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FOREWORD

In 2013, the Indiana General Assembly enacted Ind. Code § 2-5-36-1, which created the Commission on Improving the Status of Children in Indiana (Commission) and charged it with studying issues concerning vulnerable youth, reviewing and making recommendations concerning pending legislation, and promoting information sharing and best practices. The Commission’s membership includes the heads of state agencies serving vulnerable youth, including child welfare, family and social services, mental health, probation, corrections, courts, health, and education, as well as members of both chambers of the legislature, a member of the judicial branch, an appointee of the Governor, and the Indiana state budget director. “Vulnerable youth” are children served by the Department of Child Services, the Office of the Secretary of Family and Social Services, the Department of Correction, or a juvenile probation department.

The Commission established the Data Mapping & Sharing Task Force (Task Force), a multidisciplinary and multi-branch task force in order to improve access to information for those working directly with children—family case managers, probation officers, teachers, CASA volunteers, and others. The Task Force has compiled the Indiana Youth Information Sharing Guide (Guide) as a comprehensive resource to facilitate information sharing between child-serving entities on behalf of children and youth who come into contact with multiple systems, while ensuring the protection of privacy and confidentiality.

The Commission, the Task Force, key stakeholders representing state agencies committed to serving vulnerable youth, and the Attorney General have united to endorse the Guide as the statewide policy standard for sharing information. The Guide is the first resource to review state and federal confidentiality laws, along with department policies on information sharing, in order to provide practical guidance to child-serving professionals on both the important records each entity maintains and how those records can be accessed by others. Our hope is that the Guide provides clarity to child-serving professionals in order to expedite the sharing of information among entities. As a result, children and families in the court system should experience fewer delays and improved outcomes.
ACKNOWLEDGMENTS

The Indiana Youth Information Sharing Guide (Guide), the website, and the mobile application are all a part of a collaborative project of the Commission on Improving the Status of Children in Indiana (the Commission) and the Data Sharing and Mapping Task Force (Task Force). The Task Force managed a conscientious multiagency review of information sharing practices between child-serving entities in Indiana. Many key partners collaborated on this project, all of whose work affects vulnerable youth and their families: the Department of Child Services, the courts, the Indiana Supreme Court Office of Court Services and State Office of GAL/CASA, the Division of Mental Health and Addiction and community mental health providers, probation, detention centers, the Department of Health, the Department of Correction Division of Youth Services, the Columbus Police Department, Eskenazi Hospital, the Department of Education, and schools.

This project was made possible in collaboration with Casey Family Programs, whose mission is to provide, improve – and ultimately prevent the need for – foster care. The findings and conclusions presented in this report are those of the authors alone and do not necessarily reflect the opinions of Casey Family Programs.

Financial support for this project was also provided by the Court Improvement Program of the Indiana Supreme Court. The Indiana Office of Technology deserves special recognition for its work on developing the mobile application and website for the Guide, and for its contribution to the maintenance of the application. The Trial Court Technology division of the Indiana Supreme Court also contributed staff time for the application development, and server space for the website. Thanks also to the Indiana State Department of Health Office of Public Affairs for assistance with the graphics for the mobile application. Key individuals who provided material support, expertise, and research for this Guide, the website, and the mobile application include:

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Tamara Weaver - Deputy Attorney General, Indiana Attorney General
Julie Whitman- Vice President of Programs, Indiana Youth Institute
ATTORNEY GENERAL’S ENDORSEMENT

Dear Reader,

As Indiana’s Attorney General, I am committed to improving the lives of all Hoosiers, including the youngest and most vulnerable. I have been honored to serve on the Children’s Commission since its inception, and I was glad to have the opportunity for attorneys in our office to work with other stakeholders in preparing and reviewing this valuable Indiana Youth Information Sharing Guide. It is important that we maintain privacy protections for various types of information about children, and at the same time we should strive to find ways to effectively and efficiently share information where permissible if that can facilitate getting information to service providers, state agencies, and others who can assist a particular child who is in need.

This Guide has been prepared with careful attention to trying to maintain that important balance, and I would encourage persons who work in contexts relating to improving children’s lives to utilize this Guide in appropriate situations as much as possible. Laws relating to these issues may change, so users should consult with legal counsel as necessary to ensure compliance, but this Guide should be a valuable starting point for navigating privacy and information-sharing issues.

I want to express my personal thanks for the hard work of the Commission on Improving the Status of Children in Indiana, the Data Sharing & Mapping Task Force, and those who provided valuable additional input and research for this project. The Information Sharing Guide would not be possible without the efforts of all of those involved. It is my sincere hope that the Guide benefits those working with children and becomes a vital resource in their provision of services to our youngest Hoosiers.

Sincerely,

[Signature]

Gregory F. Zoeller
Indiana Attorney General
INTRODUCTION

Background
Current information sharing practices within Indiana differ greatly. Some jurisdictions share information readily, in order to make sure that professionals working with the children and families have the information they need to best meet the needs of the family. Other jurisdictions are hesitant to share information, in part because those professionals are unsure about what information can be shared, to whom it can be released, and under what circumstances.

Further, it is not uncommon to have dual status youth, who are involved with multiple child-serving agencies simultaneously; youth are frequently involved in delinquency actions while concurrently determined to be children in need of services (CHINS). The laws, policies and practices protecting privacy and confidentiality of information differ between child-serving agencies and have varying implications regarding how and when information can be shared. When a youth comes into the care and custody of either system, there are often disruptions with other institutions with which the child interacts. While these agencies strive to provide the best possible results, information gaps can cause delayed, ineffective, duplicative or inadequate services. Collaboration and information sharing between courts, probation, schools, mental health and social service providers and the Department of Child Services (DCS) will ensure informed decision making, and will expedite the exchange of key information such as case plans, service referrals, out-of-home placements, juvenile detention information and educational plans, resulting in the best possible outcomes for children and families.

The Guide was created to support for professionals in disciplines including:
- Education
- Department of Child Services
- Primary Care & Behavioral Health Services
- Juvenile Court and Juvenile Justice Services
- Court Appointed Special Advocates and Guardians ad Litem
- Indiana State Department of Health
- Indiana Department of Correction
- Law Enforcement

The Guide was designed to improve communication among professionals by providing a clear picture of what information may be shared among agencies and service personnel. It summarizes how specific types of information can be shared, which parties can share this information, and who can receive information regarding children and families.

Although multiple attorneys representing individual entities reviewed the information provided in the Guide, it is NOT intended to serve as legal advice. Please contact your organization’s legal counsel if you need clarification or have any questions regarding materials found in the Guide.

Information Sharing Principles

Why share information?
Information sharing can serve many important purposes, such as enhancing the efficiency of services and providing a more streamlined experience for children and families. Services are streamlined when best practices prevent the duplication of services and decrease the amount of time spent on gathering information. When information is shared properly, it is easier to develop an overall picture of what elements should be in place to support youth who may interact with multiple agencies. Proper information sharing is instrumental in achieving the goal of improving outcomes for all children. By decreasing the time it takes to obtain crucial records from system professionals, the juvenile system can actually reduce delays in the dispositions of cases. In turn, this can result in children achieving permanency on a faster basis.

**When to share information?**
Both federal and state laws govern privacy and confidentiality issues regarding information sharing. The laws balance privacy and confidentiality considerations with the benefits of sharing information to allow agencies and system professionals to exchange information necessary for the coordination of services. Even if a law permits information sharing, agencies must still carefully consider what information to share, how and when to share it, and with whom.

Each federal and state statute contains parameters guiding information disclosure. It is important to discuss with requesters what information is necessary and relevant to the scope of their work with a child or youth. Having a clear understanding of the requester’s needs and intentions will help providers of information disclose only that information which is necessary and relevant to the needs of the child and family. Sharing information when it is not necessary may not only violate federal and state privacy laws, but could also harm the child.

Additionally, information may be subject to re-disclosure regulations after it is shared by an originating agency. Professionals are expected to share information responsibly and accurately while safeguarding confidentiality. Agency professionals who are unsure when to share information should consult their supervisor, records coordinator, or legal counsel.

**Agency Roles: What is Your Role?**

**Understanding Individual Roles**
The ability to share and receive information is determined by the particular roles agency personnel play in a child’s life. The exchange of information may come to a standstill if the roles and responsibilities of stakeholder’s conflict. Each agency should consider its responsibilities when evaluating the requirements, appropriateness, benefits and risks of sharing information within and across multiple systems. It is important to consider the roles and responsibilities of other systems and professionals when sharing information in order to effectively address conflicts when they arise.

**Juvenile Courts & Probation**
In Indiana, county juvenile courts provide probation services. Juvenile probation officers are responsible for investigating and supervising the court-ordered treatment and services for a youth during the probation period, then preparing a progress report for the court. A juvenile probation officer may seek information from other agencies to develop recommendations regarding treatment and services, assess the level of risk a youth presents to the community and track the
youth’s participation in court-ordered activities. The probation officer is responsible for informing the court of the youth’s status and, if the juvenile is not adhering to the conditions of the probation order, may ask the court to review the case. The court may impose sanctions or consequences. The goal of probation is to provide community protection, accountability, competency development and treatment to all youth who fall under the supervision of the court.

**Department of Child Services**
The Department of Child Services (DCS) is governed at the state level and operates local offices in all 92 counties. The goal of DCS is to protect children who are victims of abuse or neglect and strengthen families through services that focus on family support and preservation. The Department also administers child support, child protection, adoption, and foster care services throughout the state of Indiana. DCS workers have varying responsibilities for children, all undertaken in an effort to protect the welfare of children and their families. The nature of a family case manager’s responsibility to a particular child will affect the need for, and rules concerning access to, information regarding the child and family members.

In general, the law provides DCS family case managers broad access to relevant information relating to an investigation of child abuse or neglect. DCS may seek information via specialized court orders granting the release of records. A frequent context for information sharing concerns DCS involvement with children who may also have a pending juvenile delinquency proceeding. A court may determine a child should be placed in the legal custody of DCS in order to ensure the child’s health, safety and welfare. DCS then becomes responsible for the care of the child, including that child’s placement, schooling, visitation, transportation, and medical care, as well as any other services necessary for the child’s welfare. In such cases, DCS is allowed access to information necessary to carry out those functions. As a general rule, DCS records are confidential and are not subject to public disclosure. However, Indiana statutes permit DCS to share relevant information about children with certain child welfare stakeholders under specific circumstances.

**Educational Entities**
Education professionals provide relevant instructional programs for students to pursue learning. School administrative staff and educators are responsible for creating a student-focused, learning-oriented environment to prepare students to live productively and responsibly in a technical, global society. Educators work to ensure students achieve their maximum intellectual potential by meeting students’ individual needs and abilities. Educators may request and share information in order to develop effective learning or behavioral plans or to assure the safety and well-being of the youth or other students at the school.

**Court Appointed Special Advocates & Guardians ad Litem**
Court Appointed Special Advocates (CASAs) are trained community volunteers appointed to advocate for the best interests of abused and neglected children in court. Guardians ad Litem (GALs) may also be volunteers, or they may be attorneys or other professionals who advocate for the child’s best interests. Both CASAs and GALs work as the eyes and ears of the court and provide critical information needed to ensure each child’s rights and needs are protected while the child is involved in the court system. Volunteers stay with each case until it is closed and the child is placed in a safe, permanent home. For many children, their CASA/GAL volunteer will
be the one constant adult presence in their lives. As a party to the legal proceedings in child welfare cases, CASA/GALs can receive all court documents and most documents from DCS involving the child or family.

The CASA/GAL will perform a number of functions in a case to help determine the best interests of a child. The volunteer may conduct home visits and interview the parents, stepparents, significant others or extended family who are involved in the child’s home life. They may also interview any childcare providers or teachers, and may review medical or education records. The CASA/GAL will ultimately file a report with the court providing fact based recommendations to the court as to what is in the child’s best interests in terms of placement, services and permanency.

**Healthcare Entities**
Healthcare is defined as any care, treatment, service or procedure to maintain, diagnose or treat an individual’s physical or mental conditions, including admission into a healthcare facility. A healthcare provider in Indiana means an individual who is licensed, registered or certified as a healthcare professional including, but not limited to: physicians, dentists, nurses, psychotherapists, psychologists, pharmacists, paramedics and others; as well as hospitals, health facilities, home health agencies, the Indiana State Department of Health (ISDH) and local health departments.

**Mental Health Treatment**
Mental health professionals provide counseling and case management services for children and their families to address emotional or behavioral concerns. Mental health providers may seek information such as child’s behavioral history, family history, and the reason for the referral in order to determine service needs. These mental health professionals may be asked to provide information regarding the child and family’s participation in treatment and general information regarding progress toward goals. In Indiana, some mental health providers partner with local schools to deliver treatment in a non-traditional mental health setting. Mental health records are confidential and accessing these records usually requires the patient or their representative to sign a release or a court to issue an order allowing the release of the records.

**Addiction Treatment**
Addiction treatment professionals provide counseling and case management services to children and their families dealing with addiction disorders. Children with addiction disorders may experience emotional and behavioral problems at home and at school. Addiction treatment providers may seek information to develop treatment plans and understand case management needs. Therapy can be provided to individuals, groups and families through both inpatient and outpatient care.

Like mental health records, addiction treatment records are confidential and generally require the patient to consent to release the records or require a court to issue an order allowing access to the records. An addiction treatment counselor may be asked to share information regarding a youth’s participation in treatment and progress toward completion. Addiction treatment providers and staff have a clinically appropriate and legally mandated standard of sharing as little information as possible, based on the recipient’s “need to know.” These standards combat the potential
negative consequences of an individual’s addiction disorder being reported outside of a therapeutic relationship. Effective treatment requires a balance between maintaining confidentiality to facilitate trust within the therapeutic relationship while adhering to reporting and disclosure requirements.

**Department of Correction**
The Indiana Department of Correction (IDOC) is charged with providing correctional services to juvenile offenders in the least restrictive setting. IDOC continually works towards enhancing the services for youth and fostering positive developments in the field of juvenile justice. The Division of Youth Services oversees all aspects of IDOC’s juvenile care, which is segregated from adult services. IDOC Youth Services utilizes the Balanced and Restorative Justice Model to serve as its foundation and core beliefs in providing juvenile justice services. All juvenile offender records are classified as confidential and the release of these records are carefully scrutinized.

**Indiana State Department of Health**
The Indiana State Department of Health’s (ISDH) mission is to promote and provide essential public health services. ISDH operates many programs that benefit children and families including Women, Infant and Children (WIC), Children’s Special Health Care Services and the Newborn Screening Program. In addition, ISDH maintains vital records including birth and death certificates. They also maintain the Indiana Immunization Registry and the Putative Father Registry. The Putative Father Registry is a database that maintains information from males who believe they may have fathered a child and who anticipate that the child may be placed for adoption. Before an adoption can be granted, the adoption petitioner is required by law to notify any man registered with the Putative Father Registry as a potential father of a child who is up for adoption. Finally, local health departments in every county provide essential health services to protect the public’s health such as preventative and primary care, immunizations, training and education and other services.

**Law Enforcement Agencies**
A law enforcement agency is any agency or department at any level of government whose principal function is the apprehension of criminal offenders. This term includes the Indiana State Police Department, local law enforcement agencies, and the Office of the Inspector General. The Indiana State Police maintains the Indiana Clearinghouse for Missing Children and operates the Amber Alert program. Other law enforcement agencies include city police, town marshals, county sheriff’s departments, and college and university police departments.
UNDERSTANDING INFORMATION SHARING

PRIMARY PARTICIPANTS

A variety of agencies and institutions are involved in the lives of youth and their families. Information sharing can occur between one or multiple systems at any given time.
REQUESTERS OF INFORMATION:
QUESTIONS & BEST PRACTICES

1. Why do you need the information? What is your purpose? What entitles you to the information?
A request for information should be made only if it is necessary to assist in the assessment of the youth’s needs, the development of a service plan for the youth, and/or the coordination of services between agencies. The requester needs to determine whether he or she is entitled to the information sought. He or she needs to be certain to possess the legal authority to obtain this information either by statute or by obtaining the appropriate consent/release of information.

2. How are you going to use the information?
Care should be taken to use the information only for the purposes for which it has been sought. There is the danger that information obtained about a youth’s substance abuse, mental health status, or unlawful behavior can be used to further incriminate the youth or push him or her unnecessarily further into the juvenile justice system.

3. How are you going to protect the information during its use (including information maintained on a computer)?
Reports and notes containing information obtained from other agencies should be protected along with other confidential information about the youth. Care should be taken to keep hard files in locked cabinets and electronic information should be stored in a manner that protects it from unintended access and use.

4. How are you going to protect/dispose of the information after use?
Once the information has been used for its intended purposes, it should be disposed of in accordance with the agencies’ policies for destruction of data. If it needs to be maintained, it should be stored in a special section of the case file and/or blocked from unintended access until it can be destroyed.

5. Who else will have access to the information?
Access to the information should be prescribed in terms of who is permitted to see and use either hard file or electronic copies.

6. What additional dissemination of the information are you going to make? For what purpose? Is it necessary?
It may be that some dissemination of the information is necessary to achieve the evaluation or treatment goals. Care should be taken to think about each transmission to be sure the person receiving it is entitled to it and that it is necessary for that person to receive it for the intended purposes. Beyond the formal dissemination, all holders of the youth’s information should take care to not informally share the information in casual conversation or in some other manner inadvertently disseminate the information beyond its intended use.

7. Will you have a log or some record of who requested and who transmitted information?
Agencies should keep a log of requesters and transmitters of information. This may be established centrally if there is an
information access officer or it may be maintained by the individual worker. If a log is maintained by the individual worker there should be a log for information requests and transmissions on all the worker’s cases, along with a notation in the individual case file of each information request and transmission.

8. **How will you handle requests for consents/releases of information with the families?**

The participation of family members in the assessment and planning for service delivery is critical in order to achieve sought outcomes for youth. As consents/releases are sought, communications should be conducted in a manner that is respectful of the family’s right to privacy. The requested information should be shared with the family to determine whether it is correct and to determine whether the family is in agreement with any information changes that may have been made.
**PROVIDERS OF INFORMATION:**
Information-Sharing Decision Guide

**Is the information I have necessary and relevant and important to the child and the child’s family case planning and services?**

- Yes. Continue.
- No. Do not share information.
- Unsure. Consult your supervisor or legal counsel.

**Is it my information to share?**

- ✓ What is my role?

  - Yes. Continue.
  - No. Direct the request to the original source of information.
  - Unsure. Consult your supervisor or legal counsel.

**Does the recipient have legal permission to obtain this information?**

- ✓ Who is the requester?
  - ✓ Why this person requesting information?
  - ✓ How will this information be used?
  - ✓ Is the person presenting with proper authorization (e.g. statute or court order)?

  - Yes. Continue.
  - No. Do not share the information.
  - Unsure. Consult your supervisor or legal counsel.

**Are there reasons this information should not be released in this situation?**

- ✓ What are the potential consequences of releasing the information?

  - No. Continue.
  - Yes or unsure. Consult your supervisor or legal counsel.

**Share information and be sure to:**
✓ Identify how much information to share. Consider the purpose and type of information shared, the parties involved.
✓ Think about when and how the information will be exchanged. Consider timelines and priorities, the stipulations of re-disclosure.
✓ Ensure that you are giving the right information to the right person. Share the information securely.
✓ Document the release of information as required by your agency.

Always be sure to check the law!
SYSTEM SPECIFIC
INFORMATION SHARING

EDUCATION/SCHOOLS

Education professionals provide engaging and relevant instructional programs for students to pursue learning. School administrative staff and educators are responsible for creating a student-focused learning-oriented environment to prepare students to live productively and responsibly in a technical, global society. Educators work to ensure that students achieve their maximum intellectual potential by meeting students’ individual needs and abilities. Educators may request a share information in order to develop effective learning or behavioral plans or to assure the safety and well-being of the youth and other students at the school.

Important and Frequently Requested Records

Records created or maintained by schools:
- Attendance records
- School disciplinary records
- Grades, transcripts, standardized test results
- Health/immunization records (provided to or created by school)
- Psychological or other testing done by school or provided to school
- Individualized Education Plan (IEP’s) and other special education records
- Surveillance video of students
- School directory information

DCS

What records can you share with DCS?
- Schools can share education records with a child’s DCS family case manager without the parents’ consent when DCS is investigating a case, and when it has the responsibility for supervising the child, such as when a child is in an out-of-home placement, so that DCS can address the child’s education needs. Schools and individual teachers, administrators, and school staff are also required to report any suspected abuse or neglect to DCS.

GAL/CASA

What records can you share with GAL/CASA?
- Schools can share education records with a child’s GAL/CASA without the parents’ consent when the GAL/CASA has been appointed by the court to represent the child and has an Order of Appointment that gives the GAL/CASA access to education records concerning the child.
Probation
What records can you share with Probation?

- Schools can share education records with probation without the parents’ consent when the child is in an out-of-home placement and probation has the responsibility of supervising the child, and must ensure the child’s educational needs are being met.
- Schools can report information about alleged delinquent behavior to probation and/or the juvenile prosecutor, which may include disciplinary records and surveillance tapes.
- Schools can share education records with juvenile justice agencies, including probation, without prior parental consent so long as the purpose relates to the ability of the juvenile justice system to serve the student before adjudication. Post-adjudication disclosure of education records is treated the same as those before adjudication if the educational agency determines that the post-adjudication disclosure is for the purpose of identifying and intervening with the child as a juvenile at risk of delinquency, rather than to obtain information solely related to supervision of the child as an adjudicated delinquent child.
- A school may also disclose education records of a child, including personally identifiable information, without the consent of the child’s parent if the child has been suspended or expelled and referred to a court for court-assisted resolution of suspension and expulsion cases.

Courts
What records can you share with the Courts?

- A school may also disclose education records of a child, including personally identifiable information, without the consent of the child’s parent if the child has been suspended or expelled and referred to a court for court-assisted resolution of suspension and expulsion cases.
- Information about a child’s school performance can be disclosed to courts in a preliminary inquiry prepared by a juvenile prosecutor, probation or DCS family case manager.
- Schools may also release education records without written consent to comply with a judicial order or subpoena, but the school must make a reasonable effort to notify the parent before releasing the records.

Mental Health/Addiction Providers
What records can you share with mental health providers?

- Schools may release education records without parental consent in connection with a health or safety emergency if the information is needed to protect the health or safety of students or others. This means that the situation must constitute an articulable and significant threat.
- Schools may also release education records without written consent to comply with a judicial order or subpoena, but the school must make a reasonable effort to notify the parent before releasing the records.
• Other than these two exceptions, schools cannot release education records to a mental health or addiction provider without the parent’s consent.

Indiana State Department of Health
What records can you share with the Department of Health?
• Schools may release education records, including immunization or other relevant health records, without parental consent in connection with a health or safety emergency if the information is needed to protect the health or safety of students or others. This means that the situation must constitute an articulable and significant threat.
• Schools may also release education records without written consent to comply with a judicial order or subpoena, but the school must make a reasonable effort to notify the parent before releasing the records.
• If a school provides immunizations to a child, the school must provide a record of the immunizations to the Department of Health’s official immunization registry, called CHIRP, Children and Hoosier Immunization Registry Program.
• Other than these exceptions, schools cannot release education records without the parent’s consent.

Adoptive or Foster Parents
What records can you share with adoptive and/or foster parents?
• Under FERPA, a “parent” means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.
• Adoptive parents who have placement of the child they wish to adopt may receive the same records as foster parents; as custodians of the children, both have court orders placing the children with them and both are entitled to access to their foster child’s education records.
• Child welfare agencies can also disclose education records obtained to “an individual or entity engaged in addressing the student’s education needs.” Education records and personally identifiable information from those records can be disclosed to the child’s foster parent, adoptive parent or another person whose job includes engaging with the school or working to improve the child’s education.

Parents/Guardians/Custodians and/or their Defense Attorney
What records can you share with parents?
• Parents of children under the age of 18 can access all education records of their children.
• A custodial and noncustodial parent are entitled to the same access to a child’s education records unless a court order has specifically restricted one parent’s access to the student’s education records; if access to one parent is restricted, the
court must provide the school administration with actual notice regarding the restriction.

- Once the student turns 18 years old or enters a postsecondary institution at any age, rights under FERPA transfer to the student. However, a school may disclose information from an eligible student’s education records to the parents of the student, without the student’s consent, if the student is a dependent for tax purposes. Neither the age of the student nor the parent’s status as a custodial parent is relevant. If a student is claimed as a dependent by either parent for tax purposes, then either parent may have access under this provision. If the student is not a dependent, then the student must provide consent for the school to disclose the information to the parents.

Non-Custodial Relatives (such as grandparents and other relatives)

What records can you share with relatives?

- Schools may not release education records to non-custodial relatives without written consent of a parent.
- Schools may only release education records without written consent to comply with a judicial order or subpoena, but the school must make a reasonable effort to notify the parent before releasing the records.

Department of Correction

What records can you share with DOC?

- Children who are incarcerated in a juvenile detention facility or other DOC facility are still entitled to an education; students with disabilities in DOC facilities must also receive a free appropriate public education. Since the DOC has an obligation to educate children who are incarcerated and a legitimate interest in the education records, schools can release education records to DOC facilities for the purposes of continuing the education of the incarcerated child without parental consent or a court order.

Law Enforcement Agencies (including the Prosecutor)

What records can you share with LEA?

- Schools can report information about alleged delinquent behavior to LEA and/or the juvenile prosecutor. This may include disciplinary records and surveillance tapes.
- Schools can share education records with juvenile justice agencies, including LEA and the prosecutor, without prior parental consent, so long as the purpose relates to the ability of the juvenile justice system to serve the student before adjudication. Post-adjudication disclosure of education records is treated the same as those before adjudication if the educational agency determines that the post-adjudication disclosure is for the purpose of identifying and intervening with the child as a juvenile at risk of delinquency, rather than to obtain information solely related to supervision of the child as an adjudicated delinquent child.
• A school may also disclose education records of a child, including personally identifiable information, without the consent of the child’s parent, if the child has been suspended or expelled and referred to a court for court assisted resolution of suspension and expulsion cases.

• Schools may release education records without parental consent in connection with a health or safety emergency if the information is needed to protect the health or safety of students or others. This means that the situation must constitute an articulable and significant threat.

Frequently Asked Questions

Are there any legal requirements about how schools store and share education records?
• Yes. The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of education records. Although both private schools and public schools maintain records on students, FERPA generally only applies to protect the privacy of education records maintained by public elementary and secondary schools, school districts, and postsecondary institutions. FERPA generally does not apply to K-12 private and parochial schools unless these schools receive federal funds.

When can a school counselor disclose information about a student?
• A school counselor is not required to disclose communications from a student because they are privileged communications under Indiana law and protected against disclosure. The only exception involves mandatory reporting laws that require all persons, including school counselors, to report suspected child abuse and neglect.

When can educational entities share educational records, without consent, with a public agency in order to determine if the student is a student with disabilities?
• If the student is a ward of the state and is not residing with the student’s parent, the public agency is not required to obtain consent from the parent for an initial evaluation to determine whether the student is a student with disabilities under the following circumstances:
  o if the parent cannot be located,
  o if the rights of the parent have been terminated, or
  o if the rights of the parent to make educational decisions have been subrogated.

• Once a public agency initiates a request for an educational evaluation, prior parental consent is not required to review existing data.

Additional Resources
• Parents' Guide to the *Family Educational Rights and Privacy Act*: Rights Regarding Children’s Education Records

• Educational Advocacy Resources
  http://www.youthlawteam.org/casa%20gal%20education%20advocacy.html

• Resources for Families from Indiana Department of Education
  http://www.doe.in.gov/idoe/parent-portal
HEALTHCARE RECORDS

All children encounter healthcare providers at various stages of their lives. These most often involve appointments with physicians, assistants, nurses, mental healthcare providers, and substance abuse and addiction treatment service providers.

Important and Frequently Requested Records

The following are the three most common areas of healthcare records relating to children:

- Medical records
- Mental health records
- Addiction treatment records

GAL/CASA

What records can you share with a GAL/CASA?

- Healthcare providers can share a minor’s healthcare records (including mental health) with the court appointed GAL/CASA representative. A guardian or court appointed advocate stands in the shoes of a patient and can receive any information the patient (or parent) can receive.
- Addiction treatment records can be shared with GAL/CASA with consent from the appropriate person. If the minor has consented to his or her own addiction treatment, then the minor is the appropriate person to consent for release of those records.
- If the appropriate person refuses to sign a consent or release of information, or if the mental health provider refuses to allow the records to be shared on the belief that releasing the records to the GAL/CASA would cause harm to the patient, then the addiction treatment records of a minor can only be shared with a court order.

DCS

What records can you share with DCS?

- Healthcare providers can freely share all records related to the child abuse report with DCS without an authorization, release, consent or court order.
- Mental health providers can share mental health records and addiction treatment records with DCS with consent from the appropriate person. If the minor has consented to his or her own addiction treatment, then the minor is the appropriate person to consent for release of those records.
- If the appropriate person refuses to sign a consent or release of information, or if the mental health provider refuses to allow the records to be shared on the belief that releasing the records to the DCS would cause harm to the patient, mental
health and addiction treatment records of a minor can only be shared with a court order.

Education Professionals

What records can you share with Education Professionals?

- Education professionals can only get healthcare records for the child if the parent/guardian/custodian has signed a release or consent in favor of the educational professional.
- Mental health records and alcohol and substance abuse treatment records cannot be shared freely with educational professionals, and access would require a signed release from the appropriate person.
- If the appropriate person refuses to sign a release, a court order is required after the court holds an evidentiary hearing and finds good cause for the release.

Probation

What records can you share with Probation?

- Healthcare records can only be shared freely with Probation if Probation is the guardian or ward of the minor.
- For healthcare records only, Probation can file a Request for Records of a Third Party and a subpoena, and obtain the health records from the healthcare provider. The patient and his attorney need to be notified of the request for records and given an opportunity to object. Healthcare providers recommend that Probation have the defendant/patient sign a release for pertinent medical records as a condition of Probation to avoid costly proceedings.
- Probation can have access to any healthcare records that a patient or his legal representative has consented to be released to Probation.
  - Even with a consent, the mental health provider may refuse to allow the records to be shared on the reasonable belief that releasing the records to Probation would cause harm to the patient.
- If the appropriate person refuses to sign a consent or release of information, or if the mental health provider refuses to allow the records to be shared on the reasonable belief that releasing the records to Probation would cause harm to the patient, mental health and addiction treatment records of a minor can only be shared with a court order.
  - The court order for release of mental health records without consent must reflect that it was a result of an evidentiary hearing showing good cause for release of the mental health record.

Courts

What records can you share with the Courts?
• If a healthcare provider is a party to a lawsuit, it can share any healthcare records that are relevant to the issues in the litigation before the court. This includes mental health and addiction treatment records if relevant to the pending lawsuit.
  o For example, if the matter before the court is a personal injury case against a healthcare provider, the provider can use its medical records to defend it or to prosecute its case.
  o In a probate case, the court may receive the medical and mental health records of the person for whom a guardianship or similar appointment is sought.
  o The same is true of adoption proceedings—the presiding court may receive pertinent medical records.
  o A court that is authorized to hear involuntary commitment cases may receive the mental health records of those against whom an involuntary commitment is being sought.

• A court must have a signed patient or guardian consent, or authorization for release of information, to obtain records of anyone who is outside the jurisdiction of the court or whose healthcare records do not appear to be relevant to the legal issues before the court.

