

Indiana Statutes and Case Law on DCS Assessments and Expungement of DCS Records

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Introduction

The Indiana Department of Child Services (DCS) is the State agency designated to receive reports of child abuse and neglect. The term "CPS investigation" has been changed to "DCS assessment." This paper provides information about statutes and case law on: (1) the Child Abuse Hotline and DCS assessment definition; (2) notices of assessments and the availability of completed DCS assessment reports; (3) notices of removal of children and parents' rights in CHINS cases; (4) negotiating admissions to CHINS petition allegations; (5) DCS substantiation notices, administrative reviews, and hearings for identified perpetrators; (6) expungement time limits for DCS assessments and records; (7) the Child Protection Index; (8) petitioning for court ordered expungement of substantiated DCS reports and records; and (9) petitioning for court ordered expungement of juvenile court records.

Reporting Abuse and Neglect, Hotline, and Assessment Definition

IC 31-33-5-1 states that a person who has reason to believe that a child is a victim of child abuse or neglect shall make a report as required by statute. "Reason to believe" is defined at IC 31-9-2-101 as evidence that, if presented to individuals of similar background and training, would cause the individuals to believe that a child was abused or neglected. "Victim of child abuse or neglect", defined at IC 31-9-2-133, refers to a child who meets one of the following Child in Need of Services categories: (1) IC 31-34-1-1 [seriously endangered due to neglect]; (2) IC 31-34-1-2 [seriously endangered due to injury by the act or omission of parent]; (3) IC 31-34-1-3 [child victim of sex offense or living with convicted or charged sex offender]; (4) IC 31-34-1-3.5 [child victim of human or sexual trafficking]; (5) IC 31-34-1-4 [parent allows child's participation in obscene performance]; (6) IC 31-34-1-5 [parent allows child to commit sex offense]; (7) IC 31-34-1-10 [child born with fetal alcohol syndrome or with controlled substance or legend drug in child's body]; (8) IC 31-34-1-11 [child injured or at substantial risk from mother's use of alcohol, controlled substance, or legend drug during pregnancy]. IC 31-33-5-4 states that a person who has a duty to report child abuse or neglect shall immediately make an oral report to DCS or law enforcement. IC 31-33-7-1 states that DCS shall arrange for receipt of all reports of suspected child abuse or neglect on a twenty-four hour, seven day per week basis. Reports are made to the statewide DCS Hotline, 1-800-800-5556.

IC 31-33-8-1(a) requires DCS to initiate an "appropriately thorough" child protection assessment of every report of known or suspected child abuse or neglect. IC 31-33-8-1(b) states that, if a report of known or suspected abuse or neglect is received from a judge or prosecutor, DCS shall initiate an assessment. IC 31-33-1-2 states that if a judge wishes to contact DCS about a potential case of child abuse or neglect, the judge shall first use the Child Abuse Hotline to make the report. The judge may contact the local (DCS) office directly to report suspected abuse or neglect if the judge does not receive a response from the Hotline or the response received will not, in the judge's opinion, serve the best interests of the child. IC 31-33-8-1(c) states that DCS shall forward reports to the Hotline from medical personnel, school personnel, a social worker, law enforcement officials or personnel, judiciary personnel, or prosecuting attorney personnel to the local (DCS) office to determine if a DCS assessment will be initiated.

“Assessment” at IC 31-9-2-9.6 for purposes of IC 31-25 and IC 31-33 is defined as:
an initial and ongoing investigation or evaluation that includes:

- (1) a review and determination of the safety issues that affect a child and:
 - (A) a child’s parents, guardians, or custodians; or
 - (B) another individual residing in the residence where the child resides or is likely to reside;
- (2) an identification of the underlying causes of the safety issues described in subdivision (1);
- (3) a determination whether child abuse, neglect, or maltreatment occurred; and
- (4) a determination of the needs of a child’s family in order for the child to:
 - (A) remain in the home safely;
 - (B) returned to the home safely; or
 - (C) be placed in an alternative living arrangement.

The definition of caseworker at IC 31-9-2-11 means “an employee of the department of child services who is classified as a family case manager.” It is a common practice for caseworkers to be called “family case managers.”

Written Report of Abuse or Neglect Complaint

IC 31-33-7-4 requires DCS to prepare a written report on the oral reports it receives alleging child abuse or neglect. This written report contains preliminary information on the alleged incident of child abuse or neglect, including the following information: the nature of the child’s injury, neglect or abuse; the child’s caretaker and siblings; the alleged perpetrator; the name and location of the reporter; and other specified information. The report must be completed within forty-eight hours of receipt of the complaint of child abuse or neglect. IC 31-33-7-4(a). The report “shall immediately be made available to” the prosecutor and appropriate law enforcement agencies, and to the coroner in cases of a child’s death.
IC 31-33-7-5.

Time Requirements for Initiating Assessments

IC 31-33-8-1 provides that a DCS assessment shall be initiated as follows: (1) when the report alleges neglect, the assessment shall be initiated within a reasonably prompt period, but not later than five days; (2) when the report alleges abuse, the assessment shall be initiated immediately, but not later than twenty-four hours; (3) when DCS has reason to believe the child is in imminent danger of serious bodily harm, an onsite investigation shall be initiated in one hour; (4) when the immediate well-being or safety of the child is endangered, an investigation shall be initiated regardless of the time of day.

IC 31-33-8-1(g) states if the report alleges that a child lives with a parent, guardian, or custodian who is married to or lives with a person who:

- (1) has been convicted of:
 - (A) neglect of a dependent under IC 35-46-1-4; or
 - (B) a battery offense under IC 35-42-4; or
- (2) is required to register as a sex or violent offender under IC 11-8-8;

the department shall initiate an assessment within a reasonably prompt time, but not later than five days after the department receives the report, with the primary consideration being the well-being of the child who is the subject of the report.

Scope of Assessment

IC 31-33-8-7(a) states that the scope of the assessment, to the extent that it is “reasonably possible” to obtain such information, should include the following:

- (1) The nature, extent, and cause of the known or suspected child abuse or neglect.
- (2) The identity of the person allegedly responsible for the child abuse or neglect.
- (3) The names and conditions of other children in the home.
- (4) An evaluation of the parent, guardian, custodian, or person responsible for the care of the child.
- (5) The home environment and the relationship of the child to the parent, guardian, or custodian, or other persons responsible for the child’s care.
- (6) All other data considered pertinent.

IC 31-33-8-3(a) states that DCS shall cause color photographs to be taken of the areas of trauma visible on a child who is the subject of a report of abuse or neglect, and that DCS shall cause a radiological examination to be performed on the child if medically indicated.

Pursuant to IC 31-33-8-7(b), the assessment may include a visit to the child's home, an interview with the subject child, and a physical, psychological, or psychiatric examination of any child in the home. IC 31-33-8-7(f) requires DCS to notify the United States Department of Defense (USDOD) Family Advocacy Program if an allegation of abuse or neglect is substantiated for a child whose parent, guardian, or custodian is an active duty member of the military. IC 31-33-8-9 requires that DCS’s assessment report be made available to the USDOD Family Advocacy Program. IC 31-33-14-3 permits DCS to seek assistance from the USDOD Family Advocacy Program in identifying and providing appropriate services for the child and family.

