

IC 31-27-3-15

Inspections

Sec. 15. The department and the state fire marshal shall do the following:

(1) Make annual onsite inspections.

(2) Keep written records of their monitoring activities and inspections.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-16

Cooperation by licensees

Sec. 16. A licensee shall cooperate with the department and the state fire marshal in carrying out the activities required by section 15 of this chapter, including permitting the department and the state fire marshal to conduct announced or unannounced inspections.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-17

Sprinkler system requirements

Sec. 17. The fire prevention and building safety commission may not adopt rules requiring the installation of a sprinkler system in a living unit of a licensed child caring institution in which fewer than sixteen (16) children reside, each of whom is:

(1) ambulatory; and

(2) at least six (6) years of age.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-18

Records

Sec. 18. (a) A licensee shall keep records regarding each child in the control and care of the licensee as the department requires and shall report to the department upon request the facts the department requires with reference to children.

(b) The department shall keep records regarding children and facts learned about children and the children's parents or relatives

confidential.

(c) The following have access to records regarding children and facts learned about children:

- (1) A state agency involved in the licensing of the child caring institution.
- (2) A legally mandated child protection agency.
- (3) A law enforcement agency.
- (4) An agency having the legal responsibility to care for a child placed at the child caring institution.
- (5) The parent, guardian, or custodian of the child at the child caring institution.
- (6) A citizen review panel established under IC 31-25-2-20.4.
- (7) The department of child services ombudsman established by IC 4-13-19-3.

As added by P.L.145-2006, SEC.273. Amended by P.L.138-2007, SEC.49; P.L.182-2009(ss), SEC.374.

IC 31-27-3-19

Notice of enforcement actions; informal meetings

Sec. 19. Except as provided in section 29 of this chapter, the department shall give a licensee thirty (30) days written notice by certified mail of an enforcement action. The licensee shall also be provided with the opportunity for an informal meeting with the department. The licensee must request the meeting not more than ten (10) working days after receipt of the certified notice.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-20

Administrative hearings

Sec. 20. (a) An administrative hearing concerning the decision of the department to impose a sanction under this chapter shall be provided upon a written request by the child caring institution. The request must be made not more than thirty (30) days after receiving notice under section 19 of this chapter. The written request must be made separately from an informal meeting request made under section 19 of this chapter.

(b) An administrative hearing shall be held not more than sixty (60) days after receiving the written request.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-21

Procedure for administrative hearings

Sec. 21. A hearing requested under section 20 of this chapter shall be held in accordance with IC 4-21.5-3.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-22

Issuance of decisions

Sec. 22. The department shall issue a decision not more than sixty (60) days after the conclusion of a hearing.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-23

Repealed

(Repealed by P.L.146-2006, SEC.60.)

IC 31-27-3-24

Repealed

(Repealed by P.L.146-2006, SEC.60.)

IC 31-27-3-25

Repealed

(Repealed by P.L.146-2006, SEC.60.)

IC 31-27-3-26

Cessation of operation upon revocation of license

Sec. 26. A child caring institution shall cease operation when the license of the child caring institution is revoked.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-27

Notice

Sec. 27. (a) After a license is revoked, the department shall notify in writing each person responsible for each child in care to ensure that those children are removed.

(b) The written notice shall be sent to the last known address of the person responsible for the child in care and shall state that the license of the child caring institution has been revoked.

As added by P.L.145-2006, SEC.273. Amended by P.L.146-2006, SEC.29.

IC 31-27-3-28

Judicial review

Sec. 28. A final decision of the department made after a hearing is subject to judicial review under IC 4-21.5-5.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-29

Investigations of noncompliance; injunctions; corrective action plans; removal of children; informal meetings

Sec. 29. (a) The department shall investigate a report of a licensed child caring institution's noncompliance with this article or the rules adopted under this article if there is reasonable cause to believe that a licensee's noncompliance with this article and rules adopted under this article creates an imminent danger of serious bodily injury to a child or an imminent danger to the health of a child and shall report the department's findings to the attorney general and to the county office and the prosecuting attorney in the county where the institution is located.

(b) The attorney general or the department may do the following:

(1) Seek the issuance of a search warrant to assist in the investigation.

(2) File an action for injunctive relief to stop the operation of a child caring institution if there is reasonable cause to believe that a licensee's noncompliance with this article or the rules adopted under this article creates an imminent danger of serious bodily injury to a child or an imminent danger to the health of a child.

(c) The department may require a plan of corrective action for emergency protection of the children described in subsection (b).

(d) The department may provide for the removal of children from child caring institutions described in subsection (b).

(e) An opportunity for an informal meeting with the department shall be available after the injunctive relief is ordered.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-30

Expiration of injunctions for creation of imminent danger

Sec. 30. A court order granted under section 29(b)(2) of this chapter expires upon the later of the following:

(1) Sixty (60) days after the order is issued.