• In certain cases, the court may need to order the release of mental health or addiction treatment records if the appropriate person refuses to sign a release or consent and the court believes the records are necessary for adjudication of the case. The court order for release of mental health and addiction treatment records without consent must reflect that it was a result of an evidentiary hearing showing good cause for release of the mental health record.

Mental Health/Addiction Providers
What records can you share with mental health providers?
• Mental health records can be shared with other providers who are also treating the patient. This includes those treating the patient for behavioral or physical problems.
• The records of a qualified alcohol or substance abuse provider, program, or unit of the hospital cannot be shared without a patient consent/release signed by the appropriate person.
• Addiction providers cannot even acknowledge whether a person is a patient at a treatment facility.
• If a patient refuses to sign a release or consent for other providers to view his medical records, and there is good cause for sharing of those records, mental health providers would have to seek a court order that is a result of an evidentiary hearing showing said good cause for release of the records

Indiana State Department of Health
What records can you share with the Department of Health?
State statutes and regulations dictate what records must be shared with the Indiana State Department of Health. Records that are required by Indiana law to be shared with the ISDH are:

- Immunization records, cancer records,
- Birth problems
- Certain chronic diseases such as asthma, diabetes, congestive heart failure, coronary heart disease, hypertension, kidney disease
- Infectious or communicable diseases such as TB and HIV/AIDS

There may be other disclosure to the Indiana Department of Health required by Indiana law now or in the future.

The law requires that all information and records obtained by the State for use in a registry must be kept confidential.

Mental health records and alcohol and substance abuse treatment records cannot be shared freely with the Indiana State Department of Health, and access would require a signed release from the appropriate person.

If the appropriate person refuses to sign a release, a court order is required after the court holds an evidentiary hearing and finds good cause for the release.

**Adoptive or Foster Parents**

**What records can you share with adoptive and/or foster parents?**

- Adoptive parents have the same rights as biological parents. Unless the parental rights of parents have been terminated, they have the right to have all available social, medical, psychological, and educational records about their minor child except that:
  - Parents have no right to access minor’s records for treatment of sexually transmitted diseases.
  - Parents cannot access records for alcohol and drug abuse treatment of the minor who has voluntarily sought treatment and who does not give consent/release for the parents to have access to those records.
  - Parents do not have a right to access the records of an emancipated minor who is at least 14 years of age, not dependent on the parents for support, living apart from his parents, is or has been married, or is in the military service.
  - Medical records for family planning under Title X are completely confidential and cannot be shared with parents without written consent.

- Foster parents are not the guardian or a court appointed representative of a child, and therefore have limited rights to access the healthcare records of the child. Since foster parents have the right to seek treatment for the child, they may have a copy of the healthcare records necessary for the foster parents to make decisions about treatment for the child.

- The State of Indiana maintains a copy of a foster child’s records as well, and the State (or a state agency) may therefore be the appropriate person to sign a consent.
or authorization for release of the records of a foster child, because the State or a state agency is most likely the child’s guardian.

- If a dispute arises with respect to whether a child’s healthcare records should be released to a foster parent, the foster parents may have to obtain a consent to release the records they seek.
- If the State refuses to give a consent to release, foster parents would have to seek a court order after presenting good cause at an evidentiary hearing in order to access the disputed records.

Parents/Guardians/Custodians and/or their Defense Attorney

**What records can you share with parents?**

Please see the response to Adoptive Parents above.

- A court appointed guardian has the same rights as an adoptive or biological parent.
- If a release of medical record issue arises, the court appointed guardian can take the matter to court and get a court order for access, if the court finds release appropriate.
- A foster parent is a custodian, as is a person such as a friend, relative, or neighbor, who is caring for the child with the consent of the parent, but who is without a formal court appointment. In Indiana such a person is consider *in loco parentis*, standing in place of the parent(s). Such custodians have the right to seek treatment for the child and hence may have access to healthcare records that are necessary to make treatment decisions about that child.
- In order for the attorney to get healthcare records for the child, the parent/guardian/custodian must sign a release or consent in favor of their defense attorney. Attorneys who represent the child in a legal proceeding can have access to healthcare records (physical and behavioral) that are relevant to the issues before the court.
- Both parents have an equal right to obtain the medical records of their child. This right is not based on custody of the child.
- Parents whose parental rights have been terminated by a court, however, do not have the right to their child’s medical records. If this issue arises, the healthcare provider should be sure to obtain a copy of the court order terminating parental rights in order to refuse to give a parent the requested medical records.

Non-Custodial Relatives (such as grandparents and other relatives)

**What records can you share with relatives?**

- Medical records can be shared with family and friends if the patient verbally consents, or if consent can be implied by the patient’s behavior.
  - For example, a patient’s consent is implied if a patient brings the family member or friend with her to a medical appointment and does not ask that the individual leave the room when medical information is discussed.
- Alcohol and substance abuse treatment records can be shared with family and friends with a written consent signed by the patient. Otherwise, family and friends cannot even be told that the patient is being treated at the addiction treatment facility.
- If the patient refuses to sign a written consent for mental health or addiction treatment records to be released to family, friends or other third parties, a court order after an evidentiary hearing to determine good cause is required.
  - For physical medical records, a court order can be issued without a hearing so long is it can be shown that the patient or his representative has had notice of the request for records and has had time to object.

**Department of Correction**

**What records can you share with the Department of Correction?**

- If a patient is in the custody of law enforcement, the Department of Correction may have access to all healthcare records created while the patient is in custody, and the Department of Correction or law enforcement is responsible for payment of the medical services rendered during that time.
- Records created while the patient is on probation or otherwise not in the custody of law enforcement can only be obtained by a consent to release signed by the patient.
- If the patient or appropriate person doesn’t consent to the release of the records, a court order, issued after the court has determined that all appropriate parties have been notified of the request for records and have had time to object, will be required.

**Law Enforcement Agencies (including the Prosecutor)**

**What records can you share with LEA?**

- When investigating offenses involving impairment while driving a motor vehicle, law enforcement, including the Prosecutor, may have blood samples and blood alcohol test results obtained during the course of the patient’s treatment without patient consent.
  - Note that if the testing has not been done for treatment purposes, law enforcement must first obtain a patient consent/release or a warrant to have a patient tested for the presence of alcohol or drug in the body.
- Law enforcement agencies may have health information for a patient for identification and location purposes, but healthcare providers are limited to the following disclosures in a missing persons or identification case:
  - Name and address of the person
  - Date and place of birth
  - Social security number
  - ABO blood type and RH factor
  - Type of injury or illness for which the patient was treated
- Date and time of treatment
- Date and time of death, if applicable
- A description of distinguishing physical characteristics including height, weight, gender, race, hair and eye color, the absence or presence of facial hair, scars and tattoos

Other than what is listed above, healthcare providers cannot release a patient’s DNA or DNA analysis, dental records, or typing samples or analysis of body fluids or tissue when releasing health records for identification or location purposes. A court order or subpoena would have to be obtained for disclosure of these records.

- Healthcare providers may release patient protected information about a crime or victim of a crime to law enforcement if the patient agrees verbally or in writing, or if the person is incapacitated and law enforcement states that the information will not be used to prosecute the victim. Release without consent must be in the best interest of the person as determined by the healthcare provider.
- The healthcare provider may release information about a deceased patient if the provider believes that the death may be the result of a crime.
- Healthcare providers may release necessary information from a patient’s medical records to law enforcement if the patient commits a crime on the provider’s premises or against the provider.
- Healthcare providers may release a patient’s protected health information in the case of a public emergency or disaster as determined by the appropriate authorities.
- Healthcare providers may release patient protected information to law enforcement to report a threat of serious bodily injury. For example, if a patient threatens to kill an identified or identifiable person or persons, the healthcare provider can disclose patient protected information to law enforcement.
INDIANA STATE DEPARTMENT OF HEALTH

The Mission of the Indiana State Department of Health (ISDH) is to promote and provide essential public health services, with a Vision for a healthier and safer Indiana.

Important and Frequently Requested Records

The ISDH maintains and generates the following sets of relevant records:

- Vital Statistics
  - Birth records
  - Death records
- Immunization records

GAL/CASA

What records can you share with a GAL/CASA?

- GAL/CASA would not typically work directly with ISDH; usually the juvenile court and/or DCS would be able to provide the GAL/CASA with the needed records. However, if the GAL/CASA could provide court documentation of appointment, and could show that they have a direct interest in the matter recorded, and that the information is necessary for the determination of personal or property rights or for compliance with state or federal law, ISDH could provide copies of birth records.
- Death records can be shared freely, sometimes with a charge or fee.
- If these requirements are not met, the records will be shared only under court order.

DCS

What records can you share with DCS?

- If DCS shows that they have a direct interest in the matter recorded and that the information is necessary for the determination of personal or property rights, or for compliance with state or federal law, ISDH may release copies of birth records freely.
- DCS, acting as a child placing agency, may be provided with immunization records.
- Death records can be shared freely, sometimes with a charge or fee.
- If these requirements are not met, the records will be shared only under court order.
Probation
What records can you share with Probation?

- Probation would not typically work directly with ISDH; usually the juvenile court and/or DCS would be able to provide Probation with the needed records. However, if Probation could provide a court order or proof of status/appointment, and could show that they have a direct interest in the matter recorded, and that the information is necessary for the determination of personal or property rights or for compliance with state or federal law, ISDH could provide copies of birth records.
- Death records can be shared freely, sometimes with a charge or fee.
- If these requirements are not met, the records will be shared only under court order.

Courts
What records can you share with the Courts?

- If the court shows that they have a direct interest in the matter recorded and that the information is necessary for the determination of personal or property rights, or for compliance with state or federal law, ISDH may release copies of birth records freely.
- Without showing the above, copies of birth records may be released with a signed consent from the parent.
- Death records can be shared freely, sometimes with a charge or fee.
- If these requirements are not met, the records will be shared only under court order.

Education Professionals
What records can you share with schools (teachers, guidance counselors, social workers, etc.)?

- An education professional would not typically work directly with ISDH; usually the child’s parent or guardian would be able to provide the school with the needed records. However, if the school could show that they have a direct interest in the matter recorded, and that the information is necessary for the determination of personal or property rights or for compliance with state or federal law, ISDH could provide copies of birth records.
- ISDH can release immunization registry data to a child’s school.
- Death records can be shared freely, sometimes with a charge or fee.
- With a consent or release of information signed by the parent, ISDH can release copies of birth records to the school if there is a need to protect the health and safety of the school community.
- If these requirements are not met, the records will be shared only under court order.
Mental Health/Addiction Providers
What records can you share with mental health providers?
- With a consent or release of information signed by the parent, ISDH can release copies of birth records to a mental health/addiction provider.
- Without a consent, the records will be shared only under court order.
- Death records can be shared freely, sometimes with a charge or fee.

Adoptive or Foster Parents
What records can you share with adoptive and/or foster parents?
- With proof of adoptive status, ISDH can release copies of birth records to an adoptive parent.
- With proof of foster designation, ISDH can release copies of birth records to a foster parent.
- If these requirements are not met, the records will be shared only under court order.
- Death records can be shared freely, sometimes with a charge or fee.

Parents/Guardians/Custodians and/or their Defense Attorney
What records can you share with parents?
- With proof of parentage, ISDH can release copies of birth records and immunization data registry information to a parent.
- With a consent or release of information signed by the parent, ISDH can release copies of birth records to an attorney providing proof of legal representation.
- If these requirements are not met, the records will be shared only under court order.
- Death records can be shared freely, sometimes with a charge or fee.

Non-Custodial Relatives (such as grandparents and other relatives)
What records can you share with relatives?
- If the non-custodial relative shows that they have a direct interest in the matter recorded, and that the information is necessary for the determination of personal or property rights or for compliance with state or federal law, ISDH may release copies of birth records freely.
- Death records can be shared freely, sometimes with a charge or fee.

Department of Correction
What records can you share freely with IDOC?
- If the IDOC shows that they have a direct interest in the matter recorded, and that the information is necessary for the determination of personal or property rights or for compliance with state or federal law, ISDH may release copies of birth records freely.
• Without showing the above, vital statistics may be released with a signed consent from the parent.

• Death records can be shared freely, sometimes with a charge or fee.

Law Enforcement Agencies (including the Prosecutor)

What records can you share with LEA?
• If the LEA shows that they have a direct interest in the matter recorded, and that the information is necessary for the determination of personal or property rights or for compliance with state or federal law, ISDH may release copies of birth records freely.
• Without showing the above, vital statistics may be released with a signed consent from the parent.
• Death records can be shared freely, sometimes with a charge or fee.

Frequently Asked Questions
This information is also available at http://www.in.gov/isdh/20243.htm.

Where can I get certified copies of birth and death certificates in Indiana?
• Certified copies of birth or death certificates can be obtained from the Indiana State Department of Health via mail; to obtain an application, visit http://www.vitalrecords.in.gov/.
• All requests require proper identification and possibly relationship verification. Customers needing an Apostille on certificates they’ve purchased from ISDH may get more information on the requirements by visiting the Indiana Secretary of State’s website at www.in.gov/sos/business.

How can changes be made to a birth certificate?
• Please contact the Corrections Section of the ISDH Vital Records office at 317.233.2700 and ask for instructions for correcting the information.

Can I get a copy of my birth certificate in Indiana if I was born in another state?
• No. Requests must be made directly to the vital records office in the state where the birth occurred.

How can I receive adoption information?
• Indiana initiated an Adoption History Program in 1988 (IC 31-19-18) to allow for the release of medical, non-identifying, and identifying information. Identifying information can be released only when both the adult adoptee and the birth parent register with the Indiana Adoption History Program. To register, please call 317.233.7279.

Additional Resources
The following are some useful links to online resources about ISDH and its records.

- Forms may be found at: http://www.in.gov/isdh/25664.htm.
- ISDH home page: http://www.in.gov/isdh/.
SYSTEM SPECIFIC
INFORMATION SHARING

DEPARTMENT OF CHILD SERVICES

The Department of Child Services (DCS) protects children who are victims of abuse or neglect and strengthens families through services that focus on family support and preservation. The Department also administers child support, child protection, adoption, and foster care throughout the state of Indiana.

Important and Frequently Requested Records

Records created by DCS
- 310 and 311 reports
- Contact log notes
- Handwritten notes not transcribed in the contact logs
- CANS assessments
- CFTM minutes/notes
- Placement lists/information
- Family genograms
- Case plans
- Preliminary Inquiry / CHINS Petition
- Legal reports filed with the court
- Informal Adjustment agreements
- Safety plans
- Photographs of children and homes
- Parent participation reports
- 30-day report of assessment to specified report source (IC 31-33-7-8)

Records received from other sources and maintained by DCS
- Child physical health records
- Child mental health records including psychological evaluations
- Drug screens of parents
- Parent physical/mental health records
- Child school records
- Service provider reports
- Child's medical history and medical passport
- Court orders
- Paternity reports
- Police reports
- Background check reports
Other records
- Home studies and documents relating to foster home licensing

GAL/CASA
What records can you share with GAL/CASA?
- The GAL/CASA is a party to the CHINS and TPR case and is entitled to all records created and maintained by DCS. The GAL/CASA also has an Order of Appointment that gives access to all documents relating to the case.

Probation
What records can you share with Probation?
- The following DCS records are available to Probation if Probation has supervisory responsibility for the child:
  - 310 and 311 reports, contact log notes, handwritten notes not transcribed in the contact logs, CANS assessments, CFTM minutes/notes, the Preliminary Inquiry (PI) / CHINS Petition, legal reports filed with the court, court orders, 30-day report of assessment to specified report source, home studies, and documents relating to foster care licensing.
- The following DCS records are available to Probation with a signed consent/release from the appropriate person (typically a parent, guardian or custodian):
  - Placement lists/information, family genograms, case plans, Informal Adjustment (IA) agreements, safety plans, photographs of children and homes, parent participation reports, the child’s physical health records, the child’s mental health records (including psychological evaluations), drug screens of parents, parent physical/mental health records, the child’s school records, service provider reports, the child's medical history and medical passport, paternity reports, police reports and background check reports.

Courts
What records can you share with the Courts?
- The following DCS records are freely available to Courts:
  - The 310 and 311 reports, contact log notes, handwritten notes not transcribed in the contact logs, CANS assessments, CFTM minutes/notes, placement lists/information, family genograms, case plans, the Preliminary Inquiry (PI) / CHINS Petitions, legal reports filed with the court, Informal Adjustment (IA) agreements, safety plans, photographs of children and homes, parent participation reports and the 30-day report of assessment to specified report source, home studies and documents relating to foster care licensing, the child’s physical health records, drug screens of parents, the child’s school records, service provider reports, the child's medical history and medical passport, court orders, paternity reports, and police reports.
The following DCS records are available to Courts with a signed consent/release from the appropriate person:
   - The child’s mental health records (including psychological evaluations), parent physical/mental health records, and criminal background check reports.

**Education Professionals**

**What records can you share with schools (teachers, guidance counselors, social workers, etc.)?**

- DCS can share CFTM minutes/notes with education professionals who are members of the CFTM and the record is released to the team.
- DCS can share the 30-day report of assessment with the school principal or specified report source.
- DCS can share home studies and documents relating to foster home licensing.
- The following DCS records are available to schools with a signed consent/release from the appropriate person (typically a parent, guardian or custodian):
   - 310 and 311 reports, contact log notes, handwritten notes not transcribed in the contact logs, CANS assessments, placement lists/information, family genograms, case plans, Preliminary Inquiry (PI) / CHINS Petitions, legal reports filed with the court, Informal Adjustment agreements, safety plans, photographs of children and homes, parent participation reports, the child’s physical health records, the child’s mental health records (including psychological evaluations), drug screens of parents, parent physical/mental health records, service provider reports, the child's medical history and medical passport, court orders, paternity reports, police reports and criminal background check reports.

**Mental Health/Addiction Providers**

**What records can you share with mental health providers?**

- DCS is able to share CFTM minutes/notes with mental health providers who are members of the CFTM and the record is released to the team.
- DCS can share the 30-day report of assessment with mental health providers or a specified report source.
- The following DCS records are available to mental health providers with a signed consent/release from the appropriate person (typically a parent, guardian or custodian):
   - 310 and 311 reports, contact log notes, handwritten notes not transcribed in the contact logs, CANS assessments, placement lists/information, family genograms, case plans, Preliminary Inquiry (PI) / CHINS Petitions, legal reports filed with the court, Informal Adjustment agreements, safety plans, photographs of children and homes, parent participation reports, the child’s physical health records, the child’s mental health records...
(including psychological evaluations), drug screens of parents, parent physical/mental health records, service provider reports, the child's medical history and medical passport, court orders, paternity reports, police reports, home studies and documents relating to foster home licensing, and criminal background check reports.

Indiana State Department of Health
What records can you share with the Department of Health? (no authorization, release, consent or court order is needed)

- Fatality review team or committees under the Department of Health may receive these:
  - 310 and 311 reports, contact log notes, handwritten notes not transcribed in the contact logs, CANS assessments, safety plans, photographs of children and homes, the child’s physical health records, the child’s mental health records (including psychological evaluations), drug screens of parents, service provider reports, the child's medical history and medical passport, and police reports (if part of initial assessment).

- The following DCS records are available to the Department of Health with a signed consent/release from the appropriate person (typically a parent, guardian or custodian):
  - CFTM minutes/notes, placement lists/information, family genograms, case plans, Preliminary Inquiry (PI) / CHINS Petitions, legal reports filed with the court, Informal Adjustment (IA) agreements, parent participation reports, the 30-day report of assessment to specified report source, parent physical/mental health records, the child's school records, court orders, paternity reports, criminal background check reports, and records of home studies and documents relating to foster home licensing.

Adoptive or Foster Parents
What records can you share with adoptive and/or foster parents?

- Adoptive parents who have placement of the child they wish to adopt may receive the same records as foster parents. These records include:
  - 310 and 311 reports, contact log notes, handwritten notes not transcribed in the contact logs, CANS assessments, CFTM minutes/notes, placement lists/information, family genograms, case plans, legal reports filed with the court, safety plans, photographs of children and homes, the child’s school records, service provider reports and the child's medical history and medical passport.

- Some DCS-created records can be shared with pre-adoptive parents who do not have placement of the child. The pre-adoptive parents can receive the following records concerning the pre-adoptive child (with redactions or exclusions of records pertaining to the birth parent):
CANS assessments; CFTM minutes/notes; case plans and photographs of children and homes, the child’s physical health records; the child’s mental health records (including psychological evaluations); the child’s school records, service provider reports and the child's medical history and medical passport.

- Adoptive parents who possess a final adoption decree can receive the same records about the children that a biological parent could receive; however, they cannot receive personally identifiable information about the birth parent without consent.

- The following DCS records are available to adoptive and/or foster parents with a signed consent/release from the appropriate person (typically a parent, guardian or custodian):
  - Preliminary Inquiry (PI) / CHINS Petitions, Informal Adjustment (IA) agreements, parent participation reports, the 30-day report of assessment to specified report source, the drug screens of parents, parent physical/mental health records, court orders, paternity reports, police report and criminal background check reports, and home studies and documents relating to foster home licensing.

Parents/Guardians/Custodians and/or their Defense Attorney
What records can you share with parents?

- DCS-created records freely available to the parents, guardians, custodians or their defense attorneys include:
  - 310 and 311 reports, contact log notes, handwritten notes not transcribed in the contact logs, CANS assessments, CFTM minutes/notes, family genograms, case plans, the Preliminary Inquiry (PI) / CHINS Petitions, legal reports filed with the court, Informal Adjustment (IA) agreements, safety plans, photographs of children and homes, parent participation reports, the child’s physical health records, the child’s mental health records (including psychological evaluations), drug screens of parents, parent physical/mental health records, the child’s school records, service provider reports, the child’s medical history and medical passport, court orders, paternity reports, police reports, criminal background check reports, and home studies and documents relating to foster home licensing.

- All DCS records that can be shared freely with parents, guardians, custodians or their defense attorney require redactions of personally identifiable information about the report source and other “appropriate individuals” before the records may be released.

- The following DCS records are available to parents with a signed consent/release from the appropriate person (typically a parent, guardian or custodian):
  - Placement lists/information and the 30-day report of assessment to specified report source.
Non-Custodial Relatives (such as grandparents and other relatives)

What records can you share with relatives?

- DCS can release CFTM minutes and notes to non-custodial relatives if they are a member of the CFTM.
- The following DCS records are available to relatives with a signed consent/release from the appropriate person (typically a parent, guardian or custodian):
  - 310 and 311 reports, contact log notes, handwritten notes not transcribed in the contact logs, CANS assessments, CFTM minutes/notes, placement lists/information, family genograms, case plans, the Preliminary Inquiry (PI) / CHINS Petitions, legal reports filed with the court, Informal Adjustment (IA) agreements, safety plans, photographs of children and homes, parent participation reports and the 30-day report of assessment to specified report source, the child’s physical health records, the child’s mental health records (including psychological evaluations), drug screens of parents, parent physical/mental health records, the child’s school records, service provider reports, the child’s medical history and medical passport, court orders, paternity reports, police report, criminal background check reports, and home studies and documents relating to foster home licensing.

Department of Correction

What records can you share with DOC?

- DCS-created records freely available to DOC (if the child is placed in a DOC facility) include:
  - 310 and 311 reports, contact log notes, handwritten notes not transcribed in the contact logs and CANS assessments (if it is part of the original assessment), and court orders.
- The following DCS records are available to DOC with a signed consent/release from the appropriate person (typically a parent, guardian or custodian):
  - CFTM minutes/notes, placement lists/information, family genograms, case plans, Preliminary Inquiry (PI) / CHINS Petitions, legal reports filed with the court, Informal Adjustment (IA) agreements, safety plans, photographs of children and homes, parent participation reports, the 30-day report of assessment provided to a specified report source, the child’s physical health records, the child’s mental health records (including psychological evaluations), drug screens of the parents, parent physical/mental health records, the child’s school records, service provider reports, the child’s medical history and medical passport, court orders, paternity reports, police report, criminal background check reports, and home studies and documents relating to foster home licensing.
Law Enforcement Agencies (including the Prosecutor)

What records can you share with LEA?

- If the LEA or prosecutor is investigating possible child abuse and/or neglect, they can receive:
  - 310 and 311 reports, contact log notes, handwritten notes not transcribed in the contact logs, CANS assessments, family genograms, photographs of children and homes, child physical health records, child mental health records (including psychological evaluations), child school records, service provider reports (if they are relating to the child), the child's medical history and medical passport, court orders, police reports, and home studies and documents relating to foster home licensing.
- The following DCS records are available to LEA with a signed consent/release from the appropriate person (typically a parent, guardian or custodian):
  - CFTM minutes/notes; placement lists/information; case plans, Preliminary Inquiry (PI) / CHINS Petitions, legal reports filed with the court, Informal Adjustment (IA) agreements, safety plans, parent participation reports and the 30-day report of assessment to specified report source, drug screens of parents, parent physical/mental health records, paternity reports, and criminal background check reports.

Frequently Asked Questions

What information must be redacted, or deleted, from records provided by DCS to persons requesting them?

- For records released to the child’s parent, guardian, or custodian, or to a person about whom the report has been made (the child), DCS is required to redact or delete the name of the person who made the report of abuse and/or neglect and other identifying information about the report source. In addition, DCS must delete all social security numbers from records before releasing them.

What is a CFTM, or child and family team meeting?

- A CFTM is a meeting where key people involved in the child abuse and neglect case come together and collaborate to build a system of support and accountability for a family. The meeting is facilitated by a DCS Family Case Manager. The meeting is driven by the wisdom and expertise of the family with outside support the family has chosen, such as extended family members, the GAL/CASA, friends, neighbors, and community members. Formal resources like mental health providers and schools may also participate in the process in order to maximize stability and permanency for the child.
Where can I find DCS’s child welfare policies?

- DCS’s child welfare policies are available on its website at:
  http://in.gov/dcs/2354.htm

Where can I find more information about adopting a child from DCS?

- You can find more information at this website: http://www.adoptuskids.org/states/in/browse.aspx

What is an Informal Adjustment?

- Informal Adjustments are agreements made by the family case manager, the child's parent(s), guardian, custodian, attorney, and other involved parties when a family admits to a problem and the child is at minimal risk if he remains in the home. The agreement is filed with the juvenile court, must be approved by the court, and includes an agreement by the parents to complete certain services to address the problems in the home.

Additional Resources

- DCS webpage and policies are also available on this site http://secure.in.gov/dcs/
- Odyssey Case Search https://mycase.in.gov/default.aspx
- IN Offender Database http://www.in.gov/apps/indcorrection/ofc/ofc
- Doxpop http://www.doxpop.com/prod/
- ZIP code listings Indiana http://data.mongabay.com/igapo/zip_codes/IN.htm
SYSTEM SPECIFIC
INFORMATION SHARING

JUVENILE COURT RECORDS

Juvenile courts primarily handle two types of cases relating to juveniles: Delinquency and Children In Need of Services, commonly known as “CHINS.” Juvenile Delinquency (JD) cases are filed when the child is accused of committing an act that would be a crime if committed by an adult, or a status offense. CHINS cases involve children who have been abused or neglected.

Important and Frequently Requested Records

The following records are contained in the juvenile court’s JD or CHINS case file:

- Delinquency records - the child’s name, age, offense petitions and orders.
- CHINS records - CHINS petition, children’s names, parents’ names, progress reports, and orders.

GAL/CASA

What records can you share with a GAL/CASA?

- The juvenile court can share all reports relevant to the case and any reports of examinations of the child’s parents or other persons responsible for the child’s welfare. This includes all reports filed by the state for periodic review and review of dispositional decrees.
- A person who is at least 18 years of age may waive the restrictions on access to the person’s records if done in writing and indicating the terms of the waiver.
- If these requirements are not met, the records will be shared only under court order.

DCS

What records can you share with DCS?

- The records of the juvenile court are available without a court order to an employee of DCS, a caseworker, or a probation officer conducting a criminal history check to determine the appropriateness of an out-of-home placement for a child at imminent risk of placement, CHINS or a delinquent.
- If a child is a delinquent or CHINS, the following entities and agencies may share information not confidential under state or federal law:
  - a court, a law enforcement agency, the Department of Correction, the Department of Child Services, the Office of Family and Social Services, a primary or secondary school including a public or nonpublic school, and the Department of Child Services Ombudsman.
A juvenile court may release court records to these entities without a court order.

- A person who is at least 18 years of age may waive the restrictions on access to the person’s records if done in writing and indicating the terms of the waiver.

**Probation**

**What records can you share with Probation?**

- The records of the juvenile court are available without a court order to any authorized staff member, which includes probation officers. Juvenile court records are available without a court order to the judge of a court having criminal jurisdiction or any authorized staff member for use in a presentence investigation, which is generally prepared by a probation officer.
- A person who is at least 18 years of age may waive the restrictions on access to the person’s records if done in writing and indicating the terms of the waiver.

**Education Professionals**

**What records can you share with schools (teachers, guidance counselors, social workers, etc.)?**

- Education professionals may have access to a juvenile’s records if they possess a signed consent/release. A person who is at least 18 years of age may waive the restrictions on access to the person’s records if done in writing and indicating the terms of the waiver.
- If the superintendent, chief administrative officer, or designee submits a written request for the court records, a juvenile court may grant the school access to court records.
  - The request must establish the records are necessary for the school to serve the educational needs of the child or protect the safety or health of a student, an employee, or a volunteer at a school.
  - Court records released in this way must be kept confidential by the school or person who receives the records.
- In addition, if a child is a delinquent or CHINS, the following entities and agencies may share information not confidential under state or federal law:
  - A court, a law enforcement agency, the Department of Correction, the Department of Child Services, the Office of Family and Social Services, a primary or secondary school including a public or nonpublic school, and the Department of Child Services Ombudsman.
  - A juvenile court may release court records to these entities without a court order.

**Mental Health/Addiction Providers**

**What records can you share with mental health providers?**
• Juvenile court records may only be provided to a mental health or addiction treatment provider under a court order.
• A juvenile court may grant any person providing services to the child or the child’s family access to the records on the child’s family.

Adoptive or Foster Parents
What records can you share with adoptive and/or foster parents?
• Once an adoption is completed by the court, the adoptive parents are now the parents of the child and information can be shared with them since they are the parents of the child.
• Foster parents are entitled to a copy of reports filed with the court and used for periodic review hearings and permanency hearings. The court, however, is not required to provide a copy of the report to foster parents if it finds that the report contains information that should not be released to foster parents.

Parents/Guardians/Custodians and/or their Defense Attorney
What records can you share with parents?
• The records of the juvenile court are available without a court order to a party and the party’s attorney.
• However, a child excluded from a hearing in order to protect the welfare of the child witness or victim, or a person denied access to a predisposition report or records for a dispositional hearing, may be denied access to that subject matter.
• The records of the juvenile court are available without a court order to the parents of a child whenever the custody or support of that child is in issue in dissolution or support actions.

Non-Custodial Relatives, such as grandparents and other relatives
What records can you share with relatives?
• Relatives having a caregiving or “significant” relationship with the child may be entitled to a copy of reports filed by the state for use in periodic review hearings or permanency hearings.
• If the court finds that the report contains information that should not be released to these individuals, the court is not required to provide them a copy.

Department of Correction
What records can you share with DOC?
• A probation department and the Division of Family Resources, a local DCS office, and the DCS may exchange information to prepare a predisposition report.