Court Orders to Facilitate the Assessment

DCS may need a court order to complete an assessment of a report of child abuse or neglect, if the child’s caretaker will not provide access to the child or will not consent to a necessary examination of or interview with the child. The court can use the procedures at IC 31-32-13-1 through 9 and/or IC 31-33-8-7(c) for this purpose. Pursuant to IC 31-32-13-1, DCS can petition the juvenile court for an emergency order “to control the conduct of any person in relation to the child.” IC 31-32-13-1(1) may include any person (school, day care provider, relative, parent, guardian, or custodian) who refuses DCS access to the child for the purpose of conducting an assessment.

DCS Access to the Child and Court Ordered Interview With the Child

IC 31-33-8-7(c) provides that the juvenile court can issue an order (on a showing of good cause) so DCS can obtain admission to the home, the school, or any place where the child is located child or to obtain an examination of a child as part of an assessment of a report of child abuse or neglect. IC 31-33-8-7(d) states that, if a custodial parent, guardian, or custodian of a child refuses to allow the DCS caseworker to interview the child after the caseworker has attempted to obtain the consent of the custodial parent, guardian, or custodian to the interview, DCS may petition a court to order the custodial parent, guardian, or custodian to make the child available to be interviewed by the caseworker. IC 31-33-8-7(e) states that, if the court finds that a custodial parent, guardian, or custodian has been informed of the hearing on the DCS petition, and DCS has made reasonable and unsuccessful efforts to obtain consent to interview the child, the court may grant DCS’s motion to interview the child, either with or without the presence of the custodial parent, guardian, or custodian.

In **In Re F.S.**, 53 N.E.3d 582 (Ind. Ct. App. 2016), the Court reversed the trial court’s order requiring Mother to allow DCS to interview her two oldest children as part of a child abuse and neglect assessment. Id. at 585. The Court concluded that the statutes on which DCS based its request to control Mother’s

conduct by compelling her to submit the children to DCS interviews require DCS to show some evidence suggesting abuse or neglect before the trial court may issue such an order. *Id.* at 599. DCS received four reports in a one month period alleging that Mother and Father of the two youngest children were using drugs, dealing in drugs in the home, and engaging in domestic violence and the oldest child had multiple school absences. The children’s prior CHINS case had been closed two months before the receipt of the new reports. Mother was on probation for theft, and her probation officer learned that Mother had purchased the maximum allowable amount of pseudoephedrine for the most recent two months. Two DCS case managers, Mother’s probation officer, and a police officer visited Mother’s home on three occasions to follow up on the reports, but no evidence of abuse or neglect was observed. Mother refused to take a drug test when requested to do so by the case managers, but passed a drug test requested by her probation officer. Mother refused to allow the DCS case manager to interview her children, so DCS filed a Motion to Control the Conduct of Mother and Father pursuant to IC 31-33-8-7, and requested that the court order Mother to comply with an interview in order to complete a thorough assessment. The trial court heard evidence from Mother, the two case managers, and Mother’s probation officer, but neither the probation officer nor the caseworkers observed evidence of drug use or domestic violence, and the caseworkers were satisfied that the children were safe. The court issued an order granting DCS’s request to interview the children, but stayed the order, granting Mother five days to file a Notice of Appeal.

On review, the Court observed that a petition seeking to order a parent to make a child available for an interview by DCS is also governed by IC 31-32-13, “which addresses juvenile court procedures generally and the issuance of orders specifically.” *Id.* at 589. The Court noted IC 31-32-13-4 [statute on issuance of orders to control conduct of a person in relation to a child] allows the court to issue orders after a hearing “if the court finds good cause to issue the order is shown upon the record.” *Id.* The Court concluded that the statutes on which DCS based its request to control Mother’s conduct by compelling her to submit the children to interviews require that DCS show some evidence of abuse or neglect before the trial court may issue such an order. *Id.* at 599. The Court said that good cause is an admittedly imprecise standard. *Id.* at 597. Quoting *Newton v. Yates*, 353 N.E.2d 485, 492 (Ind. Ct. App. 1976), the Court observed that “[w]hile an exact definition of good cause is somewhat elusive, it is clear that a mere allegation of need and a summary statement alleging that the information cannot be obtained from another source will not be sufficient to surmount a ‘good cause’ hurdle.” *F.S.* at 597. The Court opined that DCS cannot merely allege it “needs” to interview a child to “complete its assessment” and thereby show good cause. *Id.* The Court held that “DCS must show the trial court some evidence beyond a report from an undisclosed source that abuse or neglect is occurring.” *Id.* at 598. The Court clarified that the report alone does not allow DCS to conduct an interview with the child. *Id.* The Court held that if, in gathering information about the items required to be included in the assessment, DCS finds some evidence supporting the allegations of the report and determines as a result of the circumstances of the specific case being investigated that an interview is necessary to complete “an appropriately thorough” assessment, DCS may ask the trial court to order an interview if the parent does not consent. *Id.* The Court found that there was no such evidence in this case. *Id.* The Court observed that it was important to consider the nature of the allegations. *Id.* at 599. The Court noted that in the *F.S.* case: (1) the primary allegations concerned drug use, external signs of which would likely be apparent to the trained eye, and domestic violence between Mother and Father, yet no official saw evidence of either; (2) there was no drug paraphernalia in or around the house; (3) there were no visible marks from drug use or bruises from physical altercations; (4) neither Mother nor Father ever appeared intoxicated or under the influence of drugs, and both consistently passed drug screens. *Id.* The Court concluded that no probative evidence supporting the allegations was shown on the record, and accordingly, there was no good cause to compel interviews with the children. *Id.* The Court agreed with the decision in *In Re A.H.* 992 N.E.2d 960 (Ind. Ct. App. 2013), discussed immediately below, that the procedure selected by the Indiana legislature for assessing reports and compelling interviews with children does not necessarily violate due process. *F.S.* at 599. The Court opined that, when the procedure is not observed, such as in the *F.S.* case, “where DCS did not demonstrate by *any* evidence that an interview was necessary for DCS to carry out its obligation to

investigate reports of child abuse or neglect, the law impermissibly infringes upon the parent's fundamental right to raise her children without undue interference by the State." (emphasis in opinion) Id.

In In Re A.H., 992 N.E.2d 960 (Ind. Ct. App. 2013), *trans. denied*, the Court affirmed the trial court's order granting DCS's Petitions to Interview Children filed pursuant to IC 31-33-8-7(d) and (e). Id. at 968. DCS had requested the court to require Mother to make her two children, ages six and eight, available for an interview as part of a DCS assessment of a report that Mother was using methamphetamine and heroin on a daily basis in the presence of her children, that Mother was selling prescription drugs and heroin, and that there were syringes all around the house. The DCS family case manager had visited Mother at her home, explained to Mother the nature of the report, observed Mother's home and her four-year-old child, and interviewed Mother. Mother stated that she was not using drugs, heroin, or methamphetamine, and that she had no history of drug abuse. Mother stated that she had prescription drugs that she was using for health conditions, submitted to a drug test, and the test results were that she was negative for all drugs except those that she was prescribed. The case manager did not observe any indication of illicit drug use or sales in Mother's home and did not observe any indication that Mother was impaired or under the influence of drugs. Mother told the case manager that the father of her eight-year-old child had made a false allegation to DCS about her in the past and that she believed that he had also made the current report. The DCS case manager told Mother that, as part of the assessment, she needed to speak with Mother's six-year-old child and eight-year-old child, but Mother indicated that she did not want the children to be interviewed. At some point, the family case manager spoke to the father of Mother's six-year-old child, who informed the case manager that Mother had a history of drug abuse, that he was not sure if Mother was currently abusing drugs, and that he had not seen Mother for six to nine months. DCS filed petitions to interview the two children, and the court held a hearing on the petitions. At the hearing, Mother argued that IC 31-33-8-7 is unconstitutional pursuant to the Due Process Clause of the Fourteenth Amendment. The trial court entered an order granting DCS's request to interview the children, required Mother to produce the two children for interviews within ten days of the order, and permitted Mother to be present for the interviews. Mother filed a motion to stay the interviews pending appeal, which DCS opposed and the court denied. Mother appealed, arguing that IC 31-33-8-7 interferes with her right to raise and protect her children and that due process requires the presence of additional procedural protections prior to compelling the interview of a child.