(2) When a final department decision is issued under sections 20 through 22 of this chapter if notice of an enforcement action is issued under section 19 of this chapter.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-31

Grounds for revocation of licenses; waiver

Sec. 31. (a) The following constitute sufficient grounds for revocation of a license:

(1) A determination by the department of child abuse or neglect by:

(A) the licensee; or

(B) an employee or a volunteer of the licensee who has direct contact, on a regular and continuous basis, with children who are under the direct supervision of the licensee.

(2) A criminal conviction of the licensee, or the director or manager of a facility where children will be placed by the licensee, of any of the following:

(A) A felony.

(B) A misdemeanor related to the health or safety of a child.

(C) A misdemeanor for operating a child caring institution, foster family home, group home, or child placing agency without a license under this article (or IC 12-17.4 before its repeal).

(D) A misdemeanor for operating a child care center or child care home without a license under IC 12-17.2.

(3) A determination by the department that the licensee made false statements in the licensee's application for licensure.

(4) A determination by the department that the licensee made

false statements in the records required by the department.

(5) A determination by the department that:

(A) the licensee; or

(B) an employee or a volunteer of the licensee who has direct contact, on a regular and continuous basis, with children who are under the direct supervision of the licensee; previously operated a home or facility without a license required under any applicable provision of this article (or IC 12-17.4 before its repeal) or IC 12-17.2.

(6) A juvenile adjudication of a licensee for an act listed in IC 31-27-4-13(a) that, if committed by an adult, would be a felony.

(b) A license may also be revoked if an employee or volunteer of the licensee who has direct contact on a regular and continuous basis with children who are under the direct supervision of the licensee has had any of the following:

(1) A conviction of a felony described in IC 31-27-4-13(a).

(2) A conviction of any other felony or a misdemeanor relating to the health and safety of a child, unless the licensee is granted a waiver by the department to employ or assign the person as a volunteer in a position described in this subsection.

(3) A juvenile adjudication for an act listed in IC 31-27-4-13(a) that, if committed by an adult, would be a felony, unless the licensee is granted a waiver by the department to employ or assign the person as a volunteer in a position described in this subsection.

(c) In determining whether to grant a waiver under subsection (b), the department shall consider the following factors:

(1) The length of time that has passed since the disqualifying conviction.

(2) The severity, nature, and circumstances of the offense.

(3) Evidence of rehabilitation.

(4) The duties and qualifications required for the proposed employment positions or volunteer assignment.

(d) Notwithstanding subsection (a) or (b), if:

(1) a license could be revoked due to a criminal conviction of, or a determination of child abuse or neglect by, an employee or a volunteer of the licensee; and

(2) the department determines that the employee or volunteer has been dismissed by the licensee within a reasonable time after the licensee became aware of the conviction or determination;

the criminal conviction of, or determination of child abuse or neglect by, the former employee or former volunteer does not constitute a sufficient basis for the revocation of a license.

(e) The department may adopt rules to implement this section.

As added by P.L.145-2006, SEC.273. Amended by P.L.138-2007, SEC.50; P.L.162-2011, SEC.25.

IC 31-27-3-32

Compliance with rules; disciplinary sanctions; revocation of license

Sec. 32. (a) A licensee shall operate a child caring institution in compliance with the rules established under this article and is subject to the disciplinary sanctions under subsection (b) if the department finds that the licensee has violated this article or a rule adopted under this article.

(b) After complying with the procedural provisions in sections 19 through 22 of this chapter, the department may revoke the license when the department finds that a licensee has committed a violation under subsection (a).

As added by P.L.145-2006, SEC.273. Amended by P.L.146-2006, SEC.30.

IC 31-27-3-33

Investigations of unlicensed operation; injunctions; civil penalties

Sec. 33. (a) The department shall investigate a report of an unlicensed child caring institution and report the department's findings to the attorney general and to the county office and the prosecuting attorney in the county where the institution is located.

(b) The attorney general or the department may do the following:

(1) Seek the issuance of a search warrant to assist in the investigation.

(2) File an action for injunctive relief to stop the operation of a child caring institution if there is reasonable cause to believe that the child caring institution is operating without a license required under this article.

(3) Seek in a civil action a civil penalty not to exceed one hundred dollars (\$100) a day for each day a child caring institution is operating without a license required under this article.

(c) An opportunity for an informal meeting with the department shall be available after the injunctive relief is ordered.

(d) The civil penalties collected under this section shall be deposited in the department of child services child care fund established by IC 31-25-2-16.

As added by P.L.145-2006, SEC.273. Amended by P.L.1-2007, SEC.202.

IC 31-27-3-34

Expiration of injunction for unlicensed operation

Sec. 34. A court order granted under section 33(b)(2) of this chapter expires when the child caring institution is issued a license.

As added by P.L.145-2006, SEC.273.

IC 31-27-3-35

Violations of chapter

Sec. 35. A person who knowingly or intentionally violates this chapter commits a Class B misdemeanor.

As added by P.L.145-2006, SEC.273.