Law Enforcement Agencies (including the Prosecutor)
What records can you share with LEA?
• The records of the juvenile court are available without a court order to the prosecuting attorney or any authorized staff.
If a child is a delinquent or CHINS, the following entities and agencies may share information not confidential under state or federal law:

- a court, a law enforcement agency, the Department of Correction, the Department of Child Services, the Office of Family and Social Services, a primary or secondary school including a public or nonpublic school, and the Department of Child Services Ombudsman.
- A juvenile court may release court records to these entities without a court order.

Frequently Asked Questions

Courts are often asked by the press what information about a juvenile delinquent is public.

**Ind. Code § 31-39-2-8** outlines the release of this information.

(a) The records of the juvenile court are available without a court order to the public, subject to the restrictions in subsections (b) and (c), whenever a petition has been filed alleging that a child is delinquent as the result of any of the following alleged acts or combination of alleged acts: (1) An act that would be murder or a felony if committed by an adult. (2) An aggregate of two (2) unrelated acts that would be misdemeanors if committed by an adult if the child was at least twelve (12) years of age when the acts were committed. (3) An aggregate of five (5) unrelated acts that would be misdemeanors if committed by an adult if the child was less than twelve (12) years of age when the acts were committed.

(b) Only the following information or documents may be released under this section:

1. The child's name.
2. The child's age.
3. The nature of the offense.
4. Chronological case summaries.
5. Index entries.
7. Warrants.
8. Petitions.
10. Motions, excluding: (A) motions concerning psychological evaluations; and (B) motions concerning child abuse and neglect.
11. Decrees.
12. If the child is adjudicated as a delinquent child for an act or combination of acts described in subsection (a)(1), (a)(2), or (a)(3), the child's photograph.
(c) The clerk of the juvenile court shall place all other records of the child alleged to be or adjudicated as a delinquent child in an envelope marked "confidential" inside the court's file pertaining to the child. Records placed in the confidential envelope may only be released to persons who are allowed disclosure under this section or section 2, 3, 4, 5, 6, 7 or 10 of this chapter. The identifying information of any child who is a victim or a witness shall remain confidential under this section.

**Additional Resources**

The following is a useful link to the State of Indiana Judiciary website.

- [www.in.gov/judiciary](http://www.in.gov/judiciary)
- Trial court websites will vary by county, but all trial court contact information can be obtained on the above listed site.
SYSTEM SPECIFIC
INFORMATION SHARING

JUVENILE PROBATION RECORDS

Juvenile Probation Departments and Officers are employed by the courts and almost exclusively work with cases involving juvenile delinquents. The important and frequently requested records related to Probation can be broken down into two categories: those generated by Probation, and those originating from other sources but which Probation is often asked to re-release.

Important and Frequently Requested Records

Generated by Probation

- Preliminary Inquiry
- Pre-dispositional Report
- Modification Report
- Progress Report to the Court
- Risk Assessments
- Case Plans
- Drug Tests
- Substance Abuse Evaluations (some counties have staff trained for this)

Originated Elsewhere, but Asking Probation to Re-Release

- Diagnostic Evaluations (for use when placing a child)
- School Records: IEP’s, Grades, Credit Information, School Testing
- Counseling Records: Home Based Counseling and Progress Reports

GAL/CASA
What records can you share with a GAL/CASA?

- All records can be provided to the child’s GAL or CASA upon presentment of their appointment order from the court, which contains language authorizing them to receive those documents.

DCS
What records can you share with DCS?

- Probation’s records are available to the attorney for or any authorized staff member of DCS without a court order.

Courts
What records can you share with the Courts?
• As probation officers are employed by the Court, they need no authorization to share their records with the Court.

Education Professionals
What records can you share with schools (teachers, guidance counselors, social workers, etc.)?
• Education professionals may have access to a juvenile’s probation records if they possess a signed consent/release. A person who is at least 18 years of age may waive the restrictions on access to the person’s records if done in writing and indicating the terms of the waiver.
• If the school superintendent, chief administrative officer, or designee submits a written request for the probation records, a juvenile court may grant the school access to probation records.
  o The request must establish the records are necessary for the school to serve the educational needs of the child or protect the safety or health of a student, an employee, or a volunteer at a school.
  o Probation records released this way must be kept confidential by the school or person who receives the records.
• In addition, if a child is delinquent or a CHINS, the following entities and agencies may share information not confidential under state or federal law:
  o A court, a law enforcement agency, the Department of Correction, the Department of Child Services, the Office of Family and Social Services, a primary or secondary school including a public or nonpublic school, and the Department of Child Services Ombudsman.
  o A juvenile court may release court records to these entities without a court order.

Mental Health/Addiction Providers
What records can you share with mental health providers?
• Generally, probation records may only be provided to a mental health or addiction treatment provider with the child’s or parent’s consent, or under a court order.
• A juvenile court may grant any person providing services to the child, or the child’s family, access to the records on the child’s family.
• Any agency having the legal responsibility or authorization to care for, treat, or supervise a child placed out of the home may receive a copy of the child’s case plan without a release or court order.

Indiana State Department of Health
What records can you share with the Department of Health?
• If the child is a crime delinquent who committed either a sexual offense or an offense related to controlled substances that created a risk of transmission,
medical tests showing the presence of HIV can be shared with the Department of Health.

- Otherwise, any records shared with the Department of Health must be acquired with a consent signed by the child’s parent, guardian, or custodian, or with a court order.

Adoptive or Foster Parents

What records can you share with adoptive and/or foster parents?

- All records may be shared freely with post-adoptive parents, as they have a parental right to those documents. However, both pre-adoptive parents and foster parents have no substantive rights to any of these records without a release signed by the child’s parents.
- Pre-adoptive and foster parents are entitled to notice of all hearing dates and times from the court, but are not entitled to probation’s records without a proper release or court order.

Parents/Guardians/Custodians and/or their Defense Attorney

What records can you share with parents?

- Probation records are available without a court order to a party and the party’s attorney.
- However, a child excluded from a hearing in order to protect the welfare of the child witness or victim, or a person denied access to a predisposition report or records for a dispositional hearing, may be denied access to these records.
- The records of the juvenile court are available without a court order to the parents of a child whenever the custody or support of that child is in issue in dissolution or support actions.

Non-Custodial Relatives, such as grandparents and other relatives

What records can you share with relatives?

- Records cannot be freely shared with relatives who are not acting as the child’s current placement, unless they are designated as a child representative.
- However, if parents provide an appropriate consent form, any records covered by that consent may be provided to grandparents or other non-custodial relatives.

Department of Correction

What records can you share with DOC?

- Probation’s records are available without a court order to any authorized staff member of the Department of Correction.

Law Enforcement Agencies (including the Prosecutor)

What records can you share with LEA?
The prosecuting attorney or any authorized staff member is entitled to all records probation holds. Other law enforcement agents may receive any records not otherwise confidential under state or federal law.

Law enforcement agents may receive any confidential records if an appropriate release is obtained or a court order grants them such access.

Frequently Asked Questions

What Probation Records are available to the public?

- The records of a juvenile court are opened to the public on a limited basis where a petition has been filed alleging a child has committed murder, a felony, or an aggregate of misdemeanors (two if over the age of 12, five if under 12) as delinquent acts. This release is limited to a specific list of court records, none of which include the records held by probation. Therefore, probation is not required to release any records in this situation.

Are certain medical records held by Probation able to be disclosed?

- Medical records, including drug tests, psychological evaluations, and medical diagnoses, are confidential and cannot be disclosed unless such disclosure is authorized by statute, even to relatives.

What if the child and parents won’t consent?

- If the child and/or parents will not sign a release, probation will then attempt to obtain a court order to allow records to be shared or exchanged where that exchange is necessary to effectively manage the case.

Additional Resources

The following is a useful link to the State of Indiana Judiciary, Probation website, as well as a listing of the Probation Departments around the state.

- [www.in.gov/judiciary/center/2331.htm](http://www.in.gov/judiciary/center/2331.htm)
- [http://www.in.gov/judiciary/probation/files/prob-county-list.pdf](http://www.in.gov/judiciary/probation/files/prob-county-list.pdf)
CASA stands for Court Appointed Special Advocate. CASAs are screened and trained community volunteers who are appointed by judges in child abuse and neglect (“CHINS”) cases to research the case, review documents, interview people and make a report to the Court as to what is in the best interest of abused and/or neglected children in terms of services, placement, visitation, reunification, and permanency. GAL/CASA volunteers are typically the only voice for children in these cases, as Indiana law doesn’t require an attorney to be appointed for children in CHINS cases. Some volunteer programs call their volunteers GALs, or guardians ad litem. A GAL can also refer to a paid, professional GAL who may be an attorney or another type of professional.

GAL/CASA volunteers are parties to the CHINS case under Indiana law. They are objective, community-based volunteers who are not part of the child welfare system and who focus their efforts solely on gathering information and making recommendations regarding the children in CHINS cases, who would otherwise have no voice. GAL/CASA volunteers have a completely different role than the family case manager, in that their primary focus is not working with the parents to resolve their issues; instead, the GAL/CASA volunteer focuses solely on the needs of the child while they the child is in the child welfare system, and tries to encourage timely permanency. Volunteers are carefully screened and are required to be well trained; they receive 30 hours of initial training and 12 hours of ongoing training each year.

Currently, 79 of Indiana’s 92 counties have certified GAL/CASA volunteer programs which are supported by the Indiana State Office of GAL/CASA, a program of the Indiana Supreme Court, Office of Court Services. There are approximately 3,500 active GAL/CASA volunteers in Indiana. The State Office works closely with the Supreme Court Advisory Commission on GAL/CASA in developing and implementing standards for programs and promoting legislative and community awareness of GAL/CASA.

GAL/CASA volunteers and programs are also governed by a Supreme Court Code of Ethics for GAL/CASA programs. The Code of Ethics includes a confidentiality provision as follows:

GAL/CASA programs and volunteers will respect the right to privacy of all individuals. GAL/CASA programs will maintain strict confidentiality of all information related to a case. GAL/CASA programs will take all reasonable steps to ensure that volunteers also maintain strict confidentiality. GAL/CASA programs will provide training to volunteers about confidentiality and will have volunteers sign a confidentiality statement and/or policy. Neither a GAL/CASA program nor volunteers will disclose confidential information relating to a case to any person.
who is not a party to the case except in reports to the court and as provided by law or court order.

**Important and Frequently Requested Records**

**GAL/CASA programs routinely generate and maintain the following records:**

- The only documents generated by the GAL/CASA volunteers and/or programs that are requested are the GAL/CASA reports prepared by the GAL/CASA volunteer or staff member.

- Other documents that are maintained by GAL/CASA programs and frequently requested from them, but not generated by them are:
  - Court Order appointing the GAL/CASA volunteer to the case and allowing the GAL/CASA volunteer access to documents.
  - DCS records obtained by GAL/CASA program from DCS.
  - Service provider reports obtained by GAL/CASA program from DCS service providers.
  - Other medical or mental health records of the parents and/or child obtained by the GAL/CASA program.
  - School records of the child obtained by the GAL/CASA program.

**DCS**

**What records can you share with DCS?**

- GAL/CASA can share with DCS the GAL/CASA reports and any other records that it obtains from other sources regarding the parents or children in the CHINS case. DCS does not need to have a signed consent or release or a court order to obtain records from GAL/CASA since they are both parties to the underlying CHINS case.

**Probation**

**What records can you share with Probation?**

- GAL/CASA programs cannot freely provide records to probation from the CHINS case unless the child has been determined to be a dual status child (see Section 7: Juvenile Court-Dual Status Youth).

- GAL/CASA programs can provide records to probation if probation presents a signed release from the parent (for the child’s records or that parent’s own records).

- Otherwise, the records will be shared only under a court order.

**Courts**

**What records can you share with the Courts?**

- GAL/CASA advocates are appointed by the CHINS court to advocate for the child and to provide information to the court. GAL/CASA advocates can freely provide any records that they generate or obtain to the CHINS court that appoints them. If the GAL/CASA is concerned about records they provide to the court being disclosed to others (such as to parents or foster parents), the GAL/CASA program can request a protective order, or that portions of a report or document be redacted.
• The GAL/CASA cannot provide records from the CHINS case, such as GAL/CASA reports or other documents that they obtain, to a different court such as a divorce or paternity court, unless the parties consent or the court orders the information to be disclosed.

**Education Professionals**
**What records can you share with schools (teachers, guidance counselors, social workers, etc.?)**
• GAL/CASA advocates often have to speak to school personnel, such as teachers, social workers and administrators, about children for whom they are appointed to advocate. GAL/CASA advocates cannot freely disclose their records to education professionals and should limit the information that they provide to them to that which is necessary in order for the schools to assist and work with the children involved in the case. GAL/CASA advocates can show to the school the court order appointing them to the case when the advocates need to gain access to the child or the child records.

• GAL/CASA programs can provide information to education professionals if the school presents a signed release from the parent for the child’s records.

• Otherwise, the records will be shared only under a court order.

**Mental Health/Addiction Providers**
**What records can you share with mental health providers?**
• GAL/CASA advocates often have to speak to mental health and addiction treatment providers and other service providers about the child for whom they are appointed to advocate or the child’s family. GAL/CASA advocates cannot freely disclose their reports to service providers. GAL/CASA volunteers can provide information to service providers to the extent that it is necessary in order for the service providers to assist and work with the children and families involved in the case. GAL/CASA advocates should provide the court order appointing them to the case to the service provider.

• GAL/CASA programs can provide information to service providers if they present a signed release from the parent (for the child’s records or that parent’s own records). If the service provider is requesting records on each parent, each parent must sign a consent or release.

• Otherwise, the records will be shared only under a court order.

**Adoptive or Foster Parents**
**What records can you share with adoptive and/or foster parents?**
• Unless they are parties to the case by court order, GAL/CASA advocates cannot share any records freely with adoptive or foster parents.
• GAL/CASA advocates can provide information to adoptive and foster parents if they are made parties to the case or if they present a signed release from the parent (for the child’s records or that parent’s own records). If requesting records on each parent, each parent must sign a consent or release.

• Otherwise, the records will be shared only under a court order.

Parents/Guardians/Custodians and/or their Defense Attorney
What records can you share with parents?
• Parents, guardians and custodians of a child are parties to the CHINS case. GAL/CASA advocates can freely share their reports with parents, guardians and custodians of the child and their attorneys. Parents, guardians and custodians do not need to have a signed consent or release or a court order to obtain the GAL/CASA report to the court about the child.

• If the GAL/CASA has mental health or addiction treatment records, or other confidential records of one parent, GAL/CASA cannot release these records to the other parent without the written consent of the parent about whom the record pertains.

• Otherwise, the records will be shared only under a court order.

Non-Custodial Relatives (such as grandparents and other relatives)
What records can you share with relatives?
• Unless they are parties to the case by court order, GAL/CASA cannot share any records freely with relatives.

• GAL/CASA programs can provide information to relatives if they present a signed release from the parent (for the child’s records or that parent’s own records). If requesting records on each parent, each parent must sign a consent or release.

• Otherwise, the records will be shared only under a court order.

Indiana State Department of Health
What information can you share with the Department of Health?
• GAL/CASA cannot share any records freely with the Department of Health.

• GAL/CASA programs can provide records to the Department of Health if it presents a signed release from the parent (for the child’s records or that parent’s own records). If requesting records on each parent, each parent must sign a consent or release.

• Otherwise, the records will be shared only under a court order.

Department of Correction
What records can you share with the Department of Correction?
• GAL/CASA cannot share any records freely with the Department of Correction. GAL/CASA advocates can show the court order appointing them to the case to the
Department of Correction, when needed, in order to gain access to the child, a parent, or their records.

- GAL/CASA programs can provide records to the Department of Correction if they present a signed release from the parent (for the child’s records or that parent’s own records). If requesting records on each parent, each parent must sign a consent or release.

- Otherwise, the records will be shared only under a court order.

**Law Enforcement Agencies (including the Prosecutor)**

**What records can you share with law enforcement agencies?**

- GAL/CASA cannot share their reports or other records freely with law enforcement agencies or prosecutors. GAL/CASA advocates can show the court order appointing them to the case to law enforcement when needed to gain access to the child, a parent, or their records.

- GAL/CASA programs can provide information to law enforcement or a prosecutor if they present a signed release from the parent (for the child’s records or that parent’s own records). If requesting records on each parent, each parent must sign a consent or release.

- Otherwise, the records will be shared only under a court order.

**Frequently Asked Questions**

**What is the role of the GAL/CASA volunteer?**

- The GAL/CASA volunteer provides a judge with objective, fact-based recommendations about what is in the child’s best interest to help the court make a sound decision about the child’s safety, well-being and permanency. The GAL/CASA gets to know the child and serves as the child’s voice in court, making sure that the child’s needs are met while the child is in the child welfare system. With older youth, the GAL/CASA advocates with the youth to ensure their desires about their future are communicated to the court.

**How does a GAL/CASA volunteer gather information about a case?**

- To prepare recommendation to the court, the GAL/CASA volunteers speaks with the child and also may speak to parents, family members, DCS, school officials, service providers working the child and family and others who are knowledgeable about the child and family. The GAL/CASA volunteer also obtains and reviews relevant records pertaining to the child and family such as school records, medical records, reports from DCS and service providers and other relevant materials.

**Why can’t GAL/CASA volunteers freely provide their reports and other information about cases to foster parents or family members; don’t they have a right to know?**

- It is often helpful for the foster parents or other involved family members to have the GAL/CASA report; however, unless they have been made parties to the case,
the GAL/CASA is not permitted to share their reports with them. If the foster parent or other family member attends the hearing and requests that the court authorize them to receive a copy of the GAL/CASA report, the court will often allow the report to be disclosed.

**Why do you need GAL/CASA volunteers if you have family case managers and attorneys?**

- GAL/CASA volunteers play an entirely different role than the other parties in the case. The GAL/CASA advocate is the **only** person whose job is to get to know the child and determine what is in his or her best interests. The family case manager’s main role is to work with the family and to provide them with services so that the children can be returned to a safe home. Case managers, attorneys, and other professionals involved in CHINS cases have many cases involving many families and children. GAL/CASA volunteers work with only a few children at a time so they can dedicate sufficient time to get to know the children and make fact based recommendations to the court that are consistent with each individual child’s best interests.

**Additional Resources**

The following are some useful links to online resources about GAL/CASA.

- Indiana Supreme Court State Office of GAL/CASA: CASA.IN.gov
- National Court Appointed Special Advocates Association: [www.casaforchildren.org](http://www.casaforchildren.org)
- Indiana Child Advocates GAL/CASA Network: [www.childadvocatesnetwork.org](http://www.childadvocatesnetwork.org)
INDIANA DEPARTMENT OF CORRECTION

The Indiana Department of Correction (IDOC) is charged with providing correctional services to both adult and juvenile offenders. As part of our renewed commitment to providing youth services in the least restrictive setting and to continually work towards enhancing the services we provide to the youth in our care, several major reform efforts have been undertaken which underscore our commitment and dedication to assist and foster positive developments in the field of juvenile justice. Through these efforts and future collaborations with juvenile justice stakeholders throughout the state of Indiana, we will work to improve the level of juvenile services provided to the youth in our care, and assist in improving services throughout all levels of the juvenile justice system. In so doing, we believe we can improve the lives and futures of these youth, and reduce both juvenile and adult recidivism rates.

With this philosophy in mind, our Division of Youth Services (DYS) will oversee all aspects of Indiana Department of Correction (IDOC) juvenile care. We recognize that impacting the lives of troubled youth requires separate adult and juvenile services. DYS has established a new division logo portraying the words Accountability, Beliefs and Commitment. DYS has adopted the Balanced and Restorative Justice Model (http://ojjdp.ncjrs.org/pubs/implementing/foreword.html) to serve as our foundation and core beliefs for providing juvenile justice services. The core beliefs of this model will provide the overarching, guiding principle for facility operations, treatment programs, youth development, and community re-entry. DYS recently established new vision and mission statements and we will always strive to uphold our Guiding Principles and the foundations of our beliefs and to promote youth development in a Calm Professional Respectful (CPR) manner.

**DYS Vision**

Our DYS vision is to positively impact the future of Indiana's delinquent youth to foster responsible citizenship.

**DYS Mission**

Our DYS mission is focused on community protection, accountability, beliefs that foster responsible community living and competency development.

**Performance-based Standards (PbS)**

Performance-based Standards (PbS) for Youth Correction and Detention Facilities is a system for agencies and facilities to identify, monitor and improve conditions and treatment services provided to incarcerated youths using national standards and outcome measures. PbS was launched in 1995 by the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP) to improve the deplorable conditions reported by the 1994 Conditions of Confinement study of 1,000
secure facilities. Directed by the Council of Juvenile Correctional Administrators (CJCA) with technical assistance from New Amsterdam Consulting, PbS asks participants to collect and analyze data to target specific areas for improvement.

The PbS system of continuous learning and improvement provides:

- A set of goals and standards that individual facilities and agencies should strive to meet
- Tools to help facilities achieve these standards through regular self-assessment and self-improvement
- Reports that allow facilities to evaluate performance over time and in comparison to similar facilities
- Promotion and sharing of effective practices and support among facilities.

CJCA’s goal is to integrate PbS into daily facility operations to create a field-supported and self-sustaining continuous learning and improvement system in facilities nationwide. CJCA provides support to PbS sites through a variety of training and technical assistance efforts, which include a consultant assigned to each site to ease and guide PbS implementation.

Benefits of participation include:

- The ability to measure and track key indicators of facility performance
- Comparison with similar participating facilities across the country
- Definition of measurable goals and development of strategies to achieve them
- Access resources and assistance to make improvements
- Accountability and data available to help gain public support

The PbS system asks facilities to collect certain data from records, reports and interviews and enter that data online through the PbS website. The data are checked by PbS staff and used to generate an online graphic site report of each facility’s performance in key outcome measures. The report tracks performance over time and shows facility measures compared to field averages. All data from individual facilities are kept confidential. Using the information in the site reports, facilities work with PbS consultants to identify areas that need improvement, then develop and implement a detailed improvement plan.

**Important and Frequently Requested Records**

IDOC routinely generates and maintains a list of records that combined are commonly referred to as “Juvenile Records.” These are broken down into eleven (11) different categories:

- Admission Records;
- Conduct Records;
- Parole Records;
- Classification Records;
- Medical Records;
- Custody Records;
- Program Records;
- Work/Maintenance Records;
- Correspondence; and
- Offender Grievances.
- Educational Records. For the youth in the care of IDOC, educational records are also routinely generated and maintained. However, because youth placed in IDOC are considered students, IDOC facilities are considered educational institutions when it comes to education records generated and maintained by IDOC. For guidance on how youth education records can be shared, please see the record holder section on “Educational Professionals.” The following guidance applies only to the first ten (10) types of records.

GAL/CASA
What records can you share with a GAL/CASA?
- All Juvenile Records can be shared freely with a GAL/CASA as long as: (1.) the request is in written form; (2.) the request relates to a matter for which they are performing a lawful service for the juvenile; and (3.) the records released are closely tailored to comply with the written request.
- If these requirements are not met, the records will be shared only under court order.

DCS
What records can you share with DCS?
- All Juvenile Records can be shared freely with DCS as long as DCS is providing services for the direct benefit of the juvenile.
- If this requirement is not met, the records will be shared only under court order.

Probation
What records can you share with Probation?
- All Juvenile Records can be shared freely with Probation as long as: (1.) the request is in written form; (2.) the request relates to a matter for which they are performing a lawful service for the juvenile; and (3.) the records released are closely tailored to comply with the written request.
- If these requirements are not met, the records will be shared only under court order.

Courts
What records can you share with the Courts?
- All Juvenile Records can be shared with a Court only under court order.

Education Professionals
What records can you share with schools (teachers, guidance counselors, social workers, etc.)?

- All Juvenile Records can be shared freely with Education Professionals as long as: (1.) the request is in written form; (2.) the request relates to a matter for which they are performing a lawful service for the juvenile; and (3.) the records released are closely tailored to comply with the written request.
- If these requirements are not met, the records will be shared only under court order.

Mental Health/Addiction Providers

What records can you share with mental health providers?

- All Juvenile Records can be shared freely with Mental Health/Addiction Treatment Providers as long as: (1) the request is in written form; (2) the request relates to a matter for which they are performing a lawful service for the juvenile; and (3) the records released are closely tailored to comply with the written request.
- If these requirements are not met, the records will be shared only under court order.

Adoptive or Foster Parents

What records can you share with adoptive and/or foster parents?

- An Adoptive or Foster Parent of a juvenile shall have access to any information in the juvenile's official record upon specific written request, unless release of such information is contrary to the health, welfare, or safety of the juvenile.
- However, if the Adoptive or Foster Parent is currently incarcerated or on probation to a court, that parent may not have access to the records.
- Otherwise, the records will be shared only under court order.

Parents/Guardians/Custodians and/or their Defense Attorney

What records can you share with parents?

- An attorney representing a juvenile or the parent or legal guardian of a juvenile shall have access to any information in the juvenile's official record upon specific written request, unless release of such information is contrary to the health, welfare, or safety of the juvenile.
- If the attorney is requesting a review and copies of the official record, then the attorney shall be charged for the cost of reproductions consistent with approved schedules.
- However, if the parent or legal guardian is currently incarcerated or on probation to a court, that parent may not have access to the records.
- Otherwise, the records will be shared only under court order.

Non-Custodial Relatives (such as grandparents and other relatives)
What records can you share with relatives?
- Juvenile records can only be shared with non-custodial relatives under a court order.

Indiana State Department of Health
What records can you share with the Department of Health?
- All Juvenile Records can be shared freely with the State Department of Health as long as: (1.) the request is in written form; (2.) the request relates to a matter for which they are performing a lawful service for the juvenile; and (3.) the records released are closely tailored to comply with the written request.
- If these requirements are not met, the records will be shared only under court order.

Law Enforcement Agencies (including the Prosecutor)
What records can you share with LEA?
- All Juvenile Records can be shared freely with a law enforcement agency, including a prosecutor, as long as the law enforcement agency is performing a criminal investigation related to the juvenile.
- If this requirement is not met, the records will be shared only under court order.

Frequently Asked Questions
What is the best way to obtain records related to a child housed at IDOC DYS?
- A written request should be sent to:
  Keeper of Records
  Indiana Department of Correction
  E334, Indiana Government Center South
  302 W. Washington Street
  Indianapolis, Indiana 46204

Can a juvenile access his or her own IDOC records?
- A juvenile may not access his or her own records or the records of other juveniles or offenders.

Additional Resources
The following are some useful links to online resources including IDOC’s website, and links to useful state or national resources relating to IDOC’s work with youth.
- Department of Correction Website http://www.in.gov/idoc/
- Office of Juvenile Justice Programs Website http://www.ojjdp.gov/
Juvenile Justice Training and Technical Assistance

- **Bureau of Justice Assistance** – provides free training and technical assistance to courts, corrections, substance abuse and mental health service providers, justice information sharing professionals, crime prevention specialists, and tribal communities.

- **Coalition for Juvenile Justice** – provides archived juvenile justice training, fact sheets, and state juvenile justice, Juvenile Detention Alternatives Initiative (JDAI), and Juvenile Justice and Delinquency Act information.

- **The Council of State Governments Justice Center** – provides archived webinars and podcasts on juvenile justice topics, as well as publications and technical assistance to the criminal justice field.

- **Fox Valley Technical College** – offers free and/or low-cost training and technical assistance for law enforcement in various areas including: Internet crimes against children, child protection, and Amber Alerts.

- **Juvenile Law Center** – offers fact sheets and research publications about juvenile justice and child welfare issues and practices.

- **National Center for Mental Health and Juvenile Justice** – provides training curricula and online training on youth and the juvenile justice system.

- **National Center for Prosecution of Child Abuse** – provides free and/or low-cost training and technical assistance on investigating and prosecuting child abuse cases.

- **National Criminal Justice Reference Service** – offers a searchable website with a justice training event calendar, resource library, and grant and funding information.

- **National Association of School Resource Officers** – provides low-cost training for school resource officers.

- **National Association of School Safety and Law Enforcement Officers** – hosts an annual, low-cost, school safety conference. Check out their news area for training events and funding announcements.

- **National Training and Technical Assistance Center** – Office of Juvenile Justice and Delinquency Prevention resource for free or low-cost training and technical assistance for law enforcement and juvenile justice professionals.

- **NetSmartz Workshop** – provides free videos, presentations, and resource materials for law enforcement to use in their communities when teaching children how to be safer online.

- **Project Safe Neighborhoods** – provides free or low-cost training and technical assistance, news, and publications on topics including gangs, gun safety, and crime prevention.
SYSTEM SPECIFIC INFORMATION SHARING

LAW ENFORCEMENT

A law enforcement agency is any agency or department of any level of government whose principal function is the apprehension of criminal offenders. This term includes the Indiana State Police Department, local law enforcement agencies, and the Office of the Inspector General. The Indiana State Police maintains the Indiana Clearinghouse for Missing Children and operates the Amber Alert program. Other law enforcement agencies include city police, county sheriff’s departments, and college and university police departments.

Important and Frequently Requested Records

Local law enforcement routinely generates and maintains the following important and frequently requested records:

- Investigatory records, including still photographs and recorded custodial interrogations;
- Non-investigatory records, including adult arrest information;
- Law Enforcement recordings; and
- Juvenile arrest information.

GAL/CASA

What records can you share with GAL/CASA?

- The records of a law enforcement agency are available to any party to a juvenile court proceeding; however, the party can only review the records applicable to the proceeding in which the person is a party.
- The following information contained in records involving allegations of delinquency, that would be a crime if committed by an adult, is considered public information:
  - The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location, and property involved; the identity of any victim; a description of the method of apprehension; any instrument of physical force used; the identity of any officers assigned to the investigation, except for undercover units; the age and sex of any child apprehended or sought for the alleged commission of the offense; the identity of a child, if the child is apprehended or sought for the alleged commission of: a) an offense over which a juvenile court does not have jurisdiction or, b) and act that would be a felony related to controlled substances.
• The records of police runs or responses to a certain address, sometimes called “call logs,” are not investigatory records and can be disclosed.
• Records relating to the detention of any child in a secure facility shall be open to public inspection.
• Files that are not “investigatory records.”
• Any person having a legitimate interest in the work of the agency or in a particular case may be granted access to the agency’s confidential records and investigatory records by the head of a law enforcement agency or that person’s designee.
  o If a law enforcement agency does not grant access to confidential or investigatory records to a person with a legitimate interest, the records can only be disclosed with a court order.
• Some records can only be shared with a GAL/CASA with a court order:
  o A recorded custodial interrogation of a juvenile is confidential and can only be released at the discretion of the court.
• Any person may inspect or copy a law enforcement recording (in-car and body worn camera recordings) unless the law enforcement agency finds that releasing the recording: creates a significant risk of harm to any person or the general public, will interfere with a person receiving a fair trial due to prejudice or bias against the person, may affect an ongoing investigation, or would not serve the public interest.

**DCS**

**What records can you share with DCS?**

• The records of a law enforcement agency are available, without specific permission from the head of the agency, to the attorney for the Department of Child Services or any authorized staff member.
• The following information contained in records involving allegations of delinquency, that would be a crime if committed by an adult, is considered public information:
  o The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location, and property involved; the identity of any victim; a description of the method of apprehension; any instrument of physical force used; the identity of any officers assigned to the investigation, except for undercover units; the age and sex of any child apprehended or sought for the alleged commission of the offense; the identity of a child, if the child is apprehended or sought for the alleged commission of: a) an offense over which a juvenile court does not have jurisdiction or, b) and act that would be a felony related to controlled substances.
• The records of police runs or responses to a certain address, sometimes called “call logs,” are not investigatory records and can be disclosed.
• Records relating to the detention of any child in a secure facility shall be open to public inspection.
• Files that are not “investigatory records.”
• Any person having a legitimate interest in the work of the agency or in a particular case may be granted access to the agency’s confidential records and investigatory records by the head of a law enforcement agency or that person’s designee.
  o If a law enforcement agency does not grant access to confidential or investigatory records to a person with a legitimate interest, the records can only be disclosed with a court order.
• Some records can only be shared with DCS with a court order:
• A recorded custodial interrogation of a juvenile is confidential and can only be released at the discretion of the court.
• Any person may inspect or copy a law enforcement recording (in-car and body worn camera recordings) unless the law enforcement agency finds that releasing the recording: creates a significant risk of harm to any person or the general public, will interfere with a person receiving a fair trial due to prejudice or bias against the person, may affect an ongoing investigation, or would not serve the public interest.