The Court recognized the fundamental right of a parent to raise her child without undue interference by the state. Id. at 966. The Court could not say that due process requires DCS to conduct an assessment or a portion of an assessment in order to obtain information to provide a factual basis supporting the accuracy of the report prior to interviewing the child or children. Id. at 967. The Court also could not say that legislation allowing DCS the ability to interview a child as part of the initial assessment and after obtaining a court order if necessary violates due process. Id. The Court cited In Re G.W., 977 N.E.2d 381, 386 (Ind. Ct. App. 2013), *trans. denied*, in which the Court of Appeals noted that it was aware of no constitutional prohibition against the proposed interview arrangements. A.H. at 967. The Court also noted that the state's interest in protecting the welfare of children is substantial. Id. The Court could not say that the risk of error created by the legislature's chosen procedure in IC 31-33-8-7 or the actions of DCS or the trial court in this case was substantial or favored reversal. Id. The Court also could not say Mother was not afforded notice of the hearing on the petitions to interview or an opportunity to be heard with respect to the petitions at a meaningful time and in a meaningful manner. Id. at 968.

In In Re G.W., 977 N.E.2d 381 (Ind. Ct. App. 2012), *trans. denied*, the Court affirmed the trial court's order requiring Mother to make her nine-year-old daughter (Daughter) available for an interview requested by DCS. Id. at 387. DCS wished to assess Daughter's "condition" as part of a DCS child abuse and neglect assessment. Daughter's twelve-year-old sister (Sister) had made allegations of inappropriate touching by Stepfather. DCS also received copies of diary entries typed on a computer owned by Sister's paternal grandmother, but stored under Sister's password, that described sexual intercourse between Sister

and Stepfather. Sister recanted the allegations during a DCS interview. Despite Sister's recantation, DCS requested an interview with Daughter, but Mother refused. DCS then filed an amended verified emergency petition pursuant to IC 31-33-8-7(d) and (e) and IC 31-32-13-1 to compel Mother and Stepfather to make Daughter available for an interview. DCS alleged that there was good cause to believe that Daughter might be at risk due to Sister's allegations and that access to Daughter by DCS was necessary to ensure Daughter's safety and to complete the investigation. The trial court held a hearing on the petition. The DCS family case manager testified that: (1) she wanted to interview Daughter "to make sure that she's safe and also to discuss the inconsistencies" regarding how Mother learned about the alleged abuse; (2) that "recantation is a part of [the] disclosure process"; and (3) that the police were still analyzing the computer on which the incriminating diary entries were typed to determine whether Sister had actually written them. *Id.* at 384, 387. The trial court issued an order granting the petition. The trial court found that, although IC 31-33-8-7 does not specifically address an interview of a child other than the subject child, IC 31-33-8-7(a) does require the assessment to include the name *and condition* of other children in the home (emphasis in original). The trial court found that this provision, combined with IC 31-32-13-1[which allows the juvenile court upon motion to issue an order to control the conduct of any person in relation to the child] provided authority for the order. The trial court also found good cause for the order based on: (1) Sister's initial allegations of molestation and the reported diary entries, despite Sister's subsequent recantation of the allegations and denial of being the author of the diary entries; (2) the serious nature of the original allegations; and (3) Daughter's relatively close age to Sister. The court also found that DCS had made reasonable efforts to obtain the consent of the custodial parent for the interview, and ordered Mother to permit the girl be interviewed by DCS at Susie's Place in Bloomington. The trial court stayed its order pending Mother's appeal.

The Court found that Mother failed to establish that the trial court erred in granting DCS's petition to compel the interview of the child as part of the DCS assessment pursuant to IC 31-33-8-7. *Id.* at 387. The Court observed that IC 31-33-8-7(a)(3) provides that a DCS assessment, "to the extent that is reasonably possible, *must include*...[t]he names and conditions of other children in the home" (emphasis in opinion). *Id.* at 385. The Court also noted that IC 31-33-8-7(d) specifically contemplates that DCS may interview those "other children" to determine their conditions and obtain a court order if necessary to facilitate such interviews. *Id.* Although Mother argued that IC 31-33-8-7(a)(3) refers only to a child's physical condition, the Court disagreed, stating that the statute contains no such limitation, and the Court may not read one into it. *Id.* at 386. Although Mother complained about the proposed interview arrangements, the Court observed that she cited no statutory or constitutional prohibitions against them and the Court was aware of none. *Id.* The Court noted that IC 31-33-8-7(e) specifically provides that the court "may grant the motion to interview the child, either with or without the custodial parent...being present" and that nothing prohibits DCS from designating a third party to interview the child outside the home. *Id.*

Notice of Assessment and Availability of Assessment Report

IC 31-33-18-4 requires DCS to give verbal and written notice to "each" parent, guardian or custodian of a child assessed for abuse or neglect. The notice shall advise the person that he may request the reports of child abuse or neglect and confidential information outlined in IC 31-33-18-1. The person may also request juvenile court records arising from the report or investigation of child abuse or neglect. A parent, guardian or custodian can access the report and investigation information by signing a written release form that delineates what information is requested. The requesting person may be charged reasonable copying costs. Parents, guardians, custodians, and other persons about whom a report is made can also have access to DCS records as authorized by IC 31-33-18-2(8), and the child's guardian ad litem/court appointed special advocate has access to this information according to IC 31-33-18-2(7).

IC 31-33-8-9(a) states that DCS shall make the assessment report available to the appropriate court, prosecuting attorney, appropriate law enforcement agency upon request, and the United States Department

of Defense Family Advocacy Program (if a parent, guardian, or custodian of the child who is the subject of the substantiated report is an active duty member of the military). DCS is specifically required by IC 31-33-8-9(b) and (c) to send reports of substantiated cases of child abuse or neglect to the prosecuting attorney having jurisdiction in the county where the alleged child abuse or neglect occurred, and to the coordinator of the community child protection team.

In **F.D. v. Indiana Dept. of Family Services**, 1 N.E.3d 131 (Ind. 2013), Parents filed suit against DCS, the Evansville Police Department, and the Vigo County Prosecutor's Office for failure to notify them that their Nephew had admitted molesting their two-year-old daughter (Daughter). The molestation of Daughter was disclosed to Police by Nephew in the course of a DCS assessment and a Police juvenile delinquency investigation that Nephew had molested Parents' four year-old son (Son). Police informed the DCS case manager of Nephew's admission that he had molested Daughter as well as Son, but the case manager did not inform Parents that Nephew had admitted molesting Daughter. The trial court granted summary judgment to DCS on the grounds of statutory immunity. The Indiana Supreme Court found that summary judgment was not proper and remanded to the trial court for further proceedings. *Id.* at 140. The Court observed that Parents' suit was founded upon DCS's statutorily mandated duty under IC 31-33-18-4 to give verbal and written notice to parents that the reports and information relating to the child abuse or neglect investigation are available upon the request of the parent. *Id.* The Court said that the facts, which must be construed in favor of Parents as the non-moving party on summary judgment, did not fall within the circumstances that grant immunity under the plain words of the child abuse reporting law, IC 31-33-6-1(4) "for allegations that arise out of its participation in any proceedings resulting from the report of child abuse". *Id.*

Notice of DCS Removal of Child and CHINS Hearings

IC 31-34-2-3 states that a child may be taken into custody by a law enforcement officer, a caseworker, or a probation officer without a court order who has probable cause to believe that the child is a CHINS if: (1) it appears that the child's physical or mental condition will be seriously impaired or endangered if the child is not immediately taken into custody; (2) there is not a reasonable opportunity to obtain a court order; and (3) consideration for the child's safety precludes the immediate use of family services to prevent removal of the child.

IC 31-34-3-1 through 5 make special provision for notice to the custodial parent, noncustodial parent, guardian, and custodian when a child is taken into custody as result of abuse or neglect. IC 31-34-3-1 states that DCS shall notify the child's custodial parent, guardian, or custodian not more than two hours after the child has been taken into custody. IC 31-34-3-2 states that, if DCS cannot locate the child's custodial parent, guardian, or custodian after making a good faith effort to do so, DCS shall leave a written notice at the last known address of the custodial parent, guardian or custodian. IC 31-34-3-4 provides that the notice must identify a person or entity that the parent, guardian, or custodian may contact to obtain more information about the child's removal. If the custodial parent, guardian, or custodian does not live in Indiana, IC 31-34-3-3 provides that DCS shall send written notice to the custodial parent, guardian, or custodian by certified mail on the same day or the next business day after the child has been taken into custody. IC 31-34-3-5 states that the first priority for DCS is to meet the child's immediate needs for medical care, shelter, food, or other crisis services. IC 31-34-3-4.5 requires DCS to give notice to the child's adult relatives and all of the child's siblings who are over the age of eighteen within thirty days of the child's removal. If a child is taken into custody under a court order and the court orders out-of-home placement, IC 31-34-4-2 requires DCS to consider placing the child with a suitable and willing blood or adoptive relative, a relative by marriage, by or a de facto custodian before considering any other placement.

IC 31-32-1-4 requires DCS to give all notices of hearings in CHINS cases. IC 31-34-5-1 requires that notice of the time, place, and purpose of the detention hearing be given to the child's parent, guardian, or custodian if the person can be located. IC 31-34-10-2(b) requires that the child's parent, guardian, or custodian be summoned to the CHINS initial hearing and that a copy of the CHINS petition shall accompany the summons. A parent, guardian, or custodian shall also be given notice of a motion for protective order or injunction affecting the conduct of the child or the parent, guardian, or custodian.

Written Notice of Rights in CHINS Cases and Other Advisements

IC 31-34-4-6 requires DCS to give written notice of rights to the child's parent, guardian, or custodian when the child is taken into custody or when a CHINS petition is filed, whichever occurs first. The written notice shall state the following rights:

- (1) The right to have a detention hearing held by a court within forty-eight (48) hours after the child's removal from the home and to request return of the child at the hearing.
- (2) The right to:
 - (A) be represented by an attorney;
 - (B) cross-examine witnesses; and
 - (C) present evidence on the parent's, custodian's, or guardian's own behalf;at each court proceeding on a petition alleging that the child is a child in need of services. The parent, guardian, or custodian has the right to be represented by a court appointed attorney under clause (A) upon the request of the parent, guardian, or custodian if the court finds that the parent, guardian, or custodian does not have sufficient financial means for obtaining representation as described in IC 34-10-1.
- (3) The right not to make statements that incriminate the parent, custodian, or guardian and that an incriminating statement may be used during a court proceeding on a petition alleging that the child is a child in need of services.
- (4) The right to request to have the case reviewed by the child protection team under IC 31-33-3-6.
- (5) The right to be advised that after July 1, 1999, a petition to terminate the parent-child relationship must be filed whenever a child has been removed from the child's parent and has been under the supervision of the department [DCS] for at least fifteen (15) months of the most recent twenty-two (22) months.

See In Re G.P., 4 N.E.3d 1158, 1163 (Ind. 2014), in which the Indiana Supreme Court opined that the trial court must appoint counsel for a parent in a CHINS case if the parent requests the appointment of counsel and the court finds the parent to be indigent.

If the parent, guardian, or custodian is present at the initial hearing, IC 31-34-10-4 requires that the court advise him/her of the allegations in the CHINS petition and of the dispositional alternatives. IC 31-34-10-5 requires the court to advise the parent or the guardian of the child's estate of potential required parental participation and financial responsibility, and of the right to controvert allegations made regarding those issues. IC 31-34-19-9 requires the court to advise the parent, guardian, or custodian at the dispositional hearing of the modification procedures stated at IC 31-34-23. See Matter of C.B., 616 N.E. 2d 763, 769 (Ind. Ct. App. 1993) (custodian must be advised of modification proceedings at initial hearing and prior to modification).

Parents' Rights to Subpoena, Cross-Examine, and Introduce Evidence in CHINS Cases

IC 31-32-2-3 provides that the parent, guardian, or custodian of the child shall have the following rights in a hearing to determine whether a child is a child in need of services (admission and factfinding hearings), a hearing to determine whether the parent, guardian or custodian should participate in a

program of care and treatment of the child, a hearing to determine whether the parent or the child's estate should be financially responsible for the services provided to the child or the parent, and a hearing on a petition for termination of the parent-child relationship:

- (1) to cross-examine witnesses;
- (2) to obtain witnesses or tangible evidence by compulsory process; and
- (3) to introduce evidence on behalf of the parent, guardian, or custodian.

These rights are also listed in IC 31-34-4-6, with the caveat that they are applicable to "each court proceeding on a petition alleging that the child is a child in need of services."

The right of cross-examination is not absolute. Hearsay, which contravenes the right of cross-examination, is admissible in juvenile proceedings pursuant to the exceptions in the Indiana Rules of Evidence. Additionally, the juvenile code contains specialized hearsay exceptions that apply when the child is legally determined to be unavailable due to a disability, incompetency, substantial likelihood of emotional harm, or for medical reasons, and the child's statements have sufficient indicia of reliability. See IC 31-34-13-3, IC 31-35-4-2. IC 31-34-19-2 and IC 31-34-22-3 permit the admission into evidence of predispositional, review, and progress reports that contain probative evidence that would otherwise be excluded as hearsay. Case law does not bar hearsay in detention and dispositional hearings.