Probation
What records can you share with Probation?
• The records of a law enforcement agency are available to any party to a juvenile court proceeding; however, the party can only review the records applicable to the proceeding in which the person is a party.
• The records of police runs or responses to a certain address, sometimes called “call logs,” are not investigatory records and can be disclosed.
• Records relating to the detention of any child in a secure facility shall be open to public inspection.
• Files that are not “investigatory records.”
• Any person having a legitimate interest in the work of the agency or in a particular case may be granted access to the agency’s confidential records and investigatory records by the head of a law enforcement agency or that person’s designee.
  o If a law enforcement agency does not grant access to confidential or investigatory records to a person with a legitimate interest, the records can only be disclosed with a court order.
• Some records can only be shared with probation with a court order:
• A recorded custodial interrogation of a juvenile is confidential and can only be released at the discretion of the court.
• Any person may inspect or copy a law enforcement recording (in-car and body worn camera recordings) unless the law enforcement agency finds that releasing
the recording: creates a significant risk of harm to any person or the general public, will interfere with a person receiving a fair trial due to prejudice or bias against the person, may affect an ongoing investigation, or would not serve the public interest.

Courts
What records can you share with the Courts?
- The records of a law enforcement agency are available, without specific permission from the head of the agency, to the judge of the juvenile court or any authorized staff member.

Education Professionals
What records can you share with schools (teachers, guidance counselors, social workers, etc.)?
- If a child is taken into custody for certain offenses, law enforcement must notify the chief administrative officer of the school that the child was taken into custody and the reason why the child was taken into custody. Under all other offenses, law enforcement will only release such information with a court order.
  - Law enforcement may not disclose confidential information to the school.
- The following information contained in records involving allegations of delinquency, that would be a crime if committed by an adult, is considered public information:
  - The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location, and property involved; the identity of any victim; a description of the method of apprehension; any instrument of physical force used; the identity of any officers assigned to the investigation, except for undercover units; the age and sex of any child apprehended or sought for the alleged commission of the offense; the identity of a child, if the child is apprehended or sought for the alleged commission of: a) an offense over which a juvenile court does not have jurisdiction or, b) and act that would be a felony related to controlled substances.
- The records of police runs or responses to a certain address, sometimes called “call logs,” are not investigatory records and can be disclosed.
- Records relating to the detention of any child in a secure facility shall be open to public inspection.
- Files that are not “investigatory records.”
- Any person having a legitimate interest in the work of the agency or in a particular case may be granted access to the agency’s confidential records and investigatory records by the head of a law enforcement agency or that person’s designee.
If a law enforcement agency does not grant access to confidential or investigatory records to a person with a legitimate interest, the records can only be disclosed with a court order.

Some records can only be shared with education professionals with a court order:
- Still photographs, in-car and body worn camera recordings, and recorded custodial interrogations of a juvenile are confidential and can only be released at the discretion of the court.
- Records related to the arrest of an adult are open to the public.

Any person may inspect or copy a law enforcement recording (in-car and body worn camera recordings) unless the law enforcement agency finds that releasing the recording: creates a significant risk of harm to any person or the general public, will interfere with a person receiving a fair trial due to prejudice or bias against the person, may affect an ongoing investigation, or would not serve the public interest.

Mental Health/Addiction Providers
What records can you share with mental health providers?
- The following information contained in records involving allegations of delinquency, that would be a crime if committed by an adult, is considered public information:
  - The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location, and property involved; the identity of any victim; a description of the method of apprehension; any instrument of physical force used; the identity of any officers assigned to the investigation, except for undercover units; the age and sex of any child apprehended or sought for the alleged commission of the offense; the identity of a child, if the child is apprehended or sought for the alleged commission of: a) an offense over which a juvenile court does not have jurisdiction or, b) and act that would be a felony related to controlled substances.
- The records of police runs or responses to a certain address, sometimes called “call logs,” are not investigatory records and can be disclosed.
- Records relating to the detention of any child in a secure facility shall be open to public inspection.
- Files that are not “investigatory records.”
- Any person having a legitimate interest in the work of the agency or in a particular case may be granted access to the agency’s confidential records and investigatory records by the head of a law enforcement agency or that person’s designee.
  - If a law enforcement agency does not grant access to confidential or investigatory records to a person with a legitimate interest, the records can only be disclosed with a court order.
• Some records can only be shared with mental health/addiction providers with a court order:
  o A recorded custodial interrogation of a juvenile is confidential and can only be released at the discretion of the court.

• Any person may inspect or copy a law enforcement recording (in-car and body worn camera recordings) unless the law enforcement agency finds that releasing the recording: creates a significant risk of harm to any person or the general public, will interfere with a person receiving a fair trial due to prejudice or bias against the person, may affect an ongoing investigation, or would not serve the public interest.

Adoptive or Foster Parents
What records can you share with adoptive and/or foster parents?
• The law enforcement records applicable to the proceeding in which the person is a party are available, without specific permission from the head of the agency, to any party to a juvenile court proceeding and the party’s attorney.

• Upon written request of the child or the child’s parent, guardian, or custodian, a law enforcement agency shall deliver to the child any of the child’s fingerprints or photographs that are within that agency’s possession if the child was taken into custody and no petition was filed against the child; the petition was dismissed because of mistaken identity; the petition was dismissed because no delinquent act was actually committed; or the petition was dismissed for lack of probable cause.

• If a child was named in a written report of a crime as a victim of the crime or in a written report of a crime, and the law enforcement agency that receives the report reasonably believes that the child may be a victim of a crime, the law enforcement agency that receives the report shall make a reasonable attempt to notify the parent, guardian, or custodian of the child UNLESS the parent, guardian, or custodian is the alleged perpetrator of the crime; or notification would not be in the best interests of the child due to the relationship of the parent, guardian, or custodian with the alleged perpetrator of the crime.

• The following information contained in records involving allegations of delinquency, that would be a crime if committed by an adult, is considered public information:
  o The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location, and property involved; the identity of any victim; a description of the method of apprehension; any instrument of physical force used; the identity of any officers assigned to the investigation, except for undercover units; the age and sex of any child apprehended or sought for the alleged commission of the offense; the identity of a child, if the child is apprehended or sought for the alleged commission of: a) an offense over
which a juvenile court does not have jurisdiction or, b) and act that would be a felony related to controlled substances.

- The records of police runs or responses to a certain address, sometimes called “call logs,” are not investigatory records and can be disclosed.
- Records relating to the detention of any child in a secure facility shall be open to public inspection.
- Files that are not “investigatory records.”
- Any person having a legitimate interest in the work of the agency or in a particular case may be granted access to the agency’s confidential records and investigatory records by the head of a law enforcement agency or that person’s designee.
  - If a law enforcement agency does not grant access to confidential or investigatory records to a person with a legitimate interest, the records can only be disclosed with a court order.
- Some records can only be shared with adoptive or foster parents with a court order:
  - A recorded custodial interrogation of a juvenile is confidential and can only be released at the discretion of the court.
- Any person may inspect or copy a law enforcement recording (in-car and body worn camera recordings) unless the law enforcement agency finds that releasing the recording: creates a significant risk of harm to any person or the general public, will interfere with a person receiving a fair trial due to prejudice or bias against the person, may affect an ongoing investigation, or would not serve the public interest.

Parents/Guardians/Custodians and/or their Defense Attorney
What records can you share with parents?

- The law enforcement records applicable to the proceeding in which the person is a party are available, without specific permission from the head of the agency, to any party to a juvenile court proceeding and the party’s attorney.
- Upon written request of the child or the child’s parent, guardian, or custodian, a law enforcement agency shall deliver to the child any of the child’s fingerprints or photographs that are within that agency’s possession if the child was taken into custody and no petition was filed against the child; the petition was dismissed because of mistaken identity; the petition was dismissed because no delinquent act was actually committed; or the petition was dismissed for lack of probable cause.
- If a child was named in a written report of a crime as a victim of the crime or in a written report of a crime, and the law enforcement agency that receives the report reasonably believes that the child may be a victim of a crime, the law enforcement agency that receives the report shall make a reasonable attempt to notify the parent, guardian, or custodian of the child UNLESS the parent, guardian, or
custodian is the alleged perpetrator of the crime; or notification would not be in
the best interests of the child due to the relationship of the parent, guardian, or
custodian with the alleged perpetrator of the crime.

- The following information contained in records involving allegations of
delinquency, that would be a crime if committed by an adult, is considered public
information:
  - The nature of the offense allegedly committed and the circumstances
    immediately surrounding the alleged offense, including the time, location,
    and property involved; the identity of any victim; a description of the
    method of apprehension; any instrument of physical force used; the
    identity of any officers assigned to the investigation, except for
    undercover units; the age and sex of any child apprehended or sought for
    the alleged commission of the offense; the identity of a child, if the child
    is apprehended or sought for the alleged commission of: a) an offense over
    which a juvenile court does not have jurisdiction or, b) and act that would
    be a felony related to controlled substances.

- The records of police runs or responses to a certain address, sometimes called
  “call logs,” are not investigatory records and can be disclosed.

- Records relating to the detention of any child in a secure facility shall be open to
  public inspection.

- Files that are not “investigatory records.”

- Any person having a legitimate interest in the work of the agency or in a
  particular case may be granted access to the agency’s confidential records and
  investigatory records by the head of a law enforcement agency or that person’s
  designee.
  - If a law enforcement agency does not grant access to confidential or
    investigatory records to a person with a legitimate interest, the records can
    only be disclosed with a court order.

- Some records can only be shared with a parent, guardian, custodian, or their
  defense attorney with a court order:
  - A recorded custodial interrogation of a juvenile is confidential and can
    only be released at the discretion of the court.

- Any person may inspect or copy a law enforcement recording (in-car and body
  worn camera recordings) unless the law enforcement agency finds that releasing
  the recording: creates a significant risk of harm to any person or the general
  public, will interfere with a person receiving a fair trial due to prejudice or bias
  against the person, may affect an ongoing investigation, or would not serve the
  public interest.

Non-Custodial Relatives (such as grandparents and other relatives)
What records can you share with relatives?
The following information contained in records involving allegations of delinquency, that would be a crime if committed by an adult, is considered public information:
  - The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location, and property involved; the identity of any victim; a description of the method of apprehension; any instrument of physical force used; the identity of any officers assigned to the investigation, except for undercover units; the age and sex of any child apprehended or sought for the alleged commission of the offense; the identity of a child, if the child is apprehended or sought for the alleged commission of: a) an offense over which a juvenile court does not have jurisdiction or, b) and act that would be a felony related to controlled substances.

- The records of police runs or responses to a certain address, sometimes called “call logs,” are not investigatory records and can be disclosed.

- Records relating to the detention of any child in a secure facility shall be open to public inspection.

- Files that are not “investigatory records.”

- Any person having a legitimate interest in the work of the agency or in a particular case may be granted access to the agency’s confidential records and investigatory records by the head of a law enforcement agency or that person’s designee.
  - If a law enforcement agency does not grant access to confidential or investigatory records to a person with a legitimate interest, the records can only be disclosed with a court order.

- Some records can only be shared with non-custodial relatives with a court order:
  - A recorded custodial interrogation of a juvenile is confidential and can only be released at the discretion of the court.

- Any person may inspect or copy a law enforcement recording (in-car and body worn camera recordings) unless the law enforcement agency finds that releasing the recording: creates a significant risk of harm to any person or the general public, will interfere with a person receiving a fair trial due to prejudice or bias against the person, may affect an ongoing investigation, or would not serve the public interest.

**Indiana State Department of Health**

**What records can you share with the Department of Health?**

- The following information contained in records involving allegations of delinquency, that would be a crime if committed by an adult, is considered public information:
  - The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location,
and property involved; the identity of any victim; a description of the method of apprehension; any instrument of physical force used; the identity of any officers assigned to the investigation, except for undercover units; the age and sex of any child apprehended or sought for the alleged commission of the offense; the identity of a child, if the child is apprehended or sought for the alleged commission of: a) an offense over which a juvenile court does not have jurisdiction or, b) and act that would be a felony related to controlled substances.

- The records of police runs or responses to a certain address, sometimes called “call logs,” are not investigatory records and can be disclosed.
- Records relating to the detention of any child in a secure facility shall be open to public inspection.
- Files that are not “investigatory records.”
- Any person having a legitimate interest in the work of the agency or in a particular case may be granted access to the agency’s confidential records and investigatory records by the head of a law enforcement agency or that person’s designee.
  - If a law enforcement agency does not grant access to confidential or investigatory records to a person with a legitimate interest, the records can only be disclosed with a court order.
- Some records can only be shared with ISDH with a court order:
  - A recorded custodial interrogation of a juvenile is confidential and can only be released at the discretion of the court.

Any person may inspect or copy a law enforcement recording (in-car and body worn camera recordings) unless the law enforcement agency finds that releasing the recording: creates a significant risk of harm to any person or the general public, will interfere with a person receiving a fair trial due to prejudice or bias against the person, may affect an ongoing investigation, or would not serve the public interest.

Department of Correction
What records can you share with the Department of Correction?

- The following information contained in records involving allegations of delinquency, that would be a crime if committed by an adult, is considered public information:
  - The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location, and property involved; the identity of any victim; a description of the method of apprehension; any instrument of physical force used; the identity of any officers assigned to the investigation, except for undercover units; the age and sex of any child apprehended or sought for the alleged commission of the offense; the identity of a child, if the child
is apprehended or sought for the alleged commission of: a) an offense over which a juvenile court does not have jurisdiction or, b) and act that would be a felony related to controlled substances.

- The records of police runs or responses to a certain address, sometimes called “call logs,” are not investigatory records and can be disclosed.
- Records relating to the detention of any child in a secure facility shall be open to public inspection.
- Files that are not “investigatory records.”
- Any person having a legitimate interest in the work of the agency or in a particular case may be granted access to the agency’s confidential records and investigatory records by the head of a law enforcement agency or that person’s designee.
  - If a law enforcement agency does not grant access to confidential or investigatory records to a person with a legitimate interest, the records can only be disclosed with a court order.
- Some records can only be shared with IDOC with a court order:
  - A recorded custodial interrogation of a juvenile is confidential and can only be released at the discretion of the court.
- Any person may inspect or copy a law enforcement recording (in-car and body worn camera recordings) unless the law enforcement agency finds that releasing the recording: creates a significant risk of harm to any person or the general public, will interfere with a person receiving a fair trial due to prejudice or bias against the person, may affect an ongoing investigation, or would not serve the public interest.

**Law Enforcement Agencies (including the Prosecutor)**

**What records can you share with the Prosecutor?**

- The records of a law enforcement agency are available, without specific permission from the head of the agency, to a law enforcement officer acting within the scope of the officer’s lawful duties, to the prosecuting attorney, or to any authorized member of the staff of the prosecuting attorney.
- Law enforcement shall give telephone notice and immediately forward a copy of reports made that involve the death of a child to the appropriate prosecuting attorney.
- The department shall immediately forward a copy of all child abuse or neglect reports made to the appropriate prosecuting attorney if the prosecuting attorney has made a prior request to the service in writing for the copies.
- The following information contained in records involving allegations of delinquency, that would be a crime if committed by an adult, is considered public information:
  - The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location,
and property involved; the identity of any victim; a description of the method of apprehension; any instrument of physical force used; the identity of any officers assigned to the investigation, except for undercover units; the age and sex of any child apprehended or sought for the alleged commission of the offense; the identity of a child, if the child is apprehended or sought for the alleged commission of: a) an offense over which a juvenile court does not have jurisdiction or, b) and act that would be a felony related to controlled substances.

- The records of police runs or responses to a certain address, sometimes called “call logs,” are not investigatory records and can be disclosed.
- Records relating to the detention of any child in a secure facility shall be open to public inspection.
- Files that are not “investigatory records.”
- Any person having a legitimate interest in the work of the agency or in a particular case may be granted access to the agency’s confidential records and investigatory records by the head of a law enforcement agency or that person’s designee.
  - If a law enforcement agency does not grant access to confidential or investigatory records to a person with a legitimate interest, the records can only be disclosed with a court order.
- Some records can only be shared with other law enforcement agencies with a court order:
  - A recorded custodial interrogation of a juvenile is confidential and can only be released at the discretion of the court.
- Any person may inspect or copy a law enforcement recording (in-car and body worn camera recordings) unless the law enforcement agency finds that releasing the recording: creates a significant risk of harm to any person or the general public, will interfere with a person receiving a fair trial due to prejudice or bias against the person, may affect an ongoing investigation, or would not serve the public interest.

**Frequently Asked Questions**

**What is the best way to obtain law enforcement records related to a child?**
- A written request should be sent to the appropriate law enforcement agency.

**What is required in the written request?**
- Completion of an authorized form by the appropriate law enforcement agency, or a request that includes the following:
- The date and approximate time of the law enforcement activity;
- The specific location where the law enforcement activity occurred; and
The name of at least one individual, other than a law enforcement officer, who was directly involved in the law enforcement activity.

**How can I obtain a copy of police runs or calls made to a certain residence?**
- The records of police runs or responses to a certain address, sometimes called “call logs,” are not investigatory records and can be disclosed. Call your local law enforcement office to obtain copies of this information.

**Additional Resources**
- A sample authorization/release or consent will be agency specific and should be obtained from the agency you are seeking records from.
- Office of the Indiana Public Access Counselor – provides information on access to public records: [http://www.in.gov/pac/](http://www.in.gov/pac/)
LEGAL AUTHORITY FOR
INFORMATION SHARING GUIDE

EDUCATION/SCHOOLS

I. EDUCATION RECORDS – FEDERAL

A. Federal Family Educational and Privacy Rights Act

The Federal Family Educational Rights and Privacy Act (FERPA) protects the privacy interests of parents and students regarding students’ education records, which are defined as those maintained by an educational agency or institution containing personally identifiable information directly relating to a student. The law applies to educational agencies and institutions that receive funds under any program administered by the United States Department of Education. In general, FERPA prohibits the disclosure or release of personally identifiable information from a student’s education records unless the student’s parent, or in some cases the student, consents in writing or the release is specifically authorized by FERPA.

FERPA prohibits the disclosure of educational information without the prior approval of the student or parent. FERPA defines “education records” broadly to include “records, files, documents, and other materials” that are “maintained by an educational agency or institution, or by a person acting for such agency or institution.” Educational information includes a student’s transcripts, GPA, grades, attendance records, school disciplinary records, social security number, surveillance videotape with images of students, academic evaluations, and psychological evaluations. Information pertaining to lawsuits or other claims that are related to a former student are also covered under the definition of “education record” and are precluded from disclosure absent prior approval.

There are several records that are specifically exempted from the definition of education records. Effectively, these records are not regulated by FERPA, despite being records traditionally controlled by schools:

- Records kept in the sole possession of the maker, used only for personal memory aid;
- Law enforcement unit records;
- Records relating to an individual employed by a school;
- Records relating to medical and psychological treatment of a student who is eighteen years or older;

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1 Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g; 34 C.F.R. Part 99. FERPA protects most information collected by schools about students. However, sole possession records (e.g., teachers’ informal notes), records of school-based law enforcement entities, and employment records do not fall under the jurisdiction of FERPA.
- Student records created or received by a school after an individual is no longer a student in attendance and that are not directly related to the individual’s attendance as a student; and
- Grades on peer-graded papers before they are collected and recorded by a teacher.

The FERPA regulations list 16 exceptions to the general rule that education records of a student cannot be disclosed without consent of a parent or student over the age eighteen. Some exceptions to the prior consent rule for disclosure are:

- In response to a subpoena or court order, during which the school must make a reasonable effort to notify the parent or student before disclosure;
- During an emergency situation to protect the health or safety of the child or other individuals, during which records may be disclosed to a person whose knowledge of the information is necessary to provide protection;
- To other school officials, including contractors, volunteers, and others to whom the district outsources its functions, that have a legitimate educational interest;
- Information properly designated as directory information;
- To another school when the student seeks to enroll;
- To State and local juvenile justice officials and authorities when authorized by state law to serve the student prior to adjudication, during which the information shall not be re-disclosed without prior written consent of the parent; and
- Disclosure related to sex offenders and other individuals required to register under the Violent Crime Control and Law Enforcement Act of 1994.

Additionally, information on students that has been properly de-identified may be disclosed, as long as the school has made a reasonable determination that a student’s identity is not personally identifiable by the disclosure.

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2 34 C.F.R. § 99.3. – Section 99.31 governs when prior consent is not needed.
3 Under the health and safety emergency provision, an educational agency is responsible for making a determination on whether to make a disclosure of personally identifiable health information on a case-by-case basis, taking into account the totality of the circumstances pertaining to the health or safety threat. This exception is limited to the period of the emergency. 34 C.F.R. § 99.36.
4 School officials must be defined in a school’s annual FERPA notice.
5 “Directory information” on students whose parents have not opted out of the disclosure of directory information may be disclosed to the general public if it has been has properly designated in the school’s annual notice.
6 The 2000 Campus Sex Crimes Prevention Act added a new subsection (b)(7) to the statute to ensure that an educational institution may disclose information concerning a registered sex offender provided to it under State sex offender registration and community notification programs. The Patriot Act of 2001 added a new section (j) that allows the U.S. Attorney General or their deputy to apply for an ex parte court order requiring an education agency or institution to allow the Attorney General to collect and use education records relevant to investigations and prosecutions of specified crimes or acts of terrorism subject to confidentiality procedures developed in consultation with the Secretary of Education.
7 34 C.F.R. § 99.31(b). De-identified data may be shared without the consent required by FERPA with any party for any purpose, including parents, general public, and researchers. 34 C.F.R. § 99.31(b)(1). Student records contain personally identifiable information, which include direct identifiers (e.g. names, student IDs, or social security numbers), and other sensitive and non-sensitive information that, alone or combined with other information, would identify a student. Therefore, simple removal of direct identifiers from the data to be released does not constitute adequate de-identification. Properly performed de-identification involves removing or obscuring all personally identifiable information until all data that can lead to individual identification have been expunged or masked.
• Additionally, when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. § 5101) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required, the school does not have to notify the parent.

When a record is disclosed under one of the exceptions, the educational agency releasing the information must note in the record the names of the parties who received information and an explanation of the exception under which the record was disclosed. FERPA requires educational agencies to account for all instances when education records are released, indicating the reasons the information was provided and who received it. These explanations must be recorded in the student’s record and maintained there until the agency destroys the record.

FERPA limits re-disclosure of education record information and establishes a penalty for its improper re-disclosure. If a third party is found to have improperly disclosed personally identifiable information from an education record, the educational agency or institution may not allow that third party to access personally identifiable information from education records for at least five years. 8

B. Individuals with Disabilities Education Act

In addition to the requirements of FERPA, the Individuals with Disabilities Education Act (IDEA) provides greater privacy protections for students who are receiving special education and related services. 9 FERPA serves as the foundation for the additional confidentiality provisions in IDEA. Educational agencies must meet the confidentiality requirements of FERPA pertaining to personally identifiable information of students who are receiving special education and related services. 10

In addition to the FERPA provisions and IDEA-specific provisions that restate the FERPA requirements, the IDEA regulations include some enhanced protections tailored to special confidentiality concerns for children with disabilities and their families. Public agencies must inform parents of children with disabilities when information is no longer needed and, except for certain permanent record information, that information must be destroyed at the request of the parents. The public agency must give public notice about the collection of personally identifiable information in the state and a summary of the policies and procedures that public agencies must follow regarding storage, disclosure to third parties, and retention and destruction of personally identifiable information.

C. Uninterrupted Scholars Act

8 20 U.S.C. § 1232(g)(b)(4)(B). 34 C.F.R. § 99.33(a). There are certain exceptions to FERPA’s general rule regarding re-disclosure, including when the prior consent of the parent or the eligible student is not required under 34 C.F.R. Part 99 subpart D at § 99.31 and the party complies with the reporting requirements.
9 The privacy protections under Part B of the IDEA are found at 34 C.F.R. § 300.610-627
10 34 C.F.R. § 300.610-627.
The Uninterrupted Scholars Act (USA) amendments affect the confidentiality provisions of FERPA and apply to provisions of IDEA. The USA allows disclosures to a caseworker or other agency of a State or local child welfare agency who is authorized to access a student’s case plan, “when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student.” The records may only be released to an agency that is legally responsible for the care and protection of the child. Thus, the USA would not permit schools to share education records for children who are not in foster care but who are receiving other services through the child welfare agency or tribal organization. Moreover, the USA exception permits, but does not require information sharing. Thus, under FERPA, an educational agency may choose to disclose all or part of the education record it maintains on a student who is in foster care.

The USA also amended the exception to the general requirements in FERPA that permits an education agency’s disclosure of educational records without consent if the disclosure is necessary to comply with a subpoena or judicial order. FERPA generally requires educational agencies to make a reasonable effort to notify the parents of the subpoena or judicial order before complying with it, in order to allow the parents to seek protective action. Under the USA, educational agencies do not have to notify a parent if the court has already given the parent notice as a party in court proceedings involving child abuse and neglect or dependency matters, and the order is issued in the context of that proceeding. However, if the judicial order or subpoena is not issued related to one of the aforementioned proceedings, the educational agency is only permitted to release the education records without consent as long as it makes a reasonable effort to notify the parents.

These changes aim to improve educational and developmental outcomes for children in foster care by allowing those who are legally responsible for such children access to specific information maintained by the agencies providing early intervention or educational services to such children. The Department of Education continues to encourage collaboration at the local and state levels between education, early intervention, and child welfare agencies to ensure continued access to services for children in foster care.

**D. McKinney-Vento Act**

The McKinney-Vento Homeless Assistance Act is a federal law that requires State and local educational agencies to ensure that homeless children and youth are not segregated or stigmatized on the basis of their homeless status. Homeless children and youths are

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11 20 U.S.C. § 1232g.
12 For example, if a child has not been adjudicated as a foster child but is still receiving vocational and skills assessments, training, tutoring, educational services, family services, and community enrichment activities.
14 42 U.S.C. § 11431 et seq.
individuals who lack fixed, regular, or adequate nighttime residence, including those awaiting foster care placements.\textsuperscript{15}

The law allows for immediate enrollment into a new school even if normally required documents, such as immunization records, birth certificates, or guardianship documents, are not immediately available. Educational agencies are encouraged to collaborate and partner with other community agencies to ensure homeless students have the chance to thrive academically. In the event student record information appears irregular or unavailable, guidance encourages school to admit the student

\textbf{E. FERPA & Health Insurance Portability and Accountability Act}

While education records are protected under FERPA, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (“Privacy Rule”) protects the privacy and confidentiality of individually identifiable health information. The Privacy Rule applies to protected health information maintained by “covered entities,” such as medical providers and hospitals.\textsuperscript{16} Thus, education records covered by FERPA are excluded from the definition of protected health information.\textsuperscript{17} In other words, health information that is maintained by an educational agency or institution is subject to FERPA privacy and confidentiality rules, and not the Privacy Rule, even if health professionals created and used the information. There are limited circumstances where the Privacy Rule may apply in situations where an outside party provides services directly to students and is not employed by, under contract to, or otherwise acting on behalf of a school.

At the elementary and secondary level, a student’s health records, including immunization and records maintained by a school nurse or a school clinic, maintained by an education agency are subject to FERPA. In addition, records involving services provided under IDEA, including health and medical records are education records governed by FERPA.

\textbf{F. FERPA & 42 C.F.R. Part 2}

The 42 C.F.R. Part 2 (“Part 2”) prohibits the disclosure of information about students who apply for or receive addiction treatment services.\textsuperscript{18} Part 2 regulations apply to records of any patient, even a minor student in school, who receives treatment from a federally assisted program. Under the law, patients also include students who receive counseling because they are the children of individuals with addiction disorders.

\textsuperscript{16} “Covered entities” are entities that are health plans, health care clearinghouses, or health care providers that transmit health information in electronic form in connection with a covered transaction. For more information, see the healthcare agencies section.
\textsuperscript{17} 45 C.F.R. 160.103
\textsuperscript{18} 42 C.F.R. Part 2.
The Part 2 rules apply to assessment, diagnosis, counseling, group counseling, treatment, or referral for treatment in most programs in which students participate, including programs sponsored by public and many private schools. They generally forbid the release of any information without a patient’s consent, even when the patient is a student in school and under eighteen years of age.

G. National School Lunch Act

The Richard B. Russell National School Lunch Act (NSLA), which has stricter privacy provisions than FERPA, restricts who may have access to records on students who are eligible for free and reduced-price meals.\(^\text{19}\) This includes student and household information obtained from the free and reduced-price eligibility process and the student’s (free or reduced-price eligibility) status. Individuals who may be permitted access to this information under FERPA may be denied access under the more restrictive provisions of NSLA.\(^\text{20}\)

II. Education Records – Indiana

A. Parent

In Indiana, education records are defined as information that is recorded by a nonpublic or public school and concerns a student who is or was enrolled in the school, including personally identifiable test scores (e.g. ISTEP scores).\(^\text{21}\) "Personally identifiable information" means information by which it is possible to identify a student with reasonable certainty, including, but not limited to, the following: (1) the name of a student, a student's parent or parents, or other family member or members; (2) the address of a student; (3) a personal identifier, such as a student's Social Security number or student test number; and (4) a list of personal characteristics or other information that would make the student's identity easily traceable, including disability designation.\(^\text{22}\) In general, parents’ written consent is required for disclosure of educational records unless disclosure relates to the aforementioned FERPA exceptions.\(^\text{23}\) The term “parent” is defined as:

- The natural father or mother;
- The adopting father or mother of a child, in the case of adoption;
- The guardian or custodian of the child, if the custody of the child has been awarded in a court proceeding to someone other than the mother or father; or

\(\text{19}\) The NSLA is codified under Ind. Code § 20-26-9. The Department of Education monitors and maintains the records of breakfast and lunch programs.
\(\text{20}\) The NSLA strictly limits how school districts may use individual student and household information, without prior parental consent, obtained as part of the free and reduced-price school meals eligibility process once students are identified to receive program services. The NSLA specifies that persons directly connected to the administration of these programs are permitted access to eligibility information without prior parental consent in legitimate “need to know” cases.
\(\text{21}\) Ind. Code § 20-33-7-1; Ind. Code § 20-32-5-9(b); Ind. Code § 5-14-3-4(b)(4).
\(\text{22}\) 511 Ind. Admin. Code 7-32-73.
If the parents of a child are divorced, the parent to whom the divorce decree or modification awards custody or control of the child.\textsuperscript{24}

If a judicial decree or order identifies a specific person to act as the parent for a student, or make educational decisions on behalf of a student, then that person shall have the right to inspect and review the education record. In general, a custodial and noncustodial parent is entitled the same to access to her or his child’s education records.\textsuperscript{25} If a court order has restricted a custodial or non-custodial parent’s access to the student’s education record, the court must provide the school administration with actual notice regarding the termination or restriction in order to maintain confidentiality of the records.\textsuperscript{26}

B. Individual Rights

The public agency must annually notify, in writing, parents of students currently in attendance, or students of legal age currently in attendance, of their rights regarding confidentiality of personally identifiable information. The notice must inform parents or students of legal age that they have the right to:

- Inspect and review the student's educational record with respect to the identification, placement, and provision of free appropriate public education to the student.
- Seek amendment of the student's educational record that the parent or student of legal age believes to be inaccurate, misleading, or otherwise in violation of the student's privacy right.
- Consent to disclosures of personally identifiable information contained in the student's educational record, except to the extent that this rule authorizes disclosure without consent.
- File a complaint concerning the public agency's alleged failure to comply with the requirements of this rule.