In **In Re J.K.**, 30 N.E.3d 695 (Ind. 2015), the Indiana Supreme Court reversed the child's CHINS adjudication. Id. at 696. Mother had admitted the CHINS allegations, but Father denied them and requested custody of the child. The parties had nearly reached an agreement on the child's placement, except for confirming whether the child could be transported by bus to her current high school from Father's home in a neighboring school district. During a heated colloquy, the trial court said to Father, "If I were you, I'd waive factfinding otherwise you're going to find your butt finding a new job. I'll be happy to give you what you want sir and I will order custody to you and then you will be responsible for ensuring that she gets to school every day. Do you want that? We can play that game. They only do it for kids in foster care and court ordered placements, they don't do it for others." The Court told Father that "it's 5:30, sir", and Father then admitted that the child was a CHINS. The Court found that the cumulative effect of the trial court's comments and demeanor had a direct impact on Father's acceptance of the court's leading suggestion to "waive factfinding", and said that such coercion was fundamental error. Id. at 700. The Court concluded that the trial court's remarks and conduct in their cumulative effect breached the court's duty of impartiality. Id.

In **In Re L.C.**, 23 N.E.3d 37 (Ind. Ct. App. 2015), *trans. denied*, the Court reversed the trial court's CHINS adjudication of a nine-year-old girl and remanded the case to the trial court for a new hearing. Id. at 38. Father established paternity for the child and had custody of her, but allowed the child to live with Mother, where the child was exposed to domestic violence between Mother and her boyfriend. Mother admitted the allegations in the CHINS petition, but Father denied them. The juvenile court accepted Mother's admission and adjudicated the child to be a CHINS before the factfinding hearing requested by Father took place. The Court concluded that the juvenile court erred by adjudicating the child a CHINS before the completion of the factfinding hearing. Id. at 42. The Court stated that the procedure employed by the juvenile court with respect to Father's factfinding hearing in this case had been expressly rejected by the Indiana Supreme Court. Id. The Court concluded that, because Father had challenged the allegations in the CHINS petition, due process required the completion of a factfinding hearing, including the presentation of evidence and argument by both parents before the child was adjudicated a CHINS. Id.

In **In Re S.A.**, 15 N.E.3d 602 (Ind. Ct. App. 2014), the Court reversed the trial court's CHINS adjudication, finding that the trial court had deprived Father of a meaningful opportunity to be heard by adjudicating the child to be a CHINS before Father's factfinding hearing. Id. at 609. Mother, a heroin

user, admitted to some of the CHINS allegations, she and DCS entered into an agreement, and the trial court adjudicated the child to be a CHINS. Father had denied the CHINS allegations and his DNA paternity testing was pending. The Court, quoting In Re K.D., 962 N.E.2d 1249, 1259 (Ind. 2012), stated that, when one parent has admitted the CHINS allegations and the other parent denies them, due process requires that the trial court “conduct a factfinding as to the entire matter.” S.A. at 609. The Court observed that, although Father had received a factfinding hearing, the trial court had already determined the child’s CHINS status based solely on Mother’s admission. Id. The Court explained that, because a court cannot issue separate adjudications for each parent, the trial court’s CHINS determination should be based on a consideration of the evidence in its entirety. Id. On rehearing, In Re S.A., 27 N.E.3d 287 (Ind. Ct. App. 2015), the Court clarified that, when the CHINS adjudication *can* involve both parents at the same time, it *should* involve both parents at the same time, so there is one adjudication as to all facts pertaining to the entire matter. S.A., 27 N.E.3d at 292. The Court opined that, if multiple hearings are unavoidable, then the trial court should, if at all possible, refrain from adjudicating the child a CHINS until evidence has been heard from both parents. S.A., 27 N.E.3d 287, 292-93.

In In Re T.N., 963 N.E.2d 467 (Ind. 2012), Mother admitted the CHINS petition allegations, but Father objected to CHINS status being granted on Mother’s admission. The trial court told Father that he could offer his objections to any services at a contested dispositional hearing, and then found the child to be a CHINS and proceeded to a contested dispositional hearing. Father appealed the CHINS adjudication. The Indiana Supreme Court held that the trial court erred in not conducting a contested factfinding hearing that was requested by Father and, thus, violated his due process rights. Id. at 469. The Court opined that the failure to provide a factfinding hearing for Father deprived him of due process at the CHINS adjudication stage, and he was thus “sent through one barrier between him and DCS having the statutory authority to file a termination of parental rights petition” without the opportunity to even challenge the evidence. Id. The Court concluded that:

Whenever a trial court is confronted with one parent wishing to admit and one parent wishing to deny the child is in need of services, the trial court shall conduct a fact-finding hearing, assuring due process to all parties. It is ultimately in the child’s best interest that the parents are given due process at all stages of the proceeding.

Id. The Court reversed the trial court’s CHINS adjudication and remanded the case to the trial court to conduct a factfinding hearing for Father. Id.

In In Re K.D., 962 N.E.2d 1249 (Ind. 2012), the Indiana Supreme Court reversed the trial court’s CHINS determination and remanded the case to the trial court to provide Stepfather with a factfinding hearing. Id. at 1260. Mother had admitted the allegations of the CHINS petition, including that she and Stepfather had failed to complete all services under the informal adjustment agreement, that Stepfather was an untreated sexual offender and had not yet completed his sexual offender treatment, and that Mother continued to allow him to live in the home. Stepfather denied that the children were CHINS. The trial court set the matter for a dispositional hearing for Mother and a contested factfinding hearing for Stepfather. Prior to the factfinding hearing scheduled for Stepfather, the Indiana Supreme Court decided In Re N.E., 919 N.E.2d 102 (Ind. 2010). Based on its interpretation of the In Re N.E. opinion, the trial court converted the factfinding hearing scheduled for Stepfather into a contested dispositional hearing. The trial court concluded that a contested factfinding hearing as to Stepfather was not required. The Court held that whenever a trial court is confronted with one parent wishing to make an admission that the child is in need of services and the other parent wishing to deny the same, the trial court shall conduct a factfinding hearing as to the entire matter. Id. The Court noted that an apparent conflict arises between IC 31-34-10-8 and IC 31-34-11-1. Id. at 1255. IC 31-34-10-8 states that if a parent, guardian, or custodian admits [the allegations in the CHINS petition], the juvenile court shall do the following: (1) enter judgment

accordingly; (2) schedule a dispositional hearing. Id. IC 31-34-11-1 states that the juvenile court shall hold a factfinding hearing if the allegations of the petition have not been admitted. Id. The Court said that “[w]here two statutes are in apparent conflict, they should be construed, if it can be reasonably done, in a manner so as to bring them into harmony.” Id. The Court said that: (1) in this case DCS alleged the children to be CHINS based on actions of both Mother and Stepfather; (2) N.E., 919 N.E.2d at 105 states that a CHINS adjudication “focuses on the condition of the child” and “does not establish culpability on the part of a particular parent”; (3) a CHINS adjudication is dependent on DCS proving a number of statutorily defined criteria by a preponderance of the evidence; (4) there was no evidence in the record at a factfinding hearing in this case that Stepfather was an untreated sex offender or how that made the children CHINS. K.D. at 1256. The Court said that lack of a factfinding hearing for Stepfather distinguished this case from In Re N.E., where Father received a fact-finding hearing at which he presented evidence and cross-examined witnesses. K.D. at 1256. The Court further held that the contested dispositional hearing did not provide Stepfather due process because he was not given an opportunity to contest the CHINS allegations. Id. at 1258.

In In Re V.C., 967 N.E.2d 50 (Ind. Ct. App. 2012), *trans. denied*, incarcerated Father appealed the child’s CHINS adjudication, contending that the juvenile court had denied his procedural due process rights by erroneously denying his request that the court issue a subpoena to the child’s Maternal Aunt to compel her attendance at the factfinding hearing. The Court opined that the juvenile court did not erroneously deny Father’s request to issue a subpoena to Maternal Aunt. Id. at 53-54. Father conceded that he did not provide the juvenile court with Maternal Aunt’s address, but argued that the court erred by failing to conduct its own investigation into Maternal Aunt’s contact information after Father provided her name and possible avenues for obtaining the information to the court. The Court agreed with the juvenile court that it is not the court’s responsibility to “go out and find” the person named in the subpoena. Id. at 53.

Negotiating Admissions to CHINS Petition Allegations

Attorneys who represent parents, guardians, or custodians may negotiate agreements with the DCS attorney and the child’s guardian ad litem/court appointed special advocate on CHINS allegations in an effort to avoid having clients entered into the Index as child abuse or neglect perpetrators. IC 31-34-10-6 provides that, except when the CHINS petition is filed pursuant to IC 31-34-1-6 [child substantially endangers self or others] or IC 31-34-1-3.5 [child is victim of human or sexual trafficking offense], the juvenile court shall determine whether the parent, guardian, or custodian admits or denies the allegations of the petition. A failure by the parent, guardian, or custodian to respond constitutes a denial. Two CHINS categories do not require the parent, guardian, or custodian to admit or deny the allegations. IC 31-34-10-7 provides that the juvenile court shall determine whether the child admits or denies the petition when the CHINS category is self-endangerment under IC 31-34-1-6 or victim of human or sexual trafficking under IC 31-34-1-3.5. A failure by the child to respond constitutes a denial. The language allowing the parent, guardian, or custodian to admit the CHINS petition is very broad. It may allow the parent, guardian, or custodian to admit that the child is a CHINS due to the acts or omissions of another person. For example, the parent could admit that the child was the victim of a sex offense committed by the parent’s boyfriend. Also, a parent could admit that the child was a CHINS due to the acts or omissions of the other parent. If the other parent failed to appear and contest the allegations, judgment could be entered on the admission. It is recommended that DCS lay the following foundation for the CHINS admission: (1) an exact statement of what is being admitted, particularly if the admission varies from the allegations in the petition; (2) evidence that the admission is made voluntarily and with no duress or coercion from DCS; and (3) a factual basis for the admission. DCS may also request the court’s authorization to amend the allegations in the CHINS petition to clarify inaccuracies or to facilitate agreement. Attorneys who represent parents, guardians, or custodians may also negotiate agreements with the DCS attorney and the child’s guardian ad litem/court appointed special advocate to dismiss the CHINS case and remove their clients from the Child Protection Index by filing agreed custody or parenting time modifications or

establishing third party custody or guardianship in the family law court so DCS will not need to pursue the CHINS case to assure the child's safety.

Nothing in the juvenile code prohibits the parties from negotiating the specific CHINS allegations, the dispositional alternatives for the child, and/or the parental participation and financial responsibility. Such negotiations may result in amendments to the CHINS petition. Amendments should be made in writing, or at the very least, thoroughly reviewed on the record prior to the CHINS admission. Judges may vary in their willingness to accept negotiated admissions or agreed entries. Remember that parents who are indigent can ask for court appointed counsel at any stage of the CHINS case. See In Re G.P., 4 N.E.3d 1158, 1164 (Ind. 2014) (Court found Mother did not permanently waive counsel for all subsequent CHINS proceedings; Court clarified it has never held that litigant who elects to waive the right to counsel is permanently bound by that decision). Note that IC 31-33-26-15(a) states that DCS *shall* expunge a substantiated report in the Index not later than ten working days after a court having jurisdiction over a CHINS case determines that abuse or neglect has not occurred (emphasis added).

IC 31-33-26-15(b)(2) requires DCS to amend a substantiated report contained in the Index by deleting the name of an alleged perpetrator if the court finds that the person was not a perpetrator of the child abuse or neglect which occurred. Note that in 2016, the Court of Appeals has reversed three CHINS adjudications in three published opinions, finding there was no evidence of endangerment: In Re S.M., 45 N.E.3d 1252 (Ind. Ct. App. 2016); In Re S. K., 57 N.E.3d 878 (Ind. Ct. App. 2016); and In Re A.H., 58 N.E.3d 951 (Ind. Ct. App. 2016).

The Child Protection Index

The Child Protection Index statutes are found at IC 31-33-26-1 through 18. IC 31-33-26-2 requires DCS to establish and maintain a centralized computerized Child Protection Index to organize and access data on substantiated reports of child abuse and neglect. IC 31-33-26-3 includes the following requirements of the system: automated risk assessment including review by a family case manager or supervisor of prior substantiated reports; online supervisor case review; and automated production of standard reports to compile results of abuse and neglect cases; and word processing capability to allow notes to be recorded with each substantiated case. IC 31-33-26-4 requires the Index to have the capability to search for reports that match the name of the perpetrator, victim, or person responsible for the victim's welfare and transfer previous substantiated reports to the county where the new report originated within twenty-four hours of receipt of the new report. IC 31-33-26-5 provides for security for confidentiality of the Index. The office of DCS ombudsman has read-only access to the Index concerning children who are the subject of complaints filed with, or cases being investigated by the ombudsman. IC 31-33-26-5(b).

Access to Child Protection Index

IC 31-33-26-16 lists the persons and entities who may have access to information in the Index. Included at IC 31-33-26-16 are DCS representatives, juvenile court, and any party to a child in need of services or a delinquency case in connection with a determination of an appropriate out of home placement. DCS may also provide substantiated information to: (1) an authorized agency of another state who requests information on a prospective foster or adoptive parent or another adult living in the prospective foster or adoptive parent's home; (2) the national Index of substantiated cases of child abuse or neglect; (3) a child care provider, upon submitting a written consent for release of information signed by a person who is employed by or who has applied for employment with the child care provider; and (4) to determine the eligibility of a child care provider to receive a division of family resources voucher payment.