If an educational record includes information on more than one student, the parent or student of legal age has the right to inspect and review, or be informed of, only specific information relating to that student.\textsuperscript{27}

III. Educational Agencies – Interagency Collaboration

A. Juvenile Justice Agencies

In Indiana, juvenile justice agencies (JJAs) are defined as any agency or department of any level of government, the functions of which include juvenile justice activities concerning:

- The prevention or reduction of juvenile delinquency;
- The apprehension and adjudication of juvenile offenders;

\textsuperscript{24} Ind. Code § 20-18-2-13.
\textsuperscript{25} Ind. Code § 20-33-7-2(a).
\textsuperscript{26} 511 Ind. Admin. Code 7-38-1(f).
\textsuperscript{27} 511 Ind. Admin. Code 7-38-1.
- The disposition of juvenile offenders including protective techniques and practices;
- The prevention of child abuse and neglect; and
- The discovery, protection, and disposition of children in need of services (CHINS).  

Schools are permitted to share personally identifiable information with JJAs under certain circumstances. Schools are authorized to share education records with JJAs without prior parental consent so long as the purpose relates to the ability of the juvenile justice system to serve the student before adjudication. The JJA receiving the information must certify, in writing, to the entity providing the information, that it will not disclose the information to a third party, other than to another JJA, without the parent’s consent. Post-adjudication disclosure of education records shall be treated the same as those before adjudication if the educational agency determines that the post-adjudication disclosure is for the purpose of identifying and intervening with the child as a juvenile at risk of delinquency, rather than to obtain information solely related to supervision of the child as an adjudicated delinquent child. A school may also disclose education records or a child, including personally identifiable information, without the consent of the child’s parent, if the child has been suspended or expelled and referred to a court for court-assisted resolution of suspension and expulsion cases. A court’s request for the education records of a child must be for the stated purpose of assisting the child before adjudication. A school that discloses education records of a child in violation of Ind. Code §20-33-7-3, but that makes a good faith effort to comply with that law, is immune from civil liability.

B. Preliminary Inquiries

An intake officer who has reason to believe that a child is a child in need of services (CHINS) will complete a dual-status screening tool on the child in a preliminary inquiry to determine whether the interests of the child require further action. In both a CHINS and a delinquency petition, whenever practicable, the preliminary inquiry should include information on the child’s background, current status, and school performance. If a prosecuting attorney has reason to believe the child has committed a delinquent act, the prosecuting attorney shall instruct an intake officer to make a preliminary inquiry to determine whether the interests of the public or of the child require further action. If a preliminary inquiry regarding a child believed to be a CHINS or a delinquent child occurs on school property and is conducted in the presence of school officials, any record of the

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28 Ind. Code § 10-13-4-5; Ind. Code § 5-2-6-1.
29 Ind. Code § 20-33-7-3(a).
30 Ind. Code § 20-33-7-3(b)(3).
31 Ind. Code § 20-33-7-3 (b).
32 Ind. Code § 20-33-7-3 (e).
33 Ind. Code § 31-34-7-1.
34 Ind. Code § 31-34-7-1 & Ind. Code §31-37-8-2.
proceeding compiled by school officials is confidential and is not open to public inspection.  

C. Immunizations

Students enrolling in a school for the first time are required to provide proof of the student’s immunization status. The parent or legal guardian shall provide to the educational agency a record of the child’s immunizations signed by the physician or healthcare provider, or an official immunization registry record. Beginning on July 1, 2015, providers are required to report immunization data to the immunization data registry. A minor’s parent or guardian has a right to exempt disclosure of immunization data to the registry and may prevent disclosure by signing an immunization data exemption form. Moreover, an individual may have his information removed from the immunization data registry. Records maintained as part of the immunization data registry are confidential. The ISDH may release information from the registry to the individual or, if a minor, to the minor’s parent or guardian.

D. School Law Enforcement Units

FERPA defines a “law enforcement unit” as any individual, office, department, or division, or other component of an educational agency or institution that is officially authorized by that agency to enforce any local, state, or federal law, or to maintain the physical security of the school. “Law enforcement unit records” are defined as any records:

- Created by a law enforcement unit;
- Created for a law enforcement purpose; and
- Maintained by the law enforcement unit.

Law enforcement unit records are specifically excluded from the definition of education record, and thus are not subject to the consent requirements of education records. Conversely, education records and personally identifiable information contained in education records, do not lose their status as education records and remain subject to FERPA, while in the possession of a law enforcement unit.

IV. SPECIAL EDUCATION

Public schools’ special education programs are required to provide education to students who are identified as disabled, including students who have been suspended or expelled from the school, to the extent required by law. Special education programs include

36 Ind. Code § 20-34-4-5.
38 Ind. Code § 16-38-5-3.
40 34 C.F.R. § 99.3.
41 34 C.F.R. § 99.8(c)(2).
elementary school, secondary school, and early childhood programs for students who are at least three years of age, but who are not enrolled in kindergarten.\textsuperscript{43} Public schools may provide special education services and services related to special education through a variety of arrangements, including cooperative arrangements with other public agencies.

The Indiana Department of Education Office of Special Education must, in conjunction with each public agency, develop an interagency agreement or other mechanism for interagency coordination to provide special education services.\textsuperscript{44} Interagency agreements shall include the methods of ensuring services, including the coordination of service procedures, while maintaining due process and procedural safeguards.\textsuperscript{45} In conjunction with FERPA, educational agencies are allowed to share information with other authorized officials that have a legitimate educational interest. For example, a patient’s mental health records may be disclosed without prior consent “to a school in which the patient is enrolled if the superintendent of the facility determines that the information will assist the school in meeting educational needs of the patient.”\textsuperscript{46}

**A. Student with a Disability**

A student with a disability is an individual who is between three and twenty-two years of age; and, who, because of physical or mental disability, is incapable of being educated properly and efficiently through normal classroom instruction, but may be expected to benefit from special education and related services.\textsuperscript{47} A student qualifies for special education and related services if the child has at least one of the following disabilities:\textsuperscript{48}

- Mental retardation [sic].
- A hearing impairment (including deafness).
- Speech or language impairment.
- A visual impairment (including blindness).

\textsuperscript{43} 511 Ind. Amin. Code 7-33-2.
\textsuperscript{44} The requirement of this agreement applies to student identification, eligibility, evaluation, placement procedures, and the provision of free appropriate public education and special education programs conducted by the Departments of Health, Child Services, and Correction; the Family and Social Services Administration (including, but not limited to, the Division of Disability and Rehabilitative Services and the Division of Mental Health and Addiction); the School for the Blind and Visually Impaired; the School for the Deaf; and, any public or private agency contracted to provide special education services. 511 Ind. Admin. Code 7-33-3.
\textsuperscript{45} The Office of Special Education must, in conjunction with each public agency, develop an interagency agreement or other mechanism for interagency coordination. Interagency agreements or other coordination mechanisms may address educational programs or non-educational programs that provide or pay for services that are considered special education. Special education programs must comply with state and federal special education laws and regulations, including data collection and submission and program monitoring. Public school corporations and charter schools may provide special education programs through a special education planning district or as authorized under the Joint Service and Supply Act under Ind. Code § 20-26-10, the Special Education Cooperatives Act under Ind. Code § 20-35-5, and the Interlocal Cooperation Act under Ind. Code § 36-1-7, and other cooperative arrangement permitted by law. 46 Ind. Code § 16-39-2-6(9).
\textsuperscript{46} 46 Ind. Code § 20-35-1-8.
\textsuperscript{47} 34 C.F.R. § 300.8. 511 Ind. Admin. Code 7-40-4. The list of disabilities shown above is printed as it appears in the federal law; Indiana’s list differs slightly and is found at 511 Ind. Admin. Code 7-41 et seq.
- A serious emotional disturbance.\textsuperscript{49}
- An orthopedic impairment, autism, traumatic brain injury, or other health impairment; or
- A specific learning disability, deaf-blindness, or multiple disabilities.

A student with a disability is eligible for special education services after an appropriate educational evaluation by a multidisciplinary team, comprised of a group of qualified professionals who conduct a student's evaluation\textsuperscript{50} with input from the student's parent.\textsuperscript{51} Either a parent of a student or a public agency may initiate a request for an educational evaluation to determine if a student is eligible for special education and related services. If, after the evaluation, it is determined that the student has a disability and needs services, but not special education, the student is not considered a student with a disability.\textsuperscript{52} If the parents revoke consent for special education and related services, the student is no longer a student with a disability.

\textbf{B. Special Education & Related Services}

Special education means instruction specifically designed to meet the unique needs of students with disabilities as defined by federal law. Special education may include, but is not limited to: (1) instruction conducted in the classroom, the home, hospitals and institutions, and other settings; (2) physical education; (3) travel training; (4) transition

\begin{itemize}
  \item \textsuperscript{49}“Emotional disability” means an inability to learn or progress that cannot be explained by cognitive, sensory, or health factors. The student must exhibit at least one characteristic over a long period of time and to a marked degree that adversely affects her educational performance, as follows: (1) a tendency to develop physical symptoms or fears associated with personal or school problems; (2) a general pervasive mood of unhappiness or depression; (3) an inability to build or maintain satisfactory interpersonal relationships; (4) inappropriate behaviors or feelings under normal circumstances; and (5) episodes of psychosis. 511 Ind. Admin. Code 7-41-7.
  \item \textsuperscript{50}“Educational evaluation” means procedures used to provide information on the student’s disability or suspected disability, including academic achievement and available medical and mental health information that is academically relevant. 511 Ind. Admin. Code 7-32-30. Educational evaluations, test protocols that contain personally identifiable information regarding the student, and IEPs are considered education records. 511 Ind. Admin. Code 7-32-31.
  \item \textsuperscript{51}The qualified professionals include, but are not limited to, the following: (1) at least one teacher licensed in, or other specialist with knowledge in, the area of suspected disability; (2) a school psychologist, except for a student with a suspected: (a) developmental delay, in which case the multidisciplinary team shall be at least two qualified professionals from different disciplines based upon the needs of the student; (b) language impairment, a speech-language pathologist and at least one qualified professional from a different discipline based upon the needs of the student; or (c) speech impairment only, a speech-language pathologist may serve as the sole qualified professional on the multidisciplinary team; (3) for a student with a suspected specific learning disability, the following: (a) the student's general education teacher or, if the student does not have a general education teacher, a general education teacher qualified to teach students of the same age; (b) for early childhood students, an individual who holds an appropriate license to teach early childhood special education; and (4) for a student who is blind or has low vision, is deaf or hard of hearing, or has suspected multiple disabilities, the public agency may request that representatives of the state-operated schools serve as part of the multidisciplinary team only if the parent has provided written consent, in addition to the written consent to conduct the initial educational evaluation, for the representative's participation in the educational evaluation. 511 Ind. Admin. Code 7-32-65.
  \item \textsuperscript{52}511 Ind. Admin. Code 7-32-92.
\end{itemize}
services;\(^53\) (5) vocational education; and (6) speech-language pathology services.\(^{54}\) Services related to special education may include transportation and developmental, corrective, and other supportive services that are required for a student to benefit from special education.\(^{55}\)

Public agencies may provide special education services and services related to special education through a variety of arrangements, including cooperative arrangements with other public agencies. A “public agency” means any public entity that is responsible for providing special education and related services, including the following:\(^{56}\)

- Public school corporations operating programs individually or cooperatively;
- Charter schools that are not part of a public school corporation;
- Programs operated by the Indiana State Department of Health (ISDH);
- The Indiana School for the Blind and Visually Impaired;
- The Indiana School for the Deaf; and
- Programs operated by the Indiana Department of Correction (IDOC).

C. **Parent**

For a student with disabilities, the term “parent” includes:\(^{57}\)

- Any biological or adoptive parent whose parental rights have not been terminated or restricted in accordance with law;\(^{58}\)
- A guardian generally authorized to act as the student's parent, or authorized to make educational decisions for the student, including a court-appointed temporary guardian.
- A foster parent.
- An individual with legal custody or an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, or other adult who accepts full legal responsibility for the student and with whom the student lives.

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\(^{53}\) “Transition services” means a coordinated set of activities for a student with a disability that: (1) are designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the student with a disability; (2) are incorporated into the student's transition IEP in accordance with 511 Ind. Admin. Code 7-43-4; and (3) facilitate movement from school to post-school activities, including, but not limited to: (a) postsecondary education; (b) vocational education or training, or both; (c) integrated employment, including supported employment; (d) continuing and adult education; (e) adult services; (f) independent living; or (g) community participation. The coordinated set of activities must be based on the individual student's needs, taking into account the student's strengths, preferences, and interests. 511 Ind. Admin. Code § 7-32-100.

\(^{54}\) 511 Ind. Admin. Code 7-32-86.

\(^{55}\) 511 Ind. Admin. Code 7-43-1.

\(^{56}\) 511 Ind. Admin. Code 7-32-77.

\(^{57}\) 511 Ind. Admin. Code 7-32-70.

\(^{58}\) The biological or adoptive parents, when they attempt to act as parents and more than one party is qualified to act as parents, must be presumed to be “the parents” for purposes of this article unless the biological or adoptive parents do not have legal authority to make educational decisions for the student. However, if a judicial decree or order exists that identifies a specific person or persons to act as the parent of a student, or empowers a person to make educational decisions on behalf of a student, then that person will be determined to be “the parent” for the purposes of education decisions and records.
D. Identifying Students in Need of Special Education Services

Public agencies must have procedures that ensure the location, identification, and evaluation of all who are in need of special education and related services, regardless of the severity of their disabilities, including students who:

- Have legal settlement within the jurisdiction of the public agency.
- Attend a nonpublic school, are served by an agency, or live in an institution located within the jurisdiction of the public agency.
- Are homeless students.
- Are wards of the state.
- Are highly mobile students, including migrant students.
- Are suspected of being students with disabilities in need of special education even though they are advancing from grade to grade.

E. Individualized Education Programs

Each student with a disability who needs special education services must have an individualized education program (IEP), which is a written document developed, reviewed, and revised by a case conference committee, which specifies how a student will access the general education curriculum, as well as the special education and related services the student needs to participate in the educational environment.

59 511 Ind. Admin. Code 7-39. An “educational surrogate parent” is defined as a person trained and appointed to represent a student with a disability in matters relating to the provision of a free appropriate public education, including the following: identification, evaluation, and placement.

60 A “student of legal age” means a student who is eighteen years of age and has not had a guardian appointed by a court under Ind. Code § 29-3.

61 Any student eligible for special education and related services who has become eighteen years of age and has not had a guardian appointed under Ind. Code § 29-3 may have an educational representative appointed to make educational decisions on the student's behalf if the student: (1) requests in writing that an educational representative be appointed; or (2) is certified as unable to provide informed consent. In this case, a student's parent must be appointed to act as the educational representative. However, if the parent is unavailable, a person trained as an educational surrogate parent under 511 Ind. Admin. Code 7-39-2 must be appointed by the public agency to serve as the educational representative. 511 Ind. Admin. Code 7-43-6.

62 "Legal settlement," of a student, means the student's status with respect to the school corporation that: (1) has the responsibility to permit the student to attend its local public schools without the payment of tuition; or (2) is financially responsible should the student attend school in another situation permitted by law. 511 Ind. Admin. Code 7-32-56.

63 “Homeless student” is defined in 511 Ind. Admin. Code 7-32-46.

64 “Ward of the state” refers to the student who has been removed from the student's home for suspected or actual neglect or abuse, and for whom the court has issued an order restricting or terminating the rights of the student's parent. 511 Ind. Admin. Code 7-32-105.


66 A case conference committee" or "CCC" means the group of persons described in 511 Ind. Admin. Code 7-42-3, including parents and public agency personnel, who are responsible for the following: (1) reviewing the educational evaluation report and determining a student's eligibility for special education and
An individualized family service plan (IFSP) is a written plan for providing first steps early intervention services to a family and eligible child under three years of age, under Part C of the IDEA. The IFSP is both a process and document that lists a family’s priorities, concerns, and resources regarding their infant or toddler with a disability.

A team comprised of the following individuals develops a student’s IEP:

- A representative of the school corporation or public agency responsible for educating the child;
- The child's regular teacher;
- The child's parent, guardian, or custodian;
- The child, if appropriate;
- At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher;
- An individual who can interpret the instructional implications of evaluation results, who may also be one of the other listed members; and
- Other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate (e.g. a community mental health center or managed care provider), at the discretion of the educational agency or the parent.

Each public agency must ensure that the child’s IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other provider who is responsible for its implementation. The public agency must inform each teacher and provider of her or his responsibilities related to implementing the child’s IEP and the specific accommodations, modifications, and supports that must be provided in accordance with the child’s IEP.
In accordance with the Federal Performance Standards, any copy of a student’s IFSP/IEP should remain confidential and shall not be disclosed to any other person in compliance with federal and state laws and regulations, including IDEA and FERPA. The public agency may disclose personally identifiable information in a student’s education records, including the student’s IFSP/IEP, to agency and service providers with a legitimate education interests.

F. Transition Services

"Transition services" means a coordinated set of activities for a student with a disability that:

- Are designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the student with a disability;
- Are incorporated into the student's transition IEP,
- Facilitate movement from school to post-school activities, including, but not limited to: (1) postsecondary education; (2) vocational education or training, or both; (3) integrated employment, including supported employment; (4) continuing and adult education; (5) adult services; (6) independent living; or (G) community participation.

When a student reaches legal age, all of the rights that were formerly provided to the student's parents transfer to the student of legal age, unless a guardian or educational representative has been established for the student. When a student who is incarcerated in a state or local correctional institution turns eighteen, all of the rights that were formerly provided to the student's parents transfer to the student.

G. Due Process Hearing

A parent, a public agency, or the state educational agency may initiate a due process hearing that is conducted by an independent hearing officer when there is a dispute regarding a student’s special education. Prior to the initiation of a due process hearing, the public agency must convene a resolution meeting with the parent and the relevant members of the CCC who have specific knowledge of the facts identified in the due process hearing request. Any party to a due process hearing has the right to obtain a written or, at the option of the parents, an electronic verbatim transcript of the hearing.

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72 511 Ind. Admin. Code 7-32-100.
74 Id.
75 The public agency must inform the student and the parent that the parent's rights will transfer to the student when she or he turns eighteen, unless a guardianship or an educational representative has been established for the student. The student's IEP must include a statement that the student and the parent were informed of the transfer of parental rights in accordance with 511 Ind. Admin. Code 7-42-6 (f) (10).
76 511 Ind. Admin. Code 7-45-3.
77 The public agency must keep a record of its attempts to secure the participation of the parent in the resolution meeting. 511 Ind. Admin. Code 7-45-6.
A parent, or the parent's representative, involved in a due process hearing has the right to the following:

- Have the student who is the subject of the hearing attend.
- Have the hearing opened or closed to the public.
- Inspect and review, prior to the hearing, any records pertaining to the student maintained by the public agency, its agents, or employees, including all tests and reports upon which the proposed action may be based.
- Recover reasonable attorney's fees if a court determines the parent ultimately prevailed at the due process hearing or judicial review.
- Obtain a written or electronic verbatim transcript of the proceedings at no cost.
- Obtain written or electronic findings of fact and decisions at no cost.

The Office of Special Education maintains the following information and records for the duration of the hearing and any subsequent civil action: (1) the original hearing decision; (2) the transcript of the hearing; (3) the exhibits admitted by the independent hearing officer; and (4) all notices, pleadings, exceptions, motions, requests, and other papers filed in the hearing. The Office of Special Education, after deleting personally identifiable information from record, transmits a copy of to the state advisory council on the education of children with disabilities and maintains a copy of the document for public review in its offices.

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78 Other rights include, but are not limited to, the right to: (1) be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to special education or the problems of students with disabilities; (2) present evidence and confront, cross-examine, and compel the attendance of witnesses; and (3) conduct discovery. 511 Ind. Admin. Code 7-45-7.

HEALTHCARE AGENCIES
HIPAA & the Privacy Rule

I. HEALTHCARE AGENCIES – FEDERAL

A. Health Insurance Portability and Accountability Act (HIPAA)

The HIPAA Privacy Rule (“Privacy Rule” or “Rule”) establishes a minimum level of privacy protection for all medical and health records. The Privacy Rule governs all health information held or transmitted by a covered entity (as defined in the next paragraph), or its business associate, in any form or media, whether electronic, paper, or oral. “Health information” is any information, including genetic information, that: (1) is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and (2) relates to the treatment, payment, or provision of an individual’s past, present, or future physical or mental health or condition. Protected health information (PHI) is individually identifiable information except for: education records covered by FERPA, employment records held by a covered entity in its role as employer, and records regarding a person who has been deceased for more than fifty years.

The Privacy Rule applies to all covered entities, which include health plans, healthcare clearinghouses, and any healthcare provider who electronically transmits health information in connection with the HIPAA Transactions Rule. A covered entity is permitted, but not required, to use and disclose PHI without prior authorization for the following purposes or situations:

- To the individual.
- For treatment, payment, and healthcare operations.

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80 45 C.F.R. § 160.103.
81 45 C.F.R. § 160.103.
82 45 C.F.R. § 160.103.
83 Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and (3) that identifies the individual or creates a reasonable basis to identify the individual.
84 PHI includes common identifiers, such as name, address, birthdate, and social security numbers. It does not include psychotherapy notes; thus, most uses and disclosures of notes for treatment, payment, and healthcare operations require written authorization. There are no restrictions on the use or disclosure of deidentified health information.
85 Business associates perform functions or activities on behalf of a covered entity, invoking confidentiality safeguards required by the Privacy Rule. 45 C.F.R. § 164.502(d)(2). 45 C.F.R. § 164.514(a). However, some entities that may have health information are not subject to the HIPAA Privacy Rule, including: employers; most state and local police or law enforcement agencies; many state agencies, such as child protective services; and most schools and school districts.
86 Treatment is the provision, coordination, or management of healthcare and related services for an individual by one or more healthcare providers, including consultation between providers regarding a patient and referral of a patient by one provider to another. Payment encompasses activities of a health plan to obtain premiums, determine or fulfill responsibilities for coverage and provision of benefits, furnish or obtain reimbursement for healthcare delivered to an individual, and the activities of a healthcare provider to
- Uses and disclosures with opportunity to agree or object.
- Disclosure incidental to an otherwise permitted use and disclosure.\(^{87}\)
- Public interest and benefit activities.
- Limited data set for the purposes of research, public health, or healthcare operations.\(^{88}\)

Under the public interest and benefits activities exception, the Privacy Rule permits the use and disclosure of PHI, without an individual’s consent, for twelve national priority purposes:

- As required by law.
- For public health activities.
- For victims of abuse, neglect, or domestic violence.
- For health oversight activities.
- For judicial and administrative proceedings.
- For law enforcement purposes.\(^{89}\)
- For decedents.
- For donation and transplantation services.
- For research.
- If there is a serious threat to health or safety.\(^{90}\)
- For essential government programs.
- For workers’ compensation.

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obtain payment for services rendered. Healthcare operations are any of the following activities: (1) quality assessment and improvement activities, including case management and care coordination; (2) competency assurance activities; (3) conducting or arranging for medical reviews, audits, or legal services; (4) specified insurance functions; (5) business planning, development, management, and administration; and (6) business management and general administrative activities of the entity. 45 C.F.R. § 164.501.

87 The Privacy Rule permits certain incidental uses and disclosure that occur as a by-product of another permissible or required use or disclosure, as long as the covered entity has applied reasonable safeguards and implemented the minimum necessary standard, where applicable, with respect to the primary use or disclosure. An incidental use or disclosure is a secondary use or disclosure that cannot be reasonably prevented, is limited in nature, and that occurs as a result of another use or disclosure that is permitted by the Rule. However, an incidental use or disclosure is not permitted if it is a by-product of an underlying use or disclosure that violates the Privacy Rule. 45 C.F.R. § 164.502(a)(1)(iii).

88 A limited data set may be used and disclosed for research, healthcare operations, and public health purposes, provided the recipient enters into a data use agreement promising specified safeguards for the PHI within the limited data set. 45 C.F.R. § 164.514.

89 Covered entities may disclose PHI to law enforcement officials for law enforcement purposes under the following six circumstances, and subject to specified conditions: (1) as required by law (including court orders and subpoenas) and administrative requests; (2) to identify or locate a suspect, fugitive, material witness, or missing person; (3) in response to a law enforcement official’s request for information about a victim or suspected victim of a crime; (4) to alert law enforcement of a person’s death; (5) when a covered entity suspects that criminal activity caused the death; and (6) by a covered healthcare provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime. 45 C.F.R. § 164.512.

90 Covered entities may disclose PHI that they believe is necessary to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat (including the target of the threat). Covered entities may also disclose to law enforcement if the information is needed to identify or apprehend an escapee or violent criminal. 45 C.F.R. § 164.512.
These disclosures are permitted, although not required, by the Rule in recognition of the important uses made of health information outside of the healthcare context. Specific conditions or limitations apply to each public interest purpose striking the balance between the individual privacy interest and the public interest need for this information.

B. Minimum Necessary

A central aspect of the Rule is the “minimum necessary” principle. A covered entity must make reasonable efforts to use, disclose, and request only the minimum amount of PHI needed to accomplish the intended purpose of the information sharing. When the minimum necessary standard applies, a covered entity may not use, share, or request the entire medical record unless it can specifically justify that the whole record is needed for the intended purpose. The Rule requires covered entities to limit access to information by identifying who may access PHI and what type of information may be accessed.

The minimum necessary requirement, however, is not imposed in any of the following circumstances:

- Disclosure to a healthcare provider for treatment.
- Disclosure to a competent patient, or the patient’s personal representative.
- Use or disclosure made pursuant to an authorization.
- Disclosure to the Department of Health and Human Services for complaint investigation, compliance review, or enforcement.
- Use or disclosure that is required by law.
- Use or disclosure required for compliance with other HIPAA rules.

C. Personal Representatives

The Rule gives a "personal representative" the same rights as the patient to confidentiality and privacy including rights governing uses and disclosures of the PHI. In general, a personal representative is a person legally authorized to make healthcare decisions on an individual’s behalf. The Rule permits an exception when a covered entity has a reasonable belief that the personal representative may be abusing or neglecting the patient, or that treating the person as the personal representative could otherwise endanger the patient.

In most cases, parents are the personal representatives for their minor children. When a personal representative consents to healthcare on behalf of minor, that individual has a

92 45 C.F.R. § 164.514.
93 For internal uses, a covered entity must develop and implement policies and procedures that restrict access and uses of PHI based on the specified roles of the members of their workforce. These policies and procedures must identify the persons, or classes or persons, in the workforce who need access to PHI to carry their duties, the categories PHI to which access is needed, and any conditions under which they need the information to do their jobs.
94 45 C.F.R. § 164.502. As aforementioned, the minimum necessary requirement is not imposed on information sharing to individuals or their personal representatives.
right to exercise the minor’s rights as a patient. However, in certain exceptional cases, the parent may not be the personal representative. In these situations, the Privacy Rule defers to state and other law to determine the rights of parents to access and control the PHI of their minor children.

If the personal representative’s authority is limited to healthcare decisions, the PHI that may be disclosed or accessed is limited to only information relevant to the representation. For example, a personal representative authorized by a healthcare power of attorney regarding a specific treatment, such as the use of artificial life support, may act only with respect to PHI that relates to that healthcare treatment. The personal representative cannot consent to any other healthcare decisions and the covered entity must take precaution not to treat the representative as an authority for other purposes. Table 1, attached at the end of this section, indicates who is authorized to consent to healthcare treatment or decisions on behalf of a minor.

The Privacy Rule specifies exactly three scenarios when the parent is not the personal representative with respect to healthcare decisions. These exceptions highlight the ability of certain minors to consent to specified healthcare without parental consent under state or other laws. Minors who are authorized to consent to healthcare under these exceptions control the disclosure of information related to that care. Table 2, attached at the end of this section, summarizes situations when a parent is not automatically the minor’s personal representative.

II. MINORS’ RIGHTS & HEALTHCARE - FEDERAL

A. The Right to Privacy & Confidentiality

The right to privacy encompasses two separate interests, security of personal information or informational privacy, and autonomy in making important decisions or decisional privacy.\textsuperscript{95} The right to privacy is not absolute because it may be limited or denied when weighed against society’s interest in disclosure.

In doing so, courts also consider a minor’s particular vulnerabilities, the minor’s ability for decision-making, and the extent of the parents’ role in childrearing when determining the scope of a minor’s right to privacy.\textsuperscript{96} Even still, courts acknowledge that minors have informational or decisional privacy rights, or both, in certain circumstances. For example, the United States Supreme Court ruled that a mature minor has the right to consent to an abortion and the right to seek an abortion without the knowledge or involvement of a parent.\textsuperscript{97}

Minors’ privacy rights are extremely important because minors are uniquely vulnerable to harm resulting from potential nonconsensual disclosures of private information (e.g. the potential for harm in a nonconsensual disclosure of a minor’s HIV status, or a minor’s sexual orientation, or that a minor is receiving addiction treatment services). Moreover, research indicates that minors are not only vulnerable to harm caused by potential nonconsensual disclosures but also to the mere threat of a nonconsensual disclosure. Concerns about privacy powerfully influence access to care, and minors are more likely to be deterred from seeking healthcare if they fear that their information will not remain confidential. Adolescents are the least likely to have access to healthcare compared to almost any other age group; thus, privacy and confidentiality are critical components to increasing access to care.

B. Minors Authorized to Consent to Healthcare

In most cases parents (or guardians or those acting in loco parentis) will be considered personal representatives of a minor or un-emancipated child, and therefore, in most cases, parents may exercise the right to access a minor’s records. However, there are a number of exceptions to this general rule, which may be particularly applicable in the mental health setting, depending on state law.

First, where state law authorizes a minor to consent to healthcare treatment, the minor has a right to control the disclosure of records pertaining to that treatment. Second, where state law authorizes minors to consent to healthcare, if the minor did not ask for the parent to be treated as a personal representative, the minor controls the right to access and consent to disclosure. Thus, if state law permits a minor to seek mental health treatment without parental consent, the minor may exclude his parents from accessing or consenting to disclosure of the minor’s records.