IC 31-33-26-16(a)(4) states that a person or agency to whom child abuse and neglect reports are available under IC 31-33-18 may have access to the information contained in the Index. IC 31-33-18-2 lists the persons and entities that may have access to child abuse and neglect records. The list includes:

- persons authorized by IC 31-33 (IC 31-33-18-2(1));
- a legally mandated child protective agency (IC 31-33-18-2(2));
- police, a prosecutor, or a coroner (IC 31-33-18-2(3));
- a physician who reasonably suspects that a child before the physician has been a victim (IC 31-33-18-2(4));
- an individual legally authorized to place a child in protective custody (IC 31-33-18-2(5));
- an agency with legal responsibility or authorization to care for, treat, or supervise, the child (IC 31-33-18-2(6));
- an individual named as a victim, or their guardian ad litem or court appointed special advocate (IC 31-33-18-2(7));
- a parent, guardian, or custodian of the child (IC 31-33-18-2(8));
- a court, for purposes of redaction (IC 31-33-18-2(9));
- a grand jury, for its official purposes (IC 31-33-18-2(10));
- an appropriate state or local official (IC 31-33-18-2(11));
- the community child protection team under IC 31-33-3 (IC 31-33-18-2(12));
- a person about whom a report has been made, with certain information redacted (IC 31-33-18-2(13));
- a DCS employee, caseworker, or juvenile probation officer (IC 31-33-18-2(14));
- a local child fatality review team (IC 31-33-18-2(15));
- the statewide child fatality review committee (IC 31-33-18-2(16));
- DCS (IC 31-33-18-2(17));
- the division of family resources if the report is substantiated and concerns an applicant, an operator, an employee, or a volunteer at a licensed child care home or center (IC 31-33-18-2(18));
- a citizen review panel established under IC 31-25-2-20.4 (IC 31-33-18-2(19));
- the office of DCS ombudsman (IC 31-33-18-2(20));
- the state department of public instruction (IC 31-33-18-2(21));
- the state child fatality review coordinator employed by the state department of public health pursuant to IC 16-49-5-1 (IC 31-33-18-2(22)).
- the operator of a licensed child caring institution, group home, or secure private facility if the report concerns an employee, a volunteer, or a child placed at the institution, group home, or private facility, and the allegation occurred there (IC 31-33-18-2(23));
- the operator of a licensed child placing agency if the report concerns a child placed in a foster home licensed by the agency, an employee or volunteer of the agency or foster home licensed by the agency, and the allegations occurred in the foster home or in the course of employment or volunteering at the agency or foster home (IC 31-33-18-2(24)); and
- the National Center for Missing and Exploited Children (IC 31-33-18-2(25)).

There are exceptions and qualifications to the above list, so practitioners should read IC 31-33-18-2 very carefully to determine whether a person or agency is allowed to receive DCS confidential records.

DCS Substantiation Notices, Administrative Reviews, and Hearings for Identified Perpetrators

Substantiated abuse and neglect assessments are entered into the Child Protective Index. DCS shall notify the child victim's parent, guardian, or custodian and any other person identified as a perpetrator of child abuse or neglect within 30 days of the entry of a substantiated report into the Index. IC 31-33-26-

8(b). Unless a court is in the process of making a CHINS determination or a criminal charge has been filed, the perpetrator, including the child's parent, guardian, or custodian, may request that a substantiated report be amended or expunged at an administrative hearing. IC 31-33-26-8(c)(2). The perpetrator's request for an administrative hearing must be made within thirty days of service of notice, unless the perpetrator demonstrates that the failure to request an administrative hearing was due to excusable neglect or fraud. IC 31-33-26-8(c)(3) and (d). The administrative hearing shall be stayed if there is a pending CHINS case or if criminal charges are filed against the perpetrator based on the same facts and circumstances on which DCS classified the report as substantiated. IC 31-33-26-11(b); IC 31-33-26-12(a). IC 31-33-26-11(d) provides that the administrative hearing shall also be stayed pending the conclusion of any program of informal adjustment entered into by the perpetrator. The perpetrator is not entitled to an administrative hearing if the juvenile court determines in a CHINS case that the alleged abuse or neglect did not occur or the person was not a perpetrator. IC 31-33-26-11(c). If the perpetrator is convicted of the criminal charges where the facts provided the basis for the substantiated report, the perpetrator is not entitled to an administrative hearing. IC 31-33-26-12(b). IC 31-33-26-8(a) provides that a perpetrator is not entitled to an administrative hearing if the juvenile court has already determined that the child is a CHINS based on a report that names the perpetrator as the individual who committed the abuse or neglect, or DCS approved the substantiated report after the court's determination.

DCS may conduct an administrative review of a substantiated assessment before holding a formal administrative appeal before an administrative law judge. The administrative review may result in a determination that additional actions should be taken to re-examine the assessment. The re-examination could include reviewing additional information and interviewing additional persons. The re-examination can result in a determination that the assessment should be changed to "unsubstantiated" and/or that the identified perpetrator's name should be deleted from assessment.

At the administrative hearing, DCS must prove by a preponderance of evidence, that the perpetrator is responsible for the child's abuse or neglect. IC 31-33-26-9(b). The hearing officer shall consider hearsay evidence to be competent evidence and may not exclude hearsay evidence based on the technical rules of evidence. If no objection is made, hearsay evidence may form the basis for an order. If there is a proper objection to the evidence, and the evidence does not fall within a recognized exception to the hearsay rule, the resulting administrative order may not be based solely upon the hearsay evidence. IC 31-33-26-9(c). IC 31-34-13-1 [the child hearsay statute] states that the child hearsay statute applies to an administrative hearing conducted under IC 31-33-26-9. The administrative hearing and files shall be closed and not disclosed to the public. IC 31-33-26-9(f) and (g). If DCS fails to carry the burden of proof, DCS shall amend or expunge the report as ordered by the hearing officer. IC 31-33-26-9(d). IC 31-33-26-9(h) states that DCS shall provide a copy of an administrative hearing decision to the department of education if the alleged perpetrator is licensed by the department of education or the incident happened on school property or at a school function. IC 31-33-26-13 authorizes DCS to adopt rules for administrative hearings.

Expungement Time Limits for DCS Assessments and Records

IC 31-33-26-15(a) states that DCS shall expunge a substantiated report contained in the Child Protection Index not later than ten working days after any of the following occurs: (1) a court in a CHINS case determines that child abuse or neglect has not occurred; (2) an administrative hearing officer finds that the child abuse or neglect report is unsubstantiated; or (3) a court enters an expungement order under IC 31-33-27-5 [the expungement statutes]. IC 31-33-26-15(b) states that DCS shall amend a substantiated report in the Index by deleting the name of an alleged perpetrator if the court in the CHINS case or an administrative hearing officer finds that the person was not a perpetrator of child abuse or neglect.