This is true even if the parents have consented to the treatment. If the minor could consent to healthcare, the fact that a parent also provided consent to the treatment does

98 See, for example, United States v. Westinghouse Electric Co., 638 F.2d 570, 578 (3d Cir. 1980) (including “the potential for harm in any subsequent nonconsensual disclosure” in the multifactor test to apply when weighing competing interests in information disclosure.)
99 See Aid for Women v. Foulston, 427 F. Supp. 2d 1093, 1107-08 (D. Kan. 2006) (citing studies that show increasing numbers of minors will fail to seek medical treatment if statutes require parental notification or other disclosure). See also, Tina L. Cheng, et al., Confidentiality in Health Care: A Survey of Knowledge, Perceptions, and Attitudes among High School Students, 269 JAMA 1404 (1993).
100 See Carol A. Ford, Peter S. Bearman, and James Moody, Foregone Health Care among Adolescents, 282 JAMA 2227, 2227 (1999). Ford, et al., describe the proportion of young people who report forgone healthcare each year and the influence of sociodemographic factors, insurance status, past healthcare, and health risks/behaviors on the foregone care. The results of this study suggest that adolescents who forego care are at increased risk of physical and mental health problems. If healthcare professionals want to address major causes of adolescent morbidity and mortality, factors that influence adolescents to forego care should be considered when designing systems to address adolescents’ unique health needs.
101 45 C.F.R. § 164.502(g)(3)(i).
102 For example, 42 C.F.R. Part 2, explicitly requires a minor’s authorization before addiction treatment records may be disclosed to anyone, including a parent or legal representative, even when both the minor and the parent have consented to treatment.
not necessarily entitle the parent to see or authorize access to the records. However, if state law explicitly requires disclosure or notification of PHI about a minor to a parent, guardian, or other person acting in loco parentis, then the Privacy Rule defers to the state law. Conversely, if state law explicitly prohibits parental access, state law controls the rights to access and disclosure.

When state law authorizes a minor to consent to healthcare, but is silent or unclear regarding parental access to the minor’s PHI, the Privacy Rule permits the covered entity to provide or deny access to the records as long as the decision is made by a licensed health care professional exercising professional judgment. The healthcare professional may not initiate the disclosure of the minor’s PHI to a parent without the minor’s authorization. However, if a parent initiates the request for access to the information, the professional may either grant or deny that request.

INDIANA

III. INDIANA HEALTHCARE AGENCIES – HEALTH RECORDS

A. Healthcare

This section focuses on health and medical records created through the provision of primary healthcare services; mental health, developmental disability, and addiction treatment records are discussed in later sections. “Healthcare” is defined as any care, treatment, service, or procedure to maintain, diagnose, or treat an individual’s physical or mental condition including admission into a healthcare facility. A patient’s health and medical records are the property of the provider, and in some situations, the records may be used and disclosed for legitimate business purposes without the patient’s written authorization.

B. “Health Records”

The Indiana Code protects all health records possessed or maintained by a provider concerning any diagnosis, treatment, or prognosis of the patient. Note that Indiana law differs from the Privacy Rule in that it ensures the confidentiality of “health records” held by a “provider” instead of “protected health information” held by a “covered entity.”

103 45 C.F.R. § 164.502(g)(3)(ii)(C).
104 Medical records include all patient-related communications including, patient-physician email, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and informed consent agreements. 844 Ind. Admin. Code 5-3-6. Informed consent agreements related to the use of patient-physician email must include the types of transmission that will be permitted, such as prescription refills, as well as a requirement for express patient consent to forward PHI to a third-party. 844 Ind. Admin. Code 5-3-5.
105 Ind. Code § 16-36-1-1.
106 Legitimate business purposes include: submission of claims for payment from third parties; collection of accounts; litigation; quality assurance; peer review; and scientific, statistical, or educational purposes. Ind. Code § 16-39-5-3.
“Health records” are written, electronic, or printed information possessed or maintained by a provider, including such information possessed or maintained on microfiche, microfilm, or in a digital format.\textsuperscript{107} The term includes mental health records and addiction treatment records.\textsuperscript{108} However, when a provider uses health records maintained in the provider’s possession and discloses a health record to another provider or to a nonprofit medical research organization, the term includes information that describes services provided to a patient and provider’s charges for services provided to a patient.\textsuperscript{109} The term does not include information concerning emergency ambulance services.\textsuperscript{109}

For the purposes of health records, a “provider” means any of the following:\textsuperscript{111}

- An individual who is licensed, registered, or certified as a healthcare professional, including the following:\textsuperscript{112}
  - A physician
  - A psychotherapist.
  - A dentist.
  - A registered nurse.
  - A licensed practical nurse.
  - An optometrist.
  - A podiatrist.
  - A chiropractor.
  - A physical therapist.
  - A psychologist.
  - An audiologist.
  - A speech-language pathologist.
  - A dietitian.
  - An occupational therapist.
  - A respiratory therapist.
  - A pharmacist.
  - A sexual assault nurse examiner.
- A hospital, a private mental health institution, state institution, or a community center.\textsuperscript{113}
- A health facility.\textsuperscript{114}
- A home health agency.\textsuperscript{115}

\textsuperscript{107} Ind. Code § 16-18-2-168.
\textsuperscript{108} Note that while the term “health records” includes mental health records and alcohol and drug abuse records, both are subject to additional protections.
\textsuperscript{109} Pursuant to provider’s use of records under Ind. Code § 16-39-5-3(e).
\textsuperscript{110} Emergency ambulance services are described in Ind. Code § 16-31-2-11(d).
\textsuperscript{112} An individual is someone other a person who is an employee or a contractor of a hospital, a facility, or an agency described in subdivision (2) or (3). Ind. Code § 16-18-2-295(b) (1).
\textsuperscript{113} A hospital or health facility licensed under Ind. Code § 16-21-2 or Ind. Code § 12-25 (under the Division of Mental Health and Addiction) or described in Ind. Code § 12-24-1 or Ind. Code § 12-29.
\textsuperscript{114} A health facility licensed under Ind. Code § 16-28-2.
\textsuperscript{115} A home health agency licensed under Ind. Code § 16-27-1.
A “health facility” means an institution providing treatment extending beyond twenty-four hours to individuals needing services because of physical or mental illness, infirmity, or impairment. The term does not include, but is not limited to, hospitals or mental hospitals, foster homes, and residential facilities.

C. Consent

A patient’s written consent to release the health record must include the following:

- The name and address of the patient.
- The name of the person requested to release the patient's record.
- The name of the person or provider to whom the patient's health record is to be released.
- The purpose of the release.
- A description of the information to be released from the health record.
- The signature of the patient, or the signature of the patient's legal representative if the patient is incompetent.
- The date on which the consent is signed.
- A statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance on the consent.
- The date, event, or condition on which the consent will expire if not previously revoked.

D. Written Requests

Upon written request and reasonable notice, a provider must supply to a patient the health records possessed by the provider, including but not limited to prescriptions and x-rays. The right to access records, upon written request, applies to all health records, except records regarding mental health, communicable diseases, or addiction treatment.

E. Right to Access

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116 Or an employee, agent, designee, or contractor of the state or local health department.
118 The term does not include: (1) hospitals or mental hospitals, except for that part of the institution that provides long term care services; (2) hospices; (3) institutions operated by the federal government; (4) foster family homes or daycare centers; (5) schools for individuals who are deaf or blind; (6) day schools for individuals with an intellectual disability; (7) children’s homes and child placing agencies; (8) offices of practitioners of the healing arts; (9) industrial clinics providing only emergency medical services; (10) a residential facility; and (11) maternity homes. Ind. Code § 16-18-2-167.
120 Mental health records are governed by Ind. Code § 16-39-2, Ind. Code § 16-39-3, and Ind. Code § 16-39-4; communicable disease records are governed by Ind. Code § 16-41-8-1; and addiction treatment records are governed by 42 C.F.R. Part 2.
These provisions apply to all “health records;” mental health and addiction treatment records may be subject to additional regulations. “Competent patients” are entitled to their own health records possessed by a provider.\footnote{121} However, an attending physician’s good faith opinion may determine that a competent patient is incapable of making a decision regarding the proposed healthcare.\footnote{122} If a healthcare provider reasonably determines that the information requested is detrimental to the physical or mental health of the patient, or likely to cause the patient to harm themselves or others, the provider may withhold the information from the patient.\footnote{123} A patient may not obtain a copy of the patient’s health records while the patient is an inpatient of a hospital, health facility, or a mental health or addiction treatment institution.\footnote{124} However, an inpatient’s spouse, parent, guardian, or next of kin may request health and medical records on behalf of the patient.

\textbf{F. Minors Authorized to Consent to Healthcare}

The ability of minors to consent to a range of sensitive healthcare services continues to expand. This trend reflects the recognition that, while parental involvement in minors’ healthcare decisions is desirable, many minors will not avail themselves of important services if they are forced to involve their parents. Information contained in this section regarding emancipated minors and minors authorized to consent to healthcare is subject to other applicable laws governing consent, such as consent to mental health services and addiction treatment services that is discussed in those sections of the Guide.

A minor is competent to consent to healthcare if the minor is:

\begin{itemize}
  \item Emancipated.\footnote{125}
  \item At least fourteen years of age, not dependent on a parent for support, living apart from the minor’s parents or from an individual \textit{in loco parentis}, and managing his or her own affairs.
  \item Married, or was married.
  \item Is serving in the military.
  \item Is authorized to consent to the healthcare by any other statute.\footnote{126}
\end{itemize}

An “emancipated minor” can be defined in several ways.\footnote{127} For the purposes of determining child support, a court will find a minor is emancipated if the minor:

\begin{itemize}
  \item Has joined the United States armed services.
\end{itemize}

\begin{footnotes}
\item[121] A minor who is a “competent patient” is legally capable of consenting to her own healthcare, unless determined otherwise. Ind. Code § 16-36-1-3. See the Privacy Rule and related Indiana law for more information. Ind. Code § 16-39-1-1 (defining competent patient). Ind. Code § 16-39-1-1 (regarding patient access to contact lens prescriptions). Ind. Code § 16-39-1-2 (regarding patient access to x-rays).
\item[122] Ind. Code § 16-36-1-4.
\item[123] Ind. Code § 16-39-1-5; 844 Ind. Admin. Code 5-2-3 (regarding information to a patient).
\item[124] Ind. Code § 16-39-1-6.
\item[125] Note the differing standards regarding emancipated minors. See the Education and DCS sections for information.
\item[126] Ind. Code § 16-36-1-3.
\item[127] Note, however, that an emancipated minor may be defined differently for the purpose of accessing educational records pursuant to FERPA, or for the purposes of adjudicating a minor who is a CHINS.
\end{footnotes}
Is or was married.
Is not under the care or control of either parent or an individual or agency approved by the court.  

When a minor is authorized to consent to his or her own healthcare, the Privacy Rule regulations and Indiana law allow the minor to control the disclosure of records related to that care. An emancipated minor, or minor authorized to consent to healthcare either by statutory exception or incidental exception, may disqualify others from consenting to healthcare on his behalf. A healthcare provider who knows of a written disqualification may not accept consent to healthcare from a disqualified individual or others acting on behalf of the disqualified individual. In this situation, healthcare providers must have a signed release from the minor before sharing information with a parent or anyone else. In general, emancipated minors may request copies of their own health records. Other provisions apply to mental health records, developmental disability services records, and addiction treatment records.

Providers may seek parent consent and encourage minors to consult with a parent or guardian when possible. However, where the law does not require otherwise, healthcare providers should permit a competent minor to consent to medical care, and providers should not notify parents without the patient’s consent. A patient is competent if the patient understands the nature and consequences of the medical condition and the proposed treatment, and the patient is able communicate his or her decision regarding the treatment to others.

Providers may make their own assessment of a patient’s competence, and providers do not need a judicial ruling or psychiatric diagnosis in order to find a patient incompetent. Minority age alone is not a sufficient basis for finding incompetence. The law specifically deems minors capable of providing consent in certain medical situations. Similarly, physical or mental disorders alone are not a sufficient basis for finding incompetence. Competence is situation specific, and it should be determined after the nature and consequences of the health condition are explained in terms a minor could understand. A provider, when considering a minor’s interest in confidentiality, should consider the potential for harm from the mere threat of disclosure. Minors are particularly susceptible to such threats, and they are often more likely to be deterred from seeking healthcare if they fear that their personal information, like sexual orientation or HIV status, will not remain confidential.

G. Statutory Authorizations Allowing Minors to Consent to Healthcare

128 Ind. Code § 31-16-6-6.
129 Ind. Code § 16-36-1-11.
130 A disqualification must be in writing, signed by the individual, and designate those disqualified. Ind. Code § 16-36-1-9.
131 Ind. Code § 16-39-1-3.
132 Ind. Code § 16-36-1-4.
The statutory authorization for minors to consent to healthcare include donating blood and the diagnosis or treatment of a sexually transmitted infection. Federal regulations establish special access rules for family planning services funded through Title X. Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations. Federal law requires that Title X funded services be available to all adolescents, regardless of their age, without the need for parental consent. This regulation supersedes any state law to the contrary. Thus, minors of any age may consent to family planning services when those services receive Title X funds. For family planning services not funded by Title X, state consent law applies. In Indiana, there are no laws that specifically require parental consent for minors receiving reproductive health services such as contraceptive services and pre-natal care.

An un-emancipated minor who either objects to having to obtain the written consent of her parent or legal guardian, or whose parent or legal guardian refuses to consent to an abortion, may petition the juvenile court for a waiver of parental consent. A physician who feels that compliance with the parental consent requirement would have an adverse effect on the welfare of the pregnant minor or on her pregnancy may also petition the juvenile court. A physician may perform an abortion without parental consent in an emergency and to prevent an immediate threat and grave risk to the life or health of the pregnant minor. The attending physician must document this in writing.

Each county in Indiana is responsible for having a sexual assault response team responsible for the collection, preservation, secured storage, and destruction of samples. The team, which works within the chain of custody between medical and forensic services, providers, mental health providers, and law enforcement, manages these service while protecting the privacy of the sexual assault victim. Any alleged sex crime victims, at any age, who seek hospital emergency services in relation to injuries or trauma resulting from the alleged sex crime, may consent to those healthcare services. A victim is entitled to forensic medical exams and additional forensic services regardless of whether the victim cooperates with law enforcement. A provider may conduct a forensic medical examination without the consent of the patient or person authorized to consent on the patient’s behalf.

134 A minor who is seventeen years of age is eligible to donate blood without prior parental permission. However, a minor who is sixteen years of age must obtain parental permission prior to donating blood. Any minor, regardless of age, who believes he or she has, or has been exposed to a sexually transmitted infection, can consent to the diagnosis and treatment of the sexually transmitted infection. Ind. Code § 16-36-1-3.

135 42 C.F.R. § 59.5(a) (4).

136 Ind. Code § 16-34-2-4. All records that are made as a result of the proceedings are confidential.

137 Ind. Code § 16-21-8-2.


139 Ind. Code § 16-21-8-1. A parent, guardian, officer of the court, or other authorized individual may provide consent to healthcare on behalf of a minor. 203 Ind. Admin. Code 1-2-1.

140 A provider may provide services without prior consent under the following circumstances: (1) the person doesn’t have capacity to consent and, based on the medical opinion of the provider, the individual is incapable of providing consent within the timeframe needed to collect evidence; (2) the provider has a reasonable suspicion the person may be a victim of a sex crime; and (3) a person authorized to consent on
H. Parents

In general, covered entities may not use or disclose a minor’s PHI without parental consent unless the minor controls their own health information. Parents have the right to inspect their children's health records with custodial and noncustodial parents having equal access to the records unless the court has issued an order limiting parental access to the records or a parent has given up all parental rights. The covered entity must receive a copy of the court order or have actual knowledge of the court order in order to enforce this provision.

I. Personal Representatives

A judicially appointed guardian or personal representative may consent to healthcare for a minor not authorized to consent. A parent, or individual acting in loco parentis, may provide consent if:

- There is no guardian or other representative.
- The guardian or other representative is not available or declines to act.
- The healthcare provider is unaware of the existence of the guardian or representative.

An adult sibling of the minor may consent on behalf of the minor if:

- There is no guardian.
- A parent or individual in loco parentis not available or declines to act.
- The healthcare provider is unaware of the existence of the parent or individual in loco parentis.

All individuals authorized to consent are required to act in good faith and in the best interests of the minor. If a parent, an individual in loco parentis, or an adult sibling authorized to consent to healthcare on behalf of a minor will not be reasonably available to exercise this authority, they may delegate this authority to consent to another individual only if expressed in writing. An individual delegated authority to consent under this exception has the same authority and responsibility as the person who gave this authority.

A healthcare provider or any interested individual may petition the court to: (1) make a healthcare decision or order healthcare for an individual incapable of consenting; or (2) appoint a representative to act for the individual. The court may order healthcare,

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142 Ind. Code § 16-36-1-5.
143 The individual receiving the authority to consent expressed in writing may not delegate this authority to another individual unless the writing expressly includes this provision. Ind. Code § 16-36-1-6.
144 Ind. Code § 16-36-1-8.
appoint a representative while limiting the representative’s authority, or order any other appropriate relief when necessary to protect the best interest of the minor.

Health records may be requested by persons authorized to consent for healthcare on behalf of minors who are not themselves authorized to consent. When a parent or representative consents to healthcare for a minor not authorized to consent, that individual has a right to control access to the minor's medical information.145

J. Third-Parties & Legitimate Business Purposes

The original health record, excluding mental health records and substance abuse treatment records, of a patient is the property of the provider and the record may be used by the provider without specific written authorization for legitimate business purposes including the following: submissions for claims for payment from third parties; collection of accounts; litigation defense; quality assurance; peer review; and scientific, statistical, and educational purposes.146 If the provider discloses the health records pursuant to the legitimate business exception, the provider shall protect the confidentiality of the health record, and the provider may disclose the identity of the patient only when disclosure is essential to the provider’s business use, quality assurance, and peer review.

In addition, there are tools that facilitate exchanges among agencies that interact regularly, as is often the case in providing healthcare, such as partnerships formed through “business associate agreements” and “qualified services agreements.” Agencies in collaborative relationships may create or use forms such as uniform authorization forms or judicial orders to permit limited information-sharing collaborations. However, practitioners should observe the “minimum necessary” standard as it applies to the purposes driving information sharing practices.

A provider may disclose a health record to another provider or to a nonprofit medical research organization to be used in connection with a joint scientific, statistical, or educational project.147 Under this exception, the term “health record” includes information that describes services provided to a patient and a provider’s charges for services provided to that patient.148

Each party that receives information from a health record in connection with a joint project shall protect the confidentiality of the health record and, in general, all parties may not disclose the patient’s identity. An accident or sickness insurance company may obtain health records or medical information with a written consent.149

145 Ind. Code § 16-36-1-2.
148 Ind. Code § 16-18-2-168(b); Ind. Code § 16-39-5-3(e).
149 Ind. Code § 16-39-5-2. Consent obtained by an insurance company needs to contain the following: name of the insured, date the consent is granted, name of the company to which consent is given to receive the information, and the general nature of the information that may be secured by use of the consent.
K. Abuse, Neglect, & Endangerment

Covered entities may share PHI pursuant to reporting requirements, such as child abuse and neglect. The Privacy Rule permits covered entities to disclosure PHI to a social service or child protection services agency without the minor’s or parent’s consent.\textsuperscript{150} A healthcare provider treating a child for suspected abuse may photograph the areas of trauma visible on the child.\textsuperscript{151} A physician may also request that radiological examination or a physical medical examination, or both, of the child be performed.\textsuperscript{152}

All photographs taken and a summary of x-rays and other medical care shall be sent to the Department of Child Services (DCS) and, upon request, to a law enforcement agency (LEA) that investigates the alleged child abuse and neglect as soon as possible. DCS is responsible for giving notice of the existence of photographs, x-rays, and physical medical examination in these reports.\textsuperscript{153}

L. Hospital Records

Indiana law dictates that it is in the interest of public health and patient medical care that hospital medical staff committees have access to the records and other information concerning the condition and treatment of hospital patients to evaluate the care and treatment of patients for the following reasons: (1) research purposes; (2) to gather statistics and other information concerning the prevention and treatment of diseases, illness, and injuries; and (3) to reduce morbidity or mortality.\textsuperscript{154}

A hospital, or its agents and employees, may provide medical records or other information concerning the condition or treatment of a patient to a hospital medical staff committee.\textsuperscript{155} Records or other information furnished to a hospital medical staff committee, administrative proceedings, and other records maintained by the committee are confidential.\textsuperscript{156} Hospital records and hospital medical staff administrative proceedings may be disclosed upon court order if they are relevant or material. A hospital medical staff committee shall use or publish information it obtains concerning the care or treatment of patient only to evaluate matters of medical care, therapy and treatment, and for research and statistical purposes.\textsuperscript{157} However, the members, agents, or employees of a hospital medical staff committee may not disclose or reveal the identity of any patient.\textsuperscript{158}

\textsuperscript{150} 45 C.F.R. § 164.512(c).
\textsuperscript{151} Ind. Code § 31-33-10-1.
\textsuperscript{152} Ind. Code § 31-33-10-1.
\textsuperscript{153} Ind. Code § 31-33-10-3 (in accordance with Ind. Code § 31-25-2-12).
\textsuperscript{154} Ind. Code § 16-39-6-1
\textsuperscript{155} Ind. Code § 16-39-6-2.
\textsuperscript{156} Ind. Code § 16-39-6-3.
\textsuperscript{157} Ind. Code § 16-39-6-4.
\textsuperscript{158} Ind. Code § 16-39-6-5.
PRIMARY CARE - FAQs

I. INDIANA INFORMATION SHARING GUIDELINES – HEALTH RECORDS

A. Physicians

May a provider release medical or health records to an attorney or agency arranging an adoption?

Yes. While all information or records held by the provider pertaining to the adoption are confidential and may not be open to inspection, except as authorized by law, confidentiality requirements for adoption records and proceedings do not restrict a provider from releasing medical records to an attorney or agency arranging an adoption if the provider receives the appropriate authorization.159

However, a healthcare provider is required to store and index consents for the release of identifying and non-identifying information relating to an adoption.160 A provider must send a copy of an individual’s consent for the release of identifying information and any signed writing that withdraws or modifies a consent to the state registrar.161 Identifying and non-identifying information relating to adoptions may only be released in conformity with the latest version of consent on file and applicable law.162

B. Educational Agencies

May a healthcare provider disclose PHI about a student to a school nurse or physician?

Covered entities may disclose PHI about students to school nurses, physicians, or other healthcare providers for treatment purposes without the authorization of the student or the student’s parents. For example, a student’s primary care physician may discuss the student’s medication and other healthcare needs with a school nurse who will administer the student’s medication, and the school nurse may provide care to the student while the student is at school.

Must covered entities obtain parental consent before disclosing proof of a child’s immunization?

162 Records may be released in conformity with consent and: (1) regulations for adoptions filed before 1994; (2) court proceedings to request release of adoption information not available from the state registrar; (3) release of identifying information for an adoption filed after in 1994 and beyond; and (4) requests for information concerning adoptees and pre-adoptive siblings Ind. Code § 31-19-21-3 (releasing information in conformity with Ind. Code § 31-19-22 and Ind. Code § 31-19-24 through -25.5.
The HIPAA Omnibus Rule clarified that covered entities may release student immunization records to schools without authorization if state law requires schools to have immunization records and written or oral agreements documenting disclosure regulations. Indiana law fulfills both requirements.\textsuperscript{163}
II. MENTAL HEALTH & DEVELOPMENTAL DISABILITIES SERVICES – FEDERAL

A. Privacy Rule

The Privacy Rule sets the minimum federal standards for protecting and securing PHI including health information contained in mental health records. Generally, state law is more restrictive than federal law in providing safeguards for the confidentiality of mental health records. Thus, these restrictions and safeguards should be integrated into the privacy framework alongside considerations on minors’ vulnerabilities and the threat of disclosure on minors’ access to care.

B. Psychotherapy Notes

Psychotherapy notes have greater privacy protections than other mental health information because they contain particularly sensitive information, and they are the personal notes of the therapist not typically useful for treatment other than by the mental health professional who created the notes. Psychotherapy notes do not include medication prescriptions and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

The Privacy Rule generally requires a covered entity to obtain a patient’s authorization prior to the disclosure of psychotherapy notes for any reason, including a disclosure to another healthcare provider for treatment purposes. A mental health provider who creates the notes may use them for treatment, for the provider’s own training, and in litigation against the provider without the individual’s authorization. A mental health provider may also disclose psychotherapy notes without prior authorization to avert a serious and imminent threat to public health or safety, for compliance purposes, for the lawful activities of a coroner or medical examiner, and as required by law.

C. 42 C.F.R. Part 2

For entities dealing with substance abuse treatment an additional set of federal regulations, 42 C.F.R. Part 2 (“Part 2”), regulates the confidentiality of substance use disorder treatment records. Federal law limits the availability of addiction treatment

164 See the Privacy Rule for more information.
165 The Rule defines “psychotherapy notes” as notes recorded in any medium by a healthcare provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session, or a group, joint, or family counseling session, which are separate from the rest of the individual’s medical record. 45 C.F.R. § 164.501.
166 45 C.F.R. § 164.508(a) (2).
167 45 C.F.R. § 164.508(a) (2).
168 The federal legal framework for substance abuse treatment is generally referred to by the regulations “42 C.F.R. Part 2” instead of its authorizing statute, which is now codified at 42 U.S.C. § 290 ee-3.
records to ensure that individuals who seek treatment are not more vulnerable with respect to their privacy than those who do not seek treatment.\textsuperscript{169}

IV. **MENTAL HEALTH \& DEVELOPMENTAL DISABILITY SERVICES – INDIANA**

A. *Mental Health Records*

Mental health records are defined as recorded or unrecorded information concerning the diagnosis, treatment, or prognosis of a patient receiving mental health services or developmental disability training.\textsuperscript{170} “Mental health services” mean the psychological services, counseling services, case management services, residential services, and other social services for the treatment and care of individuals with psychiatric disorders or chronic addictive disorders, or both.\textsuperscript{171} However, the definition of mental health records does not include addiction treatment records, which are governed by 42 C.F.R. Part 2 and are subject to added protections.\textsuperscript{172}

Mental health providers are responsible for maintaining records for each patient receiving mental health services.\textsuperscript{173} The information contained in the mental health record belong to the patient as well as the mental health provider, a notable difference compared to health records. Mental health records are not discoverable or admissible in any legal proceeding without prior authorization except in limited circumstances.\textsuperscript{174}

Private and public mental health providers may disclose mental health records without a patient’s consent under limited circumstances, including:\textsuperscript{175}

- For treatment purposes when disclosure is to individuals who are employed by the same facility or agency, are a managed care provider, or are a healthcare or mental health provider.
- When necessary for payment services.
- To the patient’s court appointed counsel and to the Indiana Protection and Advocacy Services Commission.
- For research.
- To the Division of Mental Health and Addiction for data collection.

\textsuperscript{169} 42 C.F.R. § 2.3(b) (2).
\textsuperscript{170} Ind. Code § 16-18-2-226. Mental health records include the following information: identification data; referral information; assessment information; an individual treatment plan; history and physical exams; orders of a physician, licensed mental health professional, and LIP; medication and treatment record; progress notes; treatment plan reviews; special dietetic information; consultation reports; correspondence; legal or commitment documents; a discharge or separation summary; and release or aftercare plans. 440 Ind. Admin. Code 1.5-1-7.
\textsuperscript{171} See 42 C.F.R. Part 2 for more information.
\textsuperscript{172} Ind. Code § 16-39-2-2. “Mental health provider” is defined as a nurse, a clinical social worker, a marriage and family therapist, a psychologist, a school psychologist, and an individual who claims to be a mental health provider. Ind. Code § 16-36-1.5-2.
\textsuperscript{173} Ind. Code § 16-39-2-7.
\textsuperscript{174} Ind. Code § 16-39-2-6.
To the extent necessary to make reports or give testimony as required by statutes pertaining to admissions, transfers, discharges, and guardianship proceedings.

To law enforcement, under certain conditions.

To a coroner or medical examiner.

To a school on behalf of a student with disabilities.

To satisfy mandatory reporting requirements.

To the extent necessary to satisfy release of information requirements to individuals discharged or transferred from state institutions.

To another healthcare provider in a healthcare emergency.

For legitimate business purposes.

Pursuant to a court order.

To the U.S. Secret Service.

To the Indiana state ombudsman.

B. Patient Rights & Ind. Code § 12-27

Healthcare, defined as any care or treatment regarding an individual’s condition, includes mental health services and admission into a healthcare facility. Minors may consent to their own healthcare unless the attending physician determines in good faith that they are incapable of making a decision regarding the proposed healthcare. When a minor consents to healthcare, it is the minor’s consent that subsequently controls the use and disclosure of records related to that treatment.

C. Personal Representatives

Persons authorized to act on behalf of a minor’s healthcare are a parent, guardian, or court-appointed personal representative. Custodial and noncustodial parents have equal access to the child’s mental health records unless the provider has received a copy of a court order limiting the parent’s access. A personal representative of the patient’s estate may consent to the release of deceased patient’s record. If the minor does not have a personal representative, any responsible member of the patient’s family, including a parent or guardian, may consent to the disclosure of a deceased minor’s mental health records.

D. Patient Access

A patient is entitled to inspect his own mental health records. However, if the provider determines that the information requested is detrimental to the physical or mental health of the patient, or is likely to cause the patient to harm himself or another person, then the provider may withhold the information from the patient. A patient may request that

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176 Ind. Code § 16-36-1-1.
177 Ind. Code § 16-36-1-3; Ind. Code § 16-36-1-4.
178 Ind. Code § 16-36-1-11.
designated parties have access to his records. Mental health records requested by the patient to be released under this section may be shared regardless of whether the patient is still receiving services from the provider.182

E. Psychologists

Psychologists are required to maintain mental health and clinical records for each patient, which include identifying data, dates of services, types of services, and significant actions taken.183 Information in patient or client records is confidential, and the information shall not be disclosed without authorization unless law requires disclosure. All persons having legitimate access to records shall maintain the confidentiality of the records.184

III. MENTAL HEALTH & DEVELOPMENTAL DISABILITY SERVICES – INDIANA

A. Community Mental Health Centers, Managed Care Providers & Residential Services

In Indiana, community mental health centers (CMHCs) and managed care providers (MCPs) exemplify effective information-sharing practices enabling agencies to provide and coordinate multiple services for individuals with mental illness or chronic addictive disorders.185 A CMHC provides multiple services, and it is organized for the purpose of providing multiple services for persons with mental illness or a chronic addictive disorder.186 A patient’s mental health records may be disclosed without prior consent to individuals who are involved in the planning, provision, and monitoring of services, and who are employed by: (1) the provider at the same facility or agency; (2) a managed care provider; or (3) a healthcare provider or mental health provider.187

However, treatment for co-occurring disorders whereby recipients may receive mental health and substance abuse services within one provider system triggers 42 C.F.R. Part 2 privacy and confidentiality protections. Documentation of these services is often incorporated into one clinical record. Guidelines for protecting information and maintaining the confidentiality of an individual’s integrated record,188 and identifying circumstances under which protected health information may be disclosed, may be subject to either the Privacy Rule, 42 C.F.R. Part 2, or both.

185 Ind. Code § 12-7-2-38; 440 Ind. Admin. Code 4-3-1.
186 Ind. Code § 12-7-2-38. A “CMHC” is a mental health facility that the Division has certified as fulfilling the statutory and regulatory requirements to be a community mental health center. 440 Ind. Admin. Code 9-1-4. “Managed care provider” is an organization for mental health or addiction services that has entered into a provider agreement to provide a continuum of care in the least restrictive, most appropriate setting. 440 Ind. Admin. Code 9-1-9. Ind. Code § 12-21-2-7.
188 An integrated record is a clinical record that includes documentation of both mental health and substance abuse services provided by an agency.
The confidentiality of resident records is governed by the regulations for health, medical, mental health, developmental disability, and addiction treatment services records. Residents’ rights and responsibilities are the same as those for mental health and developmental disability services. Also, the individual has additional rights, such as the right to confidentiality concerning personal information as mental health and addiction treatment services records.