IC 31-33-27-1 through IC 31-33-27-6 address the court ordered expungement of DCS assessment reports. IC 31-33-27-1 defines the terms “expunge” and “expungement”. These terms mean the removal or deletion of all information maintained by DCS regarding a report, assessment, or determination relating to an incident or condition of child abuse or neglect, and the destruction or delivery of that information to a person to whom the information relates. IC 31-33-27-2 provides that “information” includes all files and records created or maintained by DCS. The term includes original documents and copies, correspondence, messages, photographs, videotapes, audio recordings, and audiovisual recordings, and any other material contained in electronic, paper, digital form, or in other media. IC 31-33-27-3(a) states that DCS shall expunge child abuse and neglect information when the youngest child listed in a DCS report as a victim of child abuse or neglect reaches the age of twenty-four (24) years. This shall occur only if DCS approved the assessment as unsubstantiated or the CHINS court entered a final judgment based on a finding that the child abuse or neglect did not occur. IC-31-33-27-3(b) provides that, when an interested person requests it, DCS may expunge information relating to an unsubstantiated assessment of child abuse or neglect at any time. In order to do so, DCS must determine that the probative value of the information does not justify its retention in DCS records. IC-31-33-27-3(c) applies only to information that is not expunged under (a) or (b). IC 31-33-27-3(c) states that DCS may retain information relating to an unsubstantiated assessment of child abuse or neglect in paper, digital, or other form that is accessible only by DCS employees, with access rights established by DCS policy or rule. IC-31-33-27-3(d) provides that information that is retained in DCS records under subsection (c) may be used by DCS to facilitate its assessment of a subsequent report concerning the same child or family, but IC-31-33-27-3(e) states that DCS may not solely rely on information under subsection (c) to support the substantiation of a later report, if information obtained in the assessment of the later report is otherwise insufficient to support a substantiated determination. IC-31-33-27-3(f) requires DCS to adopt a written policy, and allows DCS to adopt rules under IC 4-22-2, regarding access to information retained under subsection (c). IC 31-33-27-4(a) provides that DCS shall expunge child abuse or neglect information relating to a substantiated report no later than the time specified for expungement of the report under IC 31-33-26-15. IC 31-33-26-15(a) states: (1) DCS shall expunge a substantiated report in the Index not later than ten working days after any of the following: (1) the CHINS court determines child abuse or neglect has not occurred; (2) an administrative hearing officer finds that the child abuse or neglect report is unsubstantiated; or (3) a court having juvenile jurisdiction enters an order for expungement of the report under IC 31-33-27-5. IC 31-33-26-15(b) states that DCS shall amend a substantiated report in the Index by deleting the name of the alleged perpetrator if the CHINS court or administrative hearing officer finds that the person was not a perpetrator of the child abuse or neglect that occurred. IC 31-33-27-4(b) provides that DCS shall amend information relating to a substantiated report by deleting the name of a person as an alleged perpetrator if a CHINS court with jurisdiction or an administrative hearing officer under IC 31-33-26-9 finds that the person was not a perpetrator of the child abuse or neglect that occurred.

Petitioning for Expungement of Substantiated DCS Reports and Records

IC 31-33-27-5(a) applies to information relating to substantiated reports in any DCS records. IC 31-33-27-5(b) allows for an individual identified as a perpetrator of child abuse or neglect in a substantiated report to file a petition requesting that the court order DCS to expunge the substantiated report and related information. This petition must be filed with a court that has juvenile jurisdiction in the county where the individual resides. IC 31-33-27-5(c) requires the individual in subsection (b) to name DCS as a respondent in the petition, and to serve DCS with the petition and a summons. IC 31-33-27-5(d) provides that the court must hold a hearing on the petition and any response filed by DCS, unless a hearing is waived by the agreement of all the parties. IC 31-33-27-5(e) describes what information the court may review when considering whether to grant a petition under IC 31-33-27-5. This information includes the factors listed under IC 31-39-8-3 [Expungement of Records Concerning Delinquent Child or Child in Need of Services; Factors Considered] in relation to the petitioner, if the substantiated report was the subject of a juvenile court case, and any facts relating to the petitioner’s current status, activities,

employment, contacts with children, or other circumstances relevant to consideration of whether the petition should be granted. IC 31-33-27-5(f) provides that the court may grant the petition if the court finds by clear and convincing evidence there is little likelihood that the petitioner will be a future perpetrator of child abuse or neglect, and the information has insufficient current probative value to justify its retention in DCS records for future reference. IC 31-33-27-6 provides that if DCS expunges child abuse or neglect information under IC 31-33-27, either at the request of a perpetrator named in the assessment report or at the time for expungement specified in IC 31-33-27-4(a), or under a court order under IC 31-33-27-5, then IC 31-39-8-7 [Expungement of Records Concerning Delinquent Child or Child in Need of Services; Use of Expunged Records in Civil Action] applies to any civil action brought against DCS or any other agency, entity, or individual, if the content of the expunged information may be relevant to any issue in the civil action.

In **G.E. v. Indiana Dept. of Child Services**, 29 N.E.3d 769 (Ind. Ct. App. 2015), the Court reviewed IC 31-33-27-5, the expungement statute, and found that Birth Mother had not shown by clear and convincing evidence that: (1) there was little likelihood that she would be a future perpetrator of child abuse or neglect; and (2) there was insufficient probative value to justify the retention of her records by DCS for future reference. Id. at 773. The Court concluded that, because Birth Mother’s burden of proof was clear and convincing evidence, which is greater than a preponderance of the evidence, it was not unreasonable for the juvenile court to deny her expungement petition where the only evidence was her testimony. Id. at 772. The Court said that Birth Mother’s choice to work at a child care center made her history of child neglect and substance abuse relevant since IC 31-33-26-2 through IC 31-33-26-16 [the Child Protection Index statutes] require DCS to maintain a database of perpetrators and to make that database available to child care providers. Id.

Petitioning For Expungement of Juvenile Court, Law Enforcement, and Service Provider Records

IC 31-39-8-2 provides that any person may petition the juvenile court to remove “records pertaining to the person’s involvement in juvenile court proceedings” from the court files, files of law enforcement, and files of any other person who has provided services to a child under a court order. IC 31-39-8-3 lists the factors which the court may review on a court records expungement petition. The factors are:

- (1) the best interests of the child;
- (2) the age of the person during the person’s contact with the juvenile court or law enforcement agency;
- (3) the nature of any allegations;
- (4) whether there was an informal adjustment or an adjudication;
- (5) the disposition of the case;
- (6) the manner in which the person participated in any court ordered or supervised services;
- (7) the time during which the person has been without contact with juvenile court or with any law enforcement agency;
- (8) whether the person acquired a criminal record; and
- (9) the person’s current status.

Child abuse or neglect information may be expunged if “the probative value of the information is so doubtful as to outweigh the information’s validity.” IC 31-39-8-4(a). IC 31-39-8-4(b) states that child abuse or neglect information shall be expunged if the information is determined to be unsubstantiated after: (1) an investigation of a report of a child who may be a victim of child abuse or neglect by the child protection service; or (2) a court proceeding. IC 31-39-8-5 provides that if the court grants an expungement petition, the court shall order each law enforcement agency and service provider to send the records to the court. IC 31-39-8-6 provides that these records, together with the court’s records, may be destroyed or given to the person to whom the records pertain. IC 31-39-8-7 governs the situation when a person whose records were expunged brings a civil action that might be defended with the contents of the records. The defendant is presumed to have a complete defense to the action.

In **Dubois County Office of Family and Children v. Adams**, 671 N.E.2d 202 (Ind. Ct. App. 1996), a licensed foster parent (Adams) was accused of molesting two children for whom his wife was babysitting. The Dubois County Office of Family and Children (DCOFC) and the Jasper City Police Department investigated and substantiated the allegations, but no criminal charges were filed against Adams. When the licensing foster care agency was notified of the substantiated allegations, the agency removed a foster child who was a ward of the Jasper County Office of Family and Children from the Adams home and ceased future foster care placements in the home. Adams filed a petition requesting that the Dubois County Juvenile Court order the DCOFC and other agencies to expunge records relating to the alleged sexual molestation. The DCOFC filed a motion to dismiss. The motion was denied and DCOFC filed an interlocutory appeal. The Court ruled in DCOFC's favor that the Dubois Juvenile Court lacked subject matter jurisdiction to order the expungement of DCOFC records. Id. at 203. The Court said that IC 31-6-8-2 (recodified at IC 31-39-8-2) authorizes the juvenile court to order the expungement of records relating to proceedings before that court. Id. Neither the children who were alleged victims of molestation nor the former foster child was involved in juvenile proceedings in the Dubois Juvenile Court. Id.