**B. Developmental Disabilities**

The Division of Disability and Rehabilitative Services is responsible for the coordination of the various governmental services, activities, and programs in Indiana relating to individuals with disabilities. The planning and delivery of services is based on future plans of the individual with a developmental disability rather than on traditional determination of eligibility for discrete services, with an emphasis on the preferences of the individual with a developmental disability and that individual's family. Records held by an entity providing services to developmentally disabled individuals are confidential, and they require patient consent prior to disclosure unless pursuant to a court order or an investigation conducted by the ombudsman. However, the ombudsman may not disclose the identity of a patient without the patient’s written consent or by a court order. Individuals receiving developmental disability services are entitled to exercise their rights as patients including involvement in the development and implementation of their treatment plans.

i. **Supported Living Services**

Supported living services for individuals with developmental disabilities include a wide range of programs including rehabilitation, community habilitation, case management, and children’s foster care services. All supported living services and supports providers must ensure that an individual’s rights are not infringed upon, including the rights set out in Ind. Code § 12-27. Records are confidential, and their disclosure requires written consent from an individual, or the individual’s legal representative, before the release of

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189 Residential records are confidential under Ind. Code § 16-39 and 42 C.F.R. 2 and are the property of the agency or entity responsible. 440 Ind. Admin. Code 7.5-2-3.
191 The individual has the right to confidentiality concerning personal information under Ind. Code § 16-39-2 and 42 C.F.R. Part 2; 440 Ind. Admin. Code 7.5-2-6.
192 The Division can contract with other entities to provide these services. For example, the Division has a memorandum of understanding with the Division of Mental Health and Addiction concerning the referrals of individuals discharged from or on an outpatient status from a state institution, in order to most effectively administer services. Ind. Code § 12-11-2.1-9.
193 Ind. Code § 12-11-1.1-1.
196 This includes consent by the individual, or her legal representative, for emergency treatment. In fact, the individual treatment plan documents an individual’s likes and dislikes as well. 460 Ind. Admin. Code 6-17-3.
197 460 Ind. Admin. Code 6-4-1.
information unless otherwise authorized by law. All supported living services and support providers are required to collaborate with the individual’s other service providers to be consistent with the individual’s service plan (ISP). Providers shall maintain documentation of all services provided to the individual.

ii. Case Management Services

Case management services providers are responsible for maintaining and recording information about the individual including the individual’s health and behavioral needs. A case management services provider ensures that the individual, the individual’s legal representative, if applicable, and all other providers of services to the individual have copies of relevant documentation including an individual’s ISP. Case management services providers address concerns with services or outcomes in a timely manner, and they may involve all necessary providers and the individual’s support team if necessary.

198 460 Ind. Admin. Code 6-8-3. To support this, providers annually distribute educational information regarding policies and procedures designed to protect patient rights. 460 Ind. Admin. Code 6-9-2.
200 460 Ind. Admin. Code 6-17-2. An individual’s personal file is maintained at: (1) his residence, or primary services location; and (2) the office of the provider responsible for maintaining the individual’s ISP. 460 Ind. Admin. Code § 6-17-3. 460 Ind. Admin. Code § 6-17-4.
203 460 Ind. Admin. Code 6-19-6. The case management services provider is responsible for in-person contact with the individual or his legal representative if applicable, and updating information on the computer system.
IV. INFORMATION SHARING GUIDELINES – MENTAL HEALTH RECORDS

A. Juvenile Court

When may a mental health provider or covered entity disclose mental health records without prior consent upon court order?

A provider must release mental health records upon court order. The court may order the release of a patient’s mental health record without consent upon the showing of a good cause following a hearing for investigation, a legal proceeding, or in a juvenile adjudication.204

When may a mental health provider release PHI without prior consent to a GAL/CASA representing a child involved in an involuntary commitment proceeding?

A GAL/CASA is an officer of the juvenile court for purposes of representing the child’s interest, and the GAL/CASA is entitled to access any and all reports relevant to the child.205 A mental health provider over a covered entity may disclose PHI to the extent necessary to for the GAL/CASA to make a report.206

If a court determines in a proceeding for commitment of an individual that the individual is mentally ill and either is dangerous or gravely disabled, the provider must release any information from the patient’s mental health record that is required by the Federal Bureau of Investigation to NICS.207

B. Parents & Personal Representatives

May a mental health provider disclose PHI about a minor without the minor’s consent?

A covered entity may disclose a minor’s PHI to a parent when the disclosure is not inconsistent with other law. When a minor consents to mental healthcare under applicable law, the parents are not treated as the minor’s personal representatives.208 In general, PHI and notification of services should remain confidential unless Indiana law requires notification and disclosure. Such information may be disclosed to parents when the patient consents to disclosure.

205 Ind. Code § 12-26-8-2; Ind. Code § 12-26-8-6.
207 Ind. Code § 12-26-7-5.
208 45 C.F.R. § 164.502(g) (3).
However, other provisions may allow the disclosure of the minor’s PHI to the parent. For example, if a provider believes the minor presents a serious danger to himself or others, a provider may disclose PHI to a parent or other authorized individuals if the covered entity has a good faith belief that: (1) the disclosure is necessary to prevent or lessen the threat, and (2) the parent or other person is reasonably able to prevent or lessen the threat. The disclosure also must be consistent with applicable law and standards of ethical conduct.\textsuperscript{209}

In addition, covered entities may share health information that is directly relevant to the involvement of a family member in the patient’s healthcare or payment for care if the patient does not object to the disclosure. A covered entity may share this information with the family member when, in exercising professional judgment, it determines doing so would be in the best interest of the patient.\textsuperscript{210}

\textsuperscript{209} 45 C.F.R. § 164.512(j) (1) (i).
\textsuperscript{210} 45 C.F.R. § 164.510(b).
V.  ADDICTION TREATMENT AGENCIES – FEDERAL

A. 42 C.F.R. Part 2

Programs providing addiction diagnosis, treatment, or referral services have an additional set of federal regulations, 42 C.F.R. Part 2 (“Part 2”), that regulate the confidentiality of a patient’s addiction treatment records. Part 2 governs any record of a diagnosis identifying a patient with an addiction disorder prepared in connection with the treatment or referral for treatment of an addiction. In general, patient-identifying information held by addiction treatment programs is confidential, and it may not be disclosed without prior written consent except under limited circumstances. Permissible disclosures without patient consent include medical emergencies, research activities, and for audit and evaluation purposes as discussed below.

A “diagnosis” is any diagnosis prepared for the purpose of treatment or referral for treatment. This information is protected, even those that may subsequently be used.

A “record” is any information, whether recorded or not, relating to a patient received or acquired by a federally assisted treatment program. Written records must be maintained in a secure room, locked file cabinet, safe, or other similar container when not in use. Programs are responsible for adopting procedures to regulate and control the access and use of addiction treatment records.

A “federally assisted program” is defined as:

- An individual or entity that provides alcohol or drug abuse diagnosis, treatment, or referral for treatment.
- An identified unit within a general medical facility that provides alcohol or drug abuse diagnosis, treatment, or referral for treatment.
- Medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol or drug abuse diagnosis treatment or referral for treatment and who are identified as such providers.

211 “Alcohol abuse” means the use of an alcoholic beverage which impairs the physical, mental, emotional, or social well-being of the user. “Drug abuse” means the use of a psychoactive substance for other than medicinal purposes which impairs the physical, mental, emotional, or social well-being of the user. 42 C.F.R. § 2.11.
212 42 C.F.R. § 2.16.
213 The following are not covered by these regulations: (1) diagnosis which is made solely for the purpose of providing evidence for use by law enforcement authorities; or (2) a diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved does not have an addiction disorder (e.g., an involuntary ingestion of alcohol or drugs, or reaction to a prescribed dosage of one or more drugs). 42 C.F.R. § 2.12.
214 42 C.F.R. § 2.16.
215 42 C.F.R. § 2.12. The definition of a federally assisted program encompasses nearly all substance abuse programs. However, for-profit programs and private practitioners who see only privately insured or self-paying patients do not fall within the definition of a federally assisted program.
“Patient identifying information” means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a program if that number does not consist of or contain information that could be used to identify a patient with reasonable accuracy and speed from sources external to the program.

B. Coverage

Part 2 covers any information, including information on referral and intake, about patients receiving addiction treatment services obtained by a federally assisted program. Coverage includes, but is not limited to, those treatment or rehabilitation programs, employee assistance programs, programs within general hospitals, school-based programs, and private practitioners who hold themselves out as providing and do provide alcohol or drug abuse diagnosis, treatment, or referral for treatment. However, these regulations would not apply, for example, to emergency room personnel who refer a patient to the intensive care unit for an apparent overdose, unless the primary function of such personnel is the provision of alcohol or drug abuse diagnosis, treatment, or referral, and they are identified as providing such services or the emergency room has promoted itself to the community as a provider of such service.

If a patient's diagnosis, treatment, or referral for addiction treatment is not provided by a program which is federally assisted, that patient's record is not covered by these regulations. Thus, it is possible for an individual patient to benefit from federal support and not be covered by the confidentiality regulations because the program in which the patient is enrolled is not federally assisted.

Example:
- If a juvenile court placed a minor in a private for-profit program and made a payment to the program on behalf of that individual, that patient's record would not be covered by these regulations unless the program is assisted by federal funds.

C. Restrictions on Use & Disclosure

The restrictions on use and disclosure continue to apply to the addiction treatment patient records maintained by the program, including their disclosure and use for civil or criminal proceedings that may arise out of a report of suspected child abuse or neglect. Whether a restriction is on use or disclosure affects the type of information that may be available. The restrictions on disclosure apply to any information that would identify a patient as an alcohol or drug abuser. The restriction on using the information to bring

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216 The terms “patient” and “program” are defined in 42 C.F.R. § 2.11, and a program is federally assisted in any manner described in 42 C.F.R. § 2.12(b).
criminal charges against a patient for a crime applies to any information obtained by the program for the purpose of diagnosis, treatment, or referral for treatment of alcohol or drug abuse.\textsuperscript{217}

The restrictions barring the use of any information subject to these regulations to initiate or substantiate any criminal charges against a patient, or to conduct any criminal investigation of a patient, apply to any person who obtains that information from a federally assisted alcohol or drug abuse program, regardless of the status of the person obtaining the information or whether the information was obtained in accordance with these regulations. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding, and any other use of the information to investigate or prosecute a patient with respect to a suspected crime.

However, restrictions on uses of addiction treatment records do not apply to:\textsuperscript{218}

\begin{itemize}
\item Communications within an entity that has direct administrative control.
\item Communications between a program and a qualified service organization (QSO).
\item Crimes which occur on program premises or against program personnel.
\item Reports of suspected child abuse and neglect.
\end{itemize}

In general, information pursuant to a disclosure is limited to that which is necessary to carry out the purpose of the disclosure. These confidentiality regulations do not restrict a disclosure that an identified individual is not and has never been a patient.

\textbf{B. Acknowledgement of a Patient’s Presence}

If a facility, or component of a facility is publicly identified as an entity that only provides alcohol or drug abuse diagnosis, treatment, or referral services, the program may not acknowledge a patient’s presence or involvement in the program unless it has prior written consent or a valid court order. If a facility, or component of a facility, is not publicly identified as an entity that only provides treatment services, the program may acknowledge the patient’s presence if that acknowledgement does not reveal that the patient is in an addiction treatment program.

\textbf{C. Minors}

A “minor” is a person who has not attained the age of majority specified in the applicable state law or who is not eighteen years old.\textsuperscript{219} If a minor patient has the legal capacity under the applicable state law to apply for addiction treatment, any authorization for

\textsuperscript{217} Note that restrictions on use and disclosure apply to recipients of information under 42 C.F.R. § 2.12(d).

\textsuperscript{218} The restrictions on disclosure in these regulations do not apply to: (1) internal communications within an entity that has direct administrative control over the program for the purposes of diagnosis, treatment, or referral; (2) communications between a program and a qualified service organization of information needed by the organization to provide services to the program; or (3) communications to law enforcement agencies responding to criminal activity on site.

\textsuperscript{219} 42 C.F.R. § 2.14.
disclosure may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient-identifying information to the minor’s parent or guardian for the purpose of obtaining financial reimbursement.\textsuperscript{220} If state law requires consent of a parent for a minor to apply for addiction treatment, both the minor and his or her parent, guardian, or custodian must consent to disclosure.\textsuperscript{221}

When the minor applicant for services lacks capacity to make a rational choice as judged by the program director, facts relevant to reducing a threat to the life or physical wellbeing of a minor patient may be disclosed to the parent, guardian, or other person authorized under state law to act in the minor's behalf.\textsuperscript{222} A patient may orally revoke consent. However, addiction treatment service programs may want to obtain written revocation when possible or, at a minimum, document the revocation in the patient’s record. Both Part 2 and the Privacy Rule allow a program to make a disclosure for services already rendered in reliance on a signed consent or authorization form.\textsuperscript{223}

\textbf{D. Decedents}

Part 2 does not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death. Any other disclosure of information identifying a deceased patient as an alcohol or drug user is confidential. Written consent may be given by an executor, administrator, or other personal representative appointed under applicable state law. If there is no such appointment, the consent may be given by the patient's spouse or, if none, by any responsible member of the patient's family.

\textbf{E. Patient Access}

Patients are entitled to access to their own records including the opportunity to inspect and copy any records that the program maintains about the patient. The program is not required to obtain a patient's written consent or other authorization to provide a patient access to his or her own records. Information obtained pursuant to patient access is

\begin{footnotes}
\textsuperscript{220} These regulations do not prohibit a program from refusing to provide treatment until the minor patient consents to the disclosure necessary to obtain reimbursement; however, refusal to provide treatment may be prohibited under a state or local law requiring the program to furnish the service irrespective of ability to pay.
\textsuperscript{221} Note that notification of an application for addiction treatment is considered a disclosure.
\textsuperscript{222} A program director may judge that a minor lacks the capacity to make a rational choice if: (1) a minor applicant for services lacks capacity, because of extreme youth or mental or physical condition, to consent to disclosure and notification a parent, guardian, or an individual authorized to act on the minor's behalf; and (2) the minor’s situation poses a substantial threat to minor’s, or another individual’s, life or physical wellbeing, and this threat may be reduced by communicating relevant facts to the minor's parent, guardian, or an individual authorized to act on behalf of the minor.
\textsuperscript{223} 42 C.F.R. § 2.31(a) (8). 45 C.F.R. § 164.508(b) (5) (i).
\end{footnotes}
subject to the restriction on use of his information to initiate or substantiate any criminal charges or to conduct any criminal investigation. 224

F. Written Consent

Federally assisted addiction treatment programs may not disclose a patient’s addiction treatment records without express authorization that meets the regulations’ requirement for consent forms, except in limited circumstances. A consent form under Part 2 must include the following elements:

- The specific name or general designation of the program or person permitted to make the disclosure.
- The name or title of the individual, or the name of the organization, to which disclosure is to be made.
- The name of the patient.
- The purpose of the disclosure.
- How much and what kind of information is to be disclosed.
- The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign in lieu of the patient.
- The date on which the consent is signed.
- A statement that the consent is subject to revocation at any time except to the extent that the program or person, which is to make the disclosure, has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.
- The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given. 225
- Each disclosure made with the patient's written consent must contain the statement included in footnote 226 below. 226

G. Disclosures Without Patient Consent

Part 2 allows patient identifying information to be disclosed to medical personnel who have a need for the information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires

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224 Restrictions of use of information obtained via patient access is governed under 42 C.F.R. § 2.12(d) (1).
225 42 C.F.R. § 2.31.
226 “This information has been disclosed to you from records protected by Federal confidentiality rules (42 C.F.R. Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 C.F.R. Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.” 42 C.F.R. § 2.32.
immediate medical intervention. A program can disclose information only to medical personnel and must limit the amount of information to that which is necessary to treat the emergency medical condition. Immediately following the disclosure, the program must document the following in the patient’s records: the name and affiliation of the medical personnel to whom disclosure was made; the name of the individual making the disclosure; the date and time of the disclosure; and the nature of the emergency.

Patient identifying information may be disclosed for the purpose of conducting scientific research if the program director makes a determination that the recipient of the patient identifying information:

- Is qualified to conduct the research.
- Has a research protocol under which the patient identifying information is secure and will not be re-disclosed except as authorized by law.
- Has provided a satisfactory written statement that includes the protocol to protect the rights and welfare of the patients and the risks in disclosing patient identifying information are outweighed by the potential benefits of the research.
- A group of three or more individuals who are independent of the research project have reviewed the protocol.

While researchers may share patient identifying information with the program from which that information was obtained, researchers may not, however, identify any individual patient in any report of that research or otherwise disclose patient identities.

Part 2 allows disclosures without prior patient consent for the purposes of audit and evaluation activities. If patient records are not copied or removed, patient identifying information may be disclosed in the course of a review of records on program premises to authorized individuals who agree in writing to comply with the limitations on re-disclosure. Records containing patient identifying information may be copied or removed from program premises by authorized individuals who agree in writing to:

- Maintain the patient identifying information in accordance with the security requirements provided in these regulations or in accordance stricter requirements.
- Destroy all the patient identifying information upon completion of the audit or evaluation.

227 42 C.F.R. § 2.51.
228 Authorized individuals are those who: (1) perform the audit or evaluation activity on behalf: (a) of any federal, state, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or (b) any private person which provides financial assistance to the program, which is a third party payer covering patients in the program, or which is a quality improvement organization performing a utilization or quality control review; and (2) is determined by the program director to be qualified to conduct the audit or evaluation activities.
229 Authorized individuals are those who perform the audit or evaluation activity on behalf of: (1) any federal, state, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or (2) any private person which provides financial assistance to the program, which is a third party payer covering patients in the program, or which is a quality improvement organization performing a utilization or quality control review.
Comply with the limitations on disclosure and use.230

H. Court Order

A court order under these regulations may authorize disclosure of confidential communications made by a patient to a program in the course of diagnosis, treatment, or referral for treatment only if:

- The disclosure is necessary to protect against an existing threat to life or of serious bodily injury including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties.
- The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime such as one that directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect.
- The disclosure is made in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.231

An order authorizing the disclosure of patient records for purposes other than criminal investigation or prosecution may be pursued by individuals that have a legally recognized interest in the disclosure that is sought. The application may be filed separately or as part of a pending civil action in which it appears that the patient records are needed to provide evidence. An order may be entered only if the court determines that good cause exists, and disclosure must be limited to protect the patient.232

A court must adhere to the proper procedures and criteria found in Part 2 when issuing an order to disclose an individual’s addiction treatment records. Additionally, the court may make an order authorizing the:

- Disclosure or use of patient records to criminally investigate or prosecute a patient.
- Disclosure or use of patient records to criminally or administratively investigate or prosecute an entity possessing the records.
- Placement of an undercover agent or informant in a program as an employee or patient.

VI. Addiction Treatment Agencies – Indiana & Part 2

A. Collaboration & Minor Consent

230 Note that Medicare and Medicaid audits or evaluations are subject to additional requirements. See 42 C.F.R. Part 2 for more information.

231 For more information, see 42 C.F.R. Part 2 and the Juvenile Court section.

232 To determine good cause, the court must find that: (1) other ways of obtaining the information are not available or would not be effective; and (2) the public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.
The Indiana Code requires all other state and local agencies and providers to cooperate with addiction treatment services to provide treatment, care, or rehabilitation of alcoholics, drug abusers, and compulsive gamblers. In Indiana, a minor at any age – or, on behalf of a minor, a parent, a legal guardian, or other legal representative – may apply for voluntary addiction treatment.

The Indiana Code defines alcohol and drug abuse records (“substance abuse records” or “addiction treatment records”) as recorded or unrecorded information concerning the diagnosis, treatment, or prognosis of a patient receiving alcohol or drug abuse treatment services. All addiction treatment records are confidential and may only be disclosed as permitted by Part 2.

B. Subpoenas & Court-Ordered Disclosures

Part 2 permits programs to release information in response to a subpoena if the patient signs a consent permitting release of the information requested in the subpoena. When the patient does not consent, Part 2 prohibits programs from releasing information in response to a subpoena, unless a court has issued an order that complies with the rule. Subpart E sets out the procedure the court must follow, the findings it must make, and the limits it must place on any disclosure it authorizes.

The Privacy Rule permits a program to disclose PHI pursuant to a subpoena without a prior written authorization if the party seeking the information made reasonable efforts to insure the individual was given notice of the request for PHI and the opportunity to object, or reasonable efforts have been made to secure a qualified protective order.

VII. INDIANA PRIMARY CARE & BEHAVIORAL HEALTH – THE PRIVACY RULE & PART 2

A. Covered Entities & Part 2

The type of permission required for sharing information depends on the answers to the following questions:

- Is the party sharing the information a “covered entity” for the purposes of sharing PHI under the Privacy Rule or a “federally assisted program” for the purposes of sharing substance abuse information under Part 2?
- Is the party requesting the information a covered entity or a federally assisted program?
- What specific circumstances are generating the need to share information?

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233 Ind. Code § 12-23-1-10.
237 42 C.F.R. § 2(e).
238 45 C.F.R. § 164.512(e) (1) (ii).
Part 2 and the Privacy Rule rarely explicitly prohibit information sharing; instead they provide guidance about the conditions permitting use and disclosure. The Privacy Rule is generally more lenient than Part 2 regarding information sharing regulations. Addiction treatment services that are “covered entities” are also subject to the Privacy Rule unless there is a conflict between them. Note that while Part 2 applies to addiction treatment records covered by FERPA, the Privacy Rule does not.239

The Privacy Rule sets out different types of permission for sharing information and the circumstances under which they apply. As aforementioned, the exceptions allow covered entities to share PHI without prior consent for certain limited situations. In contrast, Part 2 requires consent for almost all disclosures of patient identifying information, unless released pursuant to a court order or otherwise permitted by law. Part 2 permits programs to comply with state reporting requirement laws. However, Part 2 limits programs to making only an initial report; it does not allow programs to respond to follow-up requests for information or to subpoenas unless the patient has consented, or the court issues an order that complies with the rule.

B. Disclosures & Patient Identifying Information

Part 2 permits a substance abuse treatment program to disclose information about a patient if the disclosure does not identify the patient as an alcohol or drug abuser or as someone who has applied for or received substance abuse assessment or treatment services.240 This rule allows a program that is part of a larger entity, such as a hospital, to disclose information about a patient so long as it does not explicitly or implicitly disclose the fact that the patient is an alcohol or drug abuser. For example, a program that is part of a hospital could disclose to a public health department that a named patient has TB by identifying itself only as part of the hospital and not as a substance abuse treatment program, and by taking care not to mention that the patient is in substance abuse treatment.

Many programs that are part of larger entities are accustomed to using this exception in Part 2 to gather information about patients from, for example, other health care providers, schools, and employers, or to refer patients to other providers. Some of these practices by programs that are part of larger entities will continue to be permissible under the Privacy Rule, which does not require patients to authorize disclosures for purposes of treatment, payment or health care operations. The Privacy Rule also permits programs to share information about an individual’s treatment or payment related to the individual’s health care with persons involved in the individual’s care.241

239 See the FERPA for more information.
240 42 C.F.R. § 2.11. 42 C.F.R. § 2.12(a).
241 45 C.F.R. § 164.510(b).
### HIPAA Privacy Rule

#### Table 1: Minors & Personal Representatives

<table>
<thead>
<tr>
<th>If the Minor is:</th>
<th>The Personal Representative is:</th>
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<tbody>
<tr>
<td>An Emancipated Minor</td>
<td>A person with legal authority to make healthcare decisions on behalf of the minor.</td>
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<tr>
<td></td>
<td><strong>Examples:</strong></td>
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<tr>
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<td>- Healthcare power of attorney</td>
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<td>- Court appointed legal guardian</td>
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<td>- General power of attorney</td>
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<td>- Durable power of attorney that includes the power to make healthcare decisions</td>
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<td></td>
<td><strong>Exceptions:</strong></td>
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<td></td>
<td>- Abuse, neglect, and endangerment situations</td>
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<td></td>
<td>- Statutory exceptions</td>
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</tbody>
</table>

| An Unemancipated Minor | A parent, guardian, or other person acting in *loco parentis* (collectively, “parent”) with legal authority to make healthcare decisions on behalf of the minor child. |
|                       | **Exceptions:**                 |
|                       | - Abuse, neglect, and endangerment |
|                       | - Statutory exceptions           |

| A Decedent | A person with legal authority to act on behalf of the deceased or the estate (not restricted to persons with authority to make healthcare decisions). |
|            | **Examples:**                   |
|            | - Executor or administrator of the estate |
|            | - Next of kin or other family members when relevant law provides authority |

#### Table 2: Parents as Personal Representatives

<table>
<thead>
<tr>
<th>Exceptions: When a Parent is Not a Personal Representative</th>
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<tbody>
<tr>
<td>When a minor can obtain a particular healthcare service without prior parental consent</td>
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<tr>
<td>When an individual, other than the parent, authorized by law consents to the provision of a particular service on behalf of a minor</td>
</tr>
<tr>
<td>When a parent agrees to a confidential relationship between the minor and the healthcare provider</td>
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</tbody>
</table>
INDIANA STATE DEPARTMENT OF HEALTH

I. INDIANA STATE DEPARTMENT OF HEALTH – FEDERAL & INDIANA

A. HIPAA

The Indiana State Department of Health (ISDH) is a hybrid entity under HIPAA. This means that ISDH has both HIPAA-covered programs and non-HIPAA-covered programs. A HIPAA-covered program is one that meets the definition of a health plan, a health care provider, or a health care clearinghouse. ISDH programs that meet one of these definitions must comply with the Privacy Rule as well as other HIPAA regulations. ISDH HIPAA-covered programs include the Breast and Cervical Cancer Program, the Children’s Special Healthcare Services Program, the Genomics/Newborn Screening Program, the Hemophilia Medical Services Program, the Indiana Lead and Health Homes Program, and the HIV Medical Services Program. Other ISDH programs are not required to comply with HIPAA; however, other state and federal privacy laws apply to those programs in order to protect sensitive personal information.

B. Indiana Law

Indiana law defines “health records” as written, electronic, or printed information possessed or maintained by a provider, including such information possessed or maintained on microfiche, microfilm, or in a digital format. The term includes mental health records and addiction treatment records. However, when a provider uses health records maintained in her or his position and discloses a health record to another provider or to a nonprofit medical research organization, the term also includes information that describes services provided to a patient and provider’s charges for services provided to a patient. The term does not include information concerning emergency ambulance services. For the purposes of health records, a “provider” includes the ISDH or a local health department or an employee, agent, designee, or contractor of the ISDH or local health department.

243 Note that while the term “health records” includes mental health records and alcohol and drug abuse records, those latter types of records are subject to additional protections.
244 Pursuant to provider’s use of records under Ind. Code § 16-39-5-3(e).
245 Emergency ambulance services are described in Ind. Code § 16-31-2-11(d).
PUTATIVE FATHER REGISTRY

II. INDIANA STATE DEPARTMENT OF HEALTH – PUTATIVE FATHER REGISTRY

A. The Putative Father Registry

Information contained in the Putative Father Registry is confidential. The purpose of the Registry, established by the Indiana State Department of Health (ISDH), is to determine the name and address of a father so that notice of the adoption may be provided to:

- A putative father whose name and address have not been disclosed by the mother of the child, to an attorney or an agency arranging the adoption of the child, before the mother executes consent to the child's adoption.
- A putative father who may have conceived a child who may be the subject of a petition for adoption.

A father who has registered with the Putative Father Registry is entitled to notice of the child’s adoption. The filing of a paternity action does not relieve the putative father from obligations of registering, or consequences of failing to register, unless paternity has been established before the filing of the petition for adoption.

B. Registry Information

The ISDH prescribes forms maintaining the following information in the Registry:

- The putative father’s name, address at which the putative father may be served with notice of an adoption, Social Security number, and date of birth.
- The mother’s name, including all other names known to the putative father that she uses, if known, address, Social Security number, and date of birth.
- The child’s name and place of birth.
- The date the ISDH receives a putative father’s registration.
- The: (1) name of an attorney or agency requesting the ISDH to search the Registry for a child who may be adopted, and (2) date that the attorney or agency submitted the request.
- Any notice of a filing of a petition to establish paternity.
- Any other information that the ISDH determines is necessary to access the information in the Registry.
- If a putative father does not have an address to receive a notice of an adoption, he may designate another person as his agent for the purpose of serving the notice of adoption.

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246 Ind. Code § 31-19-5-23.
250 Ind. Code § 31-19-5-7. A putative father provides the information upon registration (Ind. Code § 31-19-5-9) and the registration must be signed and notarized (Ind. Code § 31-19-5-10).
A court clerk will provide the ISDH with the notice in compliance with regulations for paternity actions.

A putative father may revoke his registration at any time by submitting a signed, notarized statement revoking the registration. A putative father who fails to register within the allotted time frame waives notice of an adoption proceeding, which constitutes an irrevocably implied consent to the child’s adoption.

C. Registry Searches

Whenever a petition for adoption is filed, the attorney or agency that arranges the adoption shall:
- Request that the ISDH search the Registry.
- File an affidavit prepared by the ISDH with the court presiding over the adoption.
- The above affidavit is submitted to the attorney or agency and verifies whether a putative father is registered in relation to a mother whose child is the subject of the adoption that the attorney or agency is arranging; or (2) has filed a petition to establish paternity.
- Whenever the ISDH finds that one or more putative fathers are registered, the ISDH shall: (1) submit a copy of each registration form with the ISDH’s affidavit; and (2) include in the affidavit the date that the attorney or agency submits the request for a search that relates to the affidavit.
- Whenever the ISDH finds that one or more putative fathers have filed a petition to establish paternity, the ISDH shall: (1) submit a copy of each notice prepared by the clerk of the court with the ISDH’s affidavit; and (2) include in the affidavit the date the attorney or agency submitted the request for the search that relates to the affidavit.
- Whenever the ISDH receives a request to search the Registry, the ISDH shall notify the attorney or agency as to whether a record of a paternity determination or a notice of a filing of a petition to establish paternity has been filed concerning a child who is or may be the subject of an adoption that the attorney or agency is arranging.

Upon written request, a putative father, a mother, and a child are entitled to a certified copy of a putative father’s registration form and a copy of any notice of a filing of a petition to establish paternity only if the information contained in the registration form names the requesting person. Additionally, the following individuals are entitled to a certified copy of a putative father’s registration form and a copy of any notice of a filing of a petition to establish paternity, upon written request:
- Any party or attorney of record in a pending adoption.
- An attorney who represents prospective adoptive parents, petitioners in an adoption, a mother, a putative father, or a licensed child-placing agency.

A child placing agency that represents prospective adoptive parents, petitioners in an adoption, a mother, or a putative father.

A court presiding over a pending adoption.

A person or court listed above may request information from the ISDH Putative Father Registry by taking the following steps: (1) submitting the request in writing; (2) under the penalties for perjury, stating that the requesting person is entitled to receive the information and (3) submitting the request in an appropriate manner.\textsuperscript{255}
VITAL STATISTICS

V. INDIANA STATE DEPARTMENT OF HEALTH – VITAL STATISTICS

A. Birth and Death Registration

Vital statistics are commonly split into the two most requested types of records, birth and death records.\textsuperscript{256} When a child is born alive, a report is made to the local health officer in order to create an electronic record of the birth information.\textsuperscript{257} When a death occurs, the physician last attending to the deceased person shall certify to the local health officer the cause of death to continue the initiation of the document process. These records constitute the means by which the ISDH maintains, in an electronic format, information on live births and deaths in Indiana. Printed certificates for births and deaths are comprised of the information contained in the electronic records.

B. Issuance of Birth and Death Certificates

Birth and death certificates can be accessed through the local health officer or through the ISDH directly. The local health officer shall provide a birth or death certificate when requested by anyone, only if the officer is satisfied the applicant has a direct interest in the matter and the certificate is necessary for the determination of personal or property rights or for compliance with state or federal law.\textsuperscript{258} The ISDH can also share records concerning vital statistics under the same restrictions as the health officer.\textsuperscript{259} However, a death certificate received by the health officer or the ISDH is a public record, and must be made available for inspection and copying, provided that the copy is uncertified, any Social Security numbers are redacted\textsuperscript{260}, and any necessary charges or fees are collected.\textsuperscript{261}

\begin{flushright}
\textsuperscript{256} Ind. Code § 16-18-2-366.
\textsuperscript{257} Ind. Code § 16-37-1-3.1.
\textsuperscript{258} Ind. Code § 16-37-1-8.
\textsuperscript{259} Ind. Code § 16-37-1-10.
\textsuperscript{260} Id.
\textsuperscript{261} Ind. Code § 16-37-1-9, Ind. Code § 16-37-1-11, or Ind. Code § 16-37-1-11.5.
\end{flushright}
VI. INDIANA STATE DEPARTMENT OF HEALTH – IMMUNIZATION DATA REGISTRY

Beginning on July 1, 2015 providers are required to report immunization data to the Immunization Data Registry. A minor’s parent or guardian has a right to exempt disclosure of immunization data to the Registry, and may prevent disclosure by signing an immunization data exemption form. Moreover, an individual may have her information removed from the Immunization Data Registry. Records maintained as part of the Immunization Data Registry are confidential. The ISDH may release information from the Registry to the individual or, if a minor, to the minor’s parent or guardian.

Before immunization data may be released to a person or an entity, the person or entity must enter into a data use agreement with the ISDH that ensures information that identifies a patient will not be released to any other person or entity without the written consent of the patient, unless the release is to an authorized person or entity, which include the following:

- The immunization data registry of another state.
- A provider or a provider’s designee.
- A local health department.
- An elementary or secondary school the individual is attending.
- A childcare center in which the individual is enrolled.
- A childcare home.
- A childcare ministry.
- The office, or a contractor, of Medicaid policy and planning.
- A child placing agency.
- A college or university the individual is attending.

The aforementioned entities and persons, and the ISDH, or an agent of the ISDH, who in good faith provide or receive immunization information are immune from criminal and civil liability for the following: providing information to the Immunization Data Registry; using the Immunization Data Registry information to verify that a patient or child has received the proper immunizations; and using the Immunization Data Registry information to inform a patient or the child’s parent or guardian of the patient’s immunization status or that an immunization is due according to the recommended immunization schedules. However, a person who knowingly, intentionally, or recklessly discloses PHI from the Registry commits a misdemeanor.

263 Ind. Code § 16-38-5-3.
264 Ind. Code § 16-38-5-3. Entities are specified as a childcare center licensed under Ind. Code § 12-17.2-4, a childcare home licensed under Ind. Code § 12-17.2-5, a childcare ministry registered under Ind. Code § 12-17.2-6, a child placing agency registered under Ind. Code § 31-27, and a college or university as defined in Ind. Code § 21-7-13-10.
265 Ind. Code § 16-38-5-4.
VII. INDIANA SYSTEM SPECIFIC INFORMATION-SHARING GUIDELINES – PUTATIVE FATHER REGISTRY

When does the State Department of Health disclose information on the Putative Father Registry?

An attorney or agency that arranges an adoption or may arrange an adoption may at any time request that the ISDH search the Registry to determine whether a putative father: (1) is registered in relation to a mother whose child is or may be the subject of an adoption; or (2) has filed a petition to establish paternity.266

DEPARTMENT OF CHILD SERVICES

I. **Federal Law**

A. *Child Abuse Prevention and Treatment Act*

The basis for government intervention in child maltreatment is grounded in the concept of *parens patriae* – a doctrine that grants the inherent power and authority of the state to protect persons who are legally unable to act on their own behalf. Congress determined that the problem of child abuse or neglect requires a comprehensive approach that integrates the work of social service, legal, health, mental health, domestic violence services, education, and substance abuse agencies, as well as community-based organizations. Congress passed the Child Abuse Prevention and Treatment Act (CAPTA) Reauthorization Act in 2010 to strengthen coordination among all levels of government, and with private agencies, civic, religious, and professional organizations, and individual volunteers to assist in the prevention, assessment, and investigation of child abuse or neglect.\(^{267}\)

CAPTA defines child abuse as “any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”\(^{268}\) Neglect is a failure to meet the child’s basic needs, such as not providing enough food, shelter or basic supervision, necessary medical or mental health treatment, adequate education or emotional comfort. CAPTA does not require a parent or legal guardian to provide any medical service or treatment that is against the parent’s or legal guardian’s religious beliefs.

B. *Confidentiality & Information Sharing*

Provisions governing confidentiality and sharing information in CAPTA guide state legislation. In general, CAPTA requires that a state preserve the confidentiality of all child abuse or neglect reports and records in order to protect the rights of the child and the child's parents or guardians.\(^ {269}\) However, CAPTA allows the state to release information to certain individuals and entities. The state may share confidential child abuse or neglect reports and records that are made and maintained in accordance with CAPTA with any of the following:

- Individuals who are subjects of reports.
- A grand jury or court, when necessary to determine an issue before the court or grand jury.
- Other entities or classes of individuals who are authorized by statute to receive information pursuant to a legitimate state purpose.

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\(^{267}\) CAPTA Reauthorization Act of 2010 (Pub. L. No. 111-320), § 3.
\(^{268}\) Physical abuse refers to the injury of a child on purpose, including striking, kicking, beating, biting or any action that leads to physical injury. Sexual abuse is the use, persuasion or forcing of a child to engage in sexual acts or imitation of such acts.
\(^{269}\) CAPTA § 106(b)(2)(B)(viii).
In addition, states have the option to allow public access to court proceedings that determine child abuse or neglect cases, so long as the state, at a minimum, can ensure the safety and well-being of the child, parents and families.\(^\text{270}\) The state must provide otherwise confidential information to the following:

- Any federal, state, or local government entity, or any agent of such entity that has a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect.
- Child abuse citizen review panels.\(^\text{271}\)
- Public disclosure of the findings or information about the case of child abuse or neglect that results in a child fatality or near fatality.
- Child fatality review panels.\(^\text{272}\)

Authorized recipients of confidential child abuse or neglect information are bound by the same confidentiality restrictions as the child welfare agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse or neglect. Further disclosure is permitted only in accordance with the CAPTA standards.

C. Confidentiality of Substance Abuse Records Under Federal Law

The release of most drug and alcohol records is controlled by federal law.\(^\text{273}\) If a drug and alcohol program receives any federal funding or has any connection to the federal government, the federal law controls the release of the records. Under federal law, a court order is required to obtain drug and alcohol records unless the patient consents. This law includes any treatment records, but not drug test results, if the drug tests are ordered by the court in the CHINS case. In order to obtain a court order to release drug and alcohol records without the patient’s consent, there must be a hearing with notice to the patient and to the program, and an opportunity for the patient and/or the program to object to the disclosure; also, good cause for the release of the records must be shown. However, within the context of a CHINS case, the exchange of the parents’ substance abuse records is usually not an issue, because state statutes allow all parties to the case to have access to any records filed with the court, including confidential records, as well as access to all reports relevant to the case and any reports of examinations of the child’s parents.\(^\text{274}\) Most judges also issue an order appointing a GAL/CASA in the beginning of the case which allows the GAL/CASA broad access to any records relevant to the case involving the child or the parents involved in the proceeding.

II. INDIANA LAW

\(^\text{270}\) CAPTA § 106(b)(2).
\(^\text{271}\) Such panels must comply with section 106(c) of CAPTA. CAPTA §§ 106(b)(2)(B)(viii)(III); 106(c)(5)(A).
\(^\text{272}\) Disclosures about a case of child abuse or neglect that results in a child fatality or near fatality are mandatory; accordingly, disclosure to a child fatality review panel is required. CAPTA § 106(b)(2)(B)(x).
A. Department of Child Services

The Indiana Department of Child Services is responsible for providing child protective services, child abuse and neglect prevention services, child and family services, family preservation services, and the licensing of child placing agencies, child caring institutions, foster family homes, and group homes. The Department is not required to investigate or report on proceedings relating to a child who is not the subject of an open CHINS case or otherwise monitor child custody or visitation in dissolution of marriage proceedings. In accordance with a local plan for child protection services, DCS will, by juvenile court order, provide protection services to prevent further victimization of the child, and to monitor the provision of services necessary to ensure the safety of children.

B. Child Abuse & Neglect

The Indiana Department of Child Services (DCS) protects children who are victims of abuse or neglect and strengthens families through arranging for services that focus on family support and preservation. DCS cooperates with and receives cooperation from public and private agencies, including law enforcement agencies, the courts, and organizations, groups, and programs with services related to the prevention, identification, or treatment of a child who may be a victim of abuse and neglect or family services designed to prevent removal of a child from a home. Additionally, agencies cooperate to provide consultation services, planning, case management, public education and information services, and use of each other’s facilities, staff, and other training.

"Child abuse or neglect," refers to a child in the context of a CHINS case, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court. A child is a CHINS if, before the child becomes eighteen years of age, the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision. Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered. Other grounds for CHINS

276 Ind. Code § 31-25-2-7; Ind. Code § 31-17-2; Ind. Code § 31-34.
278 The term does not refer to a child who is alleged to be a victim of a sexual offense under Ind. Code § 35-42-4-3 unless the alleged offense under Ind. Code § 35-42-4-3 involves the fondling or touching of the buttocks, genitals, or female breasts, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court. Ind. Code § 31-9-2-14. “Child abuse or neglect,” for purposes of Ind. Code § 31-34-2.3, refers to acts or omissions by a person against a child as described in Ind. Code § 31-34-1-1 through -9, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.
279 Ind. Code § 31-34-1-2.
280 Id.
cases are enumerated at Ind. Code §31-34-1-3 through -9, and generally involve sex offenses and human trafficking.

Any individual who has a reason to believe that a child is a victim of child abuse or neglect must report the abuse to DCS or a law enforcement agency (LEA). If an individual is required to make a report as a member of the staff of a medical or other public or private institution, school, facility, or agency, the individual must immediately notify the person in charge of making a report. If a child who may be a victim of abuse is under the care of a public or private institution, a public or private agency, as designated by DCS, is primarily responsible for investigating the report.

As a general rule, all information and records relating to the reporting and investigation of abuse and any other information obtained, reports written, or photographs taken concerning the reports, are confidential. Whenever a court finds that a child is a CHINS on the basis of a child abuse or neglect report classified as substantiated, DCS must enter identifiable information concerning the court’s judgment in the Child Protection Index.

C. Children in Need of Services

The first priority of DCS is to see to the immediate needs of the child for medical, shelter, food, or other crisis services. A "child in need of services," is a child under the age of eighteen who is neglected or abused, and who is not getting care or treatment that the child needs. The child can be a CHINS if the child: is seriously endangered due to injury caused by something the parents did or did not do; is living in a home where illegal drugs are being manufactured; is a danger to himself or to others; is repeatedly disruptive in school and parents don’t participate in the disciplinary proceedings; is a missing child; is a victim of a sex offense or human trafficking; or is born with disorders caused by the mother’s use of alcohol or drugs during pregnancy.

D. Notice

DCS shall give notice of the existence and location of photographs, x-rays, and physical medical examination reports to the appropriate prosecuting attorney, and to a LEA if the agency has not already received the reports. A LEA, DCS, the prosecuting attorney, GAL, or CASA appointed by the juvenile court are entitled to access, to the extent permissible under rules of trial procedure, photographs, x-rays, or physical medical examination reports for use in any judicial proceeding relating to a report to DCS. The

281 Ind. Code § 31-33-5-1.
282 Ind. Code § 31-33-5-3; Ind. Code § 31-33-5-4.
284 Ind. Code § 31-33-18-1.
285 Ind. Code § 31-33-8-13; Ind. Code § 31-33-26-2 (the child protection index).
286 Ind. Code § 31-34-1.
287 Ind. Code § 31-25-2-12; Ind. Code § 31-33-10-3.
Department will seek and receive the cooperation of appropriate public and private agencies, including LEAs, the courts, and organizations, groups, and programs providing child services.

E. Initial Reporting

Upon receiving an initial report of suspected child abuse or neglect, DCS makes a written report that includes the following:

- The names and addresses of the child, the child’s parents, guardian, custodian, or other person responsible for the child's care.
- The child's age and sex.
- The nature and apparent extent of the child's injuries, abuse, or neglect, including any evidence of prior injuries of the child, or abuse or neglect of the child or the child's siblings.
- The name of the person allegedly responsible for causing the injury, abuse, or neglect.
- The source of the report.
- The person making the report and where the person can be reached.
- The actions taken by the reporting source, including the following: taking of photographs and x-rays, removal or keeping of the child, and notifying the coroner.
- The written documentation required if a child was taken into custody without a court order.
- Any other information that the director requires by rule, or the person making the report believes might be helpful.

Copies of the written report will be immediately given or made available to a LEA, the prosecuting attorney, and, in a case involving death, the coroner. The coroner, upon receiving this report, must conduct an investigation and report his or her findings to a LEA, the prosecuting attorney, DCS, and the hospital, if the institution making the report is a hospital. A LEA receiving an initial report of child abuse or neglect must immediately notify the Department and conduct an onsite assessment. LEAs are required to share any information, including copies of assessment reports, on incidents in which a child may be the victim of child abuse or neglect with DCS and the juvenile court.

F. Investigation Reports of Suspected Child Abuse or Neglect

DCS investigates and assesses every report of known or suspected child abuse and neglect it receives. The investigation may include a visit to the child’s home, an interview

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289 Ind. Code § 31-33-7-4.
290 Written documentation as required by Ind. Code § 31-34-2-3.
291 Ind. Code § 31-33-7-5.
292 Ind. Code § 31-33-7-6-3.
293 The LEA must act immediately, whether or not it has reason to believe the child is in imminent danger or whether or not an offense has been committed. Ind. Code § 31-33-7-7.
with the subject child, and a physical, psychological, or psychiatric examination of any child in the home, with the consent of a parent, guardian, custodian, or other persons legally responsible for the child. If a mental or physical examination cannot be obtained, the juvenile court may order the mental or physical examinations with or without the consent of a parent, guardian, or custodian, upon showing good cause. If, before the assessment is complete, DCS or the LEA determines that immediate removal is necessary to protect the child from further abuse or neglect, the juvenile court may issue an order for removal.

DCS, and the LEA if involved, must make a complete written report of the investigation, including color photographs and x-rays. DCS must share investigative reports with the appropriate court, the prosecuting attorney, or the appropriate LEA, upon request. If the child abuse and neglect is substantiated after an assessment, DCS must forward the investigation report to an appropriate prosecuting attorney’s office. If the assessment substantiates a finding of child abuse and neglect as determined by the Department, the report will be sent to the coordinator of the community child protection team.

If a LEA participates in an assessment or investigation of a report of known or suspected child abuse, the LEA will make a complete written report of the assessment. Afterwards, the LEA will forward all information, including copies of an assessment report, on an incident in which a child may be a victim of alleged child abuse and neglect, to the prosecuting attorney’s office. In all cases, no matter how the information was obtained, the LEA must release information on an incident in which a child may be a victim of alleged child abuse and neglect to DCS. When the initial investigation is complete, DCS will classify reports as unsubstantiated or substantiated.

**G. Disclosure & Confidentiality**

As a general rule, any information recorded or obtained pursuant to a report of child abuse or neglect and held by the Division of Family Resources and its local offices, the DCS and the DCS ombudsman, is confidential. All records held by the Division of

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294 Ind. Code § 31-33-8-7. "Assessment," for purposes of child abuse and neglect, means 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; and (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 remain in the home safely, be returned to the home safely, or be placed in an alternative living arrangement. Ind. Code § 31-9-2-9.6.

295 Ind. Code § 31-33-8-7; Ind. Code § 31-32-12.

296 Ind. Code § 31-33-8-3. DCS is responsible for giving notice the existence and location of photographs, x-rays, and physical medical examination reports to a prosecuting attorney and a LEA. Ind. Code § 31-25-2-12.

297 Ind. Code § 31-33-8-9.

298 Ind. Code § 31-33-8-8.

299 Ind. Code § 31-33-8-10.

300 Ind. Code § 31-33-8-11.

301 Ind. Code § 31-33-8-13.

302 Ind. Code § 31-33-18-1.
Family Resources and its local offices, DCS, a local child fatality review team, the statewide child fatality review committee, and the DCS ombudsman, regarding the death of a child determined to be a result of abuse, abandonment, or neglect are confidential and may not be disclosed except as outlined below. Photographs, x-rays, or physical medical examination records are available for inspection by a LEA, DCS, the prosecuting attorney, the guardian ad litem, or the CASA appointed by the juvenile court.303

H. Records regarding the death of a child due to abuse, abandonment or neglect

Unless information in a record is otherwise confidential under state or federal law, a record held by a local DCS office, DCS, or the DCS ombudsman regarding a child whose death or near fatality may have been the result of abuse, abandonment, or neglect that has been redacted is not confidential and may be disclosed to any person who requests the record.304 A child’s death or near fatality may have been the result of abuse, abandonment or neglect if DCS determines that the child’s death or near fatality is the result of abuse, abandonment or neglect; or, a prosecuting attorney files an indictment or information or a complaint alleging the commission of a delinquent act that, if proven, would cause a reasonable person to believe that the child’s death or near fatality may have been the result of abuse, abandonment, or neglect.305 Upon the request of any person, or upon its own motion, the court exercising juvenile jurisdiction in the county in which the child’s death or near fatality occurred shall determine whether the allegations contained in the indictment, information, or complaint, if proven, would cause a reasonable person to believe that the child’s death or near fatality may have been the result of abuse, abandonment, or neglect.306 If the juvenile court finds that the child’s death or near fatality was the result of abuse, abandonment, or neglect, the court shall make written findings and provide a copy to DCS. The court shall redact the record to exclude any identifying information as outlined in the statute.307

I. Disclosure of unredacted material to certain persons

Disclosure of information308 and records309 from unredacted material may only be made to the following310:

304 Ind. Code § 31-33-18-1.5. “Near fatality” means an act that, as certified by a physician, places the child in serious or critical condition. 42 U.S.C. § 5106a.
305 Ind. Code § 31-33-16-1.5(b).
306 Ind. Code § 31-33-18-1.5(b).
307 Ind. Code § 31-33-18-1.5(g).
308 “Information” means any information recorded or obtained pursuant to a report of child abuse or neglect and held by the Division of Family Resources and the local office, DCS, and the DCS ombudsman, which is confidential. Ind. Code § 31-33-18-2 (referring to Ind. Code § 31-33-18-1(a)).
309 “Records” means all records regarding the death of a child determined to be a result of abuse, abandonment, or neglect, held by the Division of Family Resources and a local office, DCS, a local child fatality review team, the statewide child fatality review committee, and the DCS ombudsman, which are confidential. Ind. Code § 31-33-18-2 (referring to Ind. Code § 31-33-18-1(b)).
• Persons authorized under Indiana law regarding the reporting and investigation of child abuse and neglect.\textsuperscript{311}
• A child protective agency investigating child abuse.\textsuperscript{312}
• A LEA, prosecuting attorney, or coroner, in the case of a death of child, investigating the abuse.
• An authorized physician.
• An individual legally authorized to place a child in protective custody.\textsuperscript{313}
• An entity having legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report; or a parent, guardian, or custodian or other person responsible for the child’s welfare.
• An individual named in the report as who is alleged to be abused or neglected or, if the individual is a child, the individual’s guardian ad litem (GAL) or court appointed special advocate (CASA).\textsuperscript{314}
• A parent and an attorney of a child listed in the report.\textsuperscript{315}
• A court.
• A grand jury.
• A state or local official responsible for child protective services.
• The community child protection team.
• A person about whom a report was made, with protection for the identity of the person making the report of known or suspected child abuse or neglect and any other person, if the agency finds that disclosure would likely endanger the life or safety of the person.
• A DCS employee, a caseworker, or a juvenile probation officer for the purposes of conducting a criminal check.\textsuperscript{316}
• A local child fatality review team.
• The statewide child fatality review committee.
• DCS.
• The Division of Family Resources.\textsuperscript{317}

\textsuperscript{311} Ind. Code § 31-33, \textit{et seq.}
\textsuperscript{312} A legally mandated public or private child protective agency may access the records if it is investigating a report of child abuse or neglect or treating a child or family that is the subject of a report or record.
\textsuperscript{313} An individual legally authorized to place a child in protective custody if: (1) the individual has before the individual a child whom the individual reasonably suspects may be a victim of abuse or neglect; and (2) the individual requires the information in the report or record to determine whether to place the child in protective custody.
\textsuperscript{314} An individual named in the report or record who is alleged to be abused or neglected or, if the individual named in the report is a child or is otherwise incompetent, the individual’s guardian ad litem or the individual’s court appointed special advocate, or both.
\textsuperscript{315} Each parent, guardian, custodian, or other person responsible for the welfare of a child named in a report or record and an attorney of the person described under this subdivision, with protection for the identity of reporters and other appropriate individuals.
\textsuperscript{316} The criminal check, conducted under Ind. Code § 31-26-5, Ind. Code § 31-34, or Ind. Code § 31-37, must be done to determine out-of-home placement for a child at imminent risk of placement, a CHINS, or a delinquent child, and must be disclosed to the court determining placement.
\textsuperscript{317} Records are to be shared with the Division of Family Resources if the investigation is substantiated and concerns an application for a license to operate, a person licensed to operate, an employee of, or a volunteer providing services at a childcare center or childcare home.
- A citizen review panel.
- The DCS ombudsman.
- The state superintendent of education
- The state child fatality review coordinator.
- Certain individuals who operate a child caring institution, group home, or private facility under certain circumstances.\(^{318}\)
- Certain individuals who operate a child-placing agency under certain circumstances.\(^{319}\)
- The National Center for Missing and Exploited Children.

Individuals authorized to receive information and records regarding child abuse and neglect may also be able to access information in the Child Protection Index, subject to certain limitations.\(^{320}\)

\*\* J. Confidentiality of recordings to child abuse hotline \*\*

Audio recordings of telephone calls made to the child abuse hotline are confidential and may be released only with a court order.\(^{321}\) If there is a complaint made to a prosecuting attorney that a false report has been made to the child abuse hotline, then the audio recording of the subject report shall be released without a court order to the prosecuting attorney upon request.\(^{322}\)

\*\* III. DEPARTMENT OF CHILD SERVICES - CHILD PROTECTION INDEX \*\*

\*\* A. Substantiated Reports of Child Abuse & Neglect \*\*

DCS maintains a centralized electronic child protection index to organize and access data regarding substantiated reports of child abuse and neglect that it receives from throughout Indiana. Information contained in the Child Protection Index is confidential.\(^{323}\) Use of automated report forms enables the Index to compile information gathered by family case managers to report the information and results of child abuse and neglect cases. Additionally, the Index is capable of same-day notification and transfer of information regarding new and closed cases to DCS.\(^{324}\)

Whenever a person enters a new child abuse or neglect report into the Index, it automatically searches for reports that match the name of the perpetrator, victim, and person who is legally responsible for the victim's welfare. If the Index identifies a previous substantiated report, the previous report is transferred to the county where the

\(^{318}\) Ind. Code § 31-33-18-2(24).
\(^{319}\) Ind. Code § 31-33-18-2(25).
\(^{320}\) Ind. Code § 31-33-26-16(4).
\(^{321}\) Ind. Code §31-33-18-5.
\(^{322}\) Id.
\(^{323}\) Ind. Code § 31-33-26-5. Index data include: (1) the child's name; (2) the child's date of birth; (3) the alleged perpetrator's name; (4) the child's mother's name; (5) the child's father's name; (6) the name of a sibling of the child; (7) the name of the child's guardian or custodian if applicable. Ind. Code § 31-33-26-6.
\(^{324}\) Ind. Code § 31-33-26-2; Ind. Code § 31-33-26-3.
new report originated. If a previous matching report is located, the Index provides a case history extract to the assigned caseworker.

After the DCS enters a substantiated child abuse or neglect report into the Index, the Department shall notify: (1) the parent, guardian, or custodian of the child who is named in the report as the victim of the child abuse or neglect; and (2) any person identified as the perpetrator, if other than the child's parent, guardian, or custodian; that the Department has entered the report into the Index. The notification requirements do not apply to substantiated reports if the Department approved the substantiated report after the court's determination that the child is a child in need of services (CHINS) based on: (1) the report of child abuse or neglect that names the perpetrator as the individual who committed the offense; or (2) facts presented to the court at a hearing in a CHINS case commenced under Ind. Code § 31-34 that are consistent with the facts and conclusions stated in the report.

B. Access to Index Information

DCS may not disclose information used in connection with the Child Protection Index unless otherwise authorized. An individual or organization may have access to information contained in the index as follows:

- A LEA may have access to a substantiated report for purposes of investigating or prosecuting the perpetrator.
- An authorized childcare provider, under certain conditions.
- A person documented in a report, with identifying information redacted.
- A person or an agency authorized to access information and reports of child abuse and neglect under Ind. Code § 31-33-18-2.
- Representatives of the Division of Family Resources may access and use any information relating to a substantiated report in connection with licensing a childcare center or childcare home.
- Representatives of the DCS may access and use any information relating to a substantiated report in connection with licensing a child caring institution, foster family home, group home, or child placing agency.

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325 Ind. Code § 31-33-26-16.
326 An authorized childcare provider may have access to Index information upon submitting a written consent for release of information signed by an individual who: (1) is employed by or who has applied for employment with the child care provider; (2) has volunteered to provide services to the child care provider in a capacity that would place the individual in direct contact, on a regular and continuous basis, with children who are or will be under the direct supervision of the child care provider; or (c) is at least eighteen years of age and resides in the home of the child care provider. The childcare provider may obtain any information relating to a substantiated report of child abuse or neglect that names the employee, applicant, volunteer, or household resident as the perpetrator of child abuse or neglect. Ind. Code § 31-33-26-16.
327 An individual may have access to any information that is contained in the Index pertaining to the person, with protection for the identity of the person who reported the child abuse or neglect and any other appropriate person.
IV. DEPARTMENT OF CHILD SERVICES – FOSTER CARE & PLACEMENT OF CHILDREN

A. Health Summary Records of Foster Children

These regulations apply to children receiving foster care services funded by DCS. The local DCS office of the county in which a foster child resides shall maintain a health summary record for the foster child. The provider who is responsible for the child’s ongoing care completes the child’s records, which include a summary of healthcare provided to the child and recommendations for the future healthcare needs of the child.  

The provider shall transfer the child’s health summary records to the local DCS office when the child is placed in foster care and whenever the child is returned to the natural parents, adopted, or placed in another permanent plan.

B. Medical Records of Foster Children

If medical care is provided to a child who receives foster care services, the individual who has custody of the child shall inform the provider that the provider is required to file a copy of the child’s medical care treatment record on a medical passport form with the local DCS office in which the child resides. The local office is responsible for

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328 DCS, a court having juvenile jurisdiction, and any party in a CHINS or juvenile delinquency case, under Ind. Code § 31-34 or Ind. Code § 31-37, may have access to and use any information relating to a substantiated report of child abuse or neglect in connection with a determination of an appropriate out of home placement for a child that requires a criminal history check.

329 DCS must provide any information contained in a substantiated report of child abuse or neglect that is included in the Index to an authorized agency of another state that requests information concerning a prospective foster or adoptive parent, or any other adult living in the home of a prospective foster or adoptive parent, in accordance with 42 U.S.C. § 671(a)(20)(C).

330 DCS must transmit to a national index of substantiated cases of child abuse or neglect established in accordance with 42 U.S.C. § 16990: (1) a copy of any substantiated report and related information entered into the Index; and (2) information concerning expungement or amendment of any substantiated report.

331 The Division of Family Resources may, to determine the eligibility of a childcare provider to receive a voucher payment, use information contained in the Index concerning whether a child was a CHINS based on a report of child abuse or neglect.


maintaining the medical care treatment records filed on behalf of children in foster care. The local DCS office must provide a copy of a foster child’s medical treatment records to the individual providing foster care to the child. The local office shall also provide a copy of an individual’s medical care treatment records to the individual if the individual is at least eighteen years old and is leaving foster care after having received foster care services for at least six months.

C. Medical Passport Program for Foster Children

Under the medical passport program established for foster children, the Department shall do the following:

- Maintain a record of medical treatment provided to a foster child.
- Facilitate a provider in providing appropriate care to a foster child.
- Allow foster parents to authorize routine and emergency medical care to a foster child.
- Provide forms for a provider to submit to a local DCS office.

A local DCS office shall issue the medical passport to a foster child when the child is placed in foster care. The passport must remain with the child until the child is returned to the natural parents, is adopted, or a legal guardian is appointed for the child. When a child is placed with the natural parents, adopted, or a guardian is appointed, the medical passport shall be returned to the local DCS office that issued the passport. The office will provide the medical passport to the child or the child’s legal guardian after the child’s CHINS or collaborative care case is closed.

V. DEPARTMENT OF CHILD SERVICES – FOSTER CARE

A. Case Plan

Federal law requires that a CHINS under the supervision of the county as the result of an out-of-home placement or through a dispositional decree has a case plan. DCS and each foster parent of a child will cooperate in the development of the case plan for the child. DCS must discuss with a foster parent of a child the foster parent’s role regarding: (1) rehabilitation of the child and the child’s parents, guardians, and custodians; (2) visitation arrangements; and (3) services required to meet the special needs of the child.

337 Ind. Code § 31-28-3-2.
340 Ind. Code § 31-34-15-6. For more information on case plans, see the Foster Care section.
A child’s case plan must be completed on a form prescribed by DCS that meets the specifications set by Title IV-E, including a description and discussion of the following: 341

- A permanent plan for the child and an estimated date for achieving the goal of the plan.
- The appropriate placement for the child based on the child’s special needs and best interests.
- The least restrictive family-like setting.
- Family services recommended for the child, parent, guardian, and custodian.
- Efforts already made to provide family services to the child, parent, guardian, or custodian.
- Efforts that are to be made regarding the provision of family services ordered by the court.
- A plan ensuring the educational stability of the child while in foster care.
- Any age appropriate activities that the child is interested in pursuing.

A minor who is at least fourteen years of age is entitled to participate in the creation of his or her own case plan. DCS must consult with the child in the development of the child’s case plan or transitional services plan. 342 If the Department determines that the child is unable to participate effectively in the development of a case plan or transitional services plan due to a physical, mental, emotional, or intellectual disability, the Department may excuse the child from this requirement by documenting in the plan the reasons for the child’s inability to participate. If the child refuses to participate in the development of the applicable plan for reasons other than a physical, mental, emotional, or intellectual disability, DCS must record the refusal and document efforts made to obtain the child's input or participation in the development of the plan. The child may select up to two individuals as child representatives to be involved with the development of the child's case plan or transitional services plan. 343

If the case plan is for a child in foster care who is at least fourteen years of age, it will include an acknowledgement signed by child that the child received a document regarding his or her rights, which were explained to him or her, including the right to: 344

- Education, health, visitation, and court participation.
- The right to be provided with the his or her medical documents and other medical information.
- The right to stay safe and avoid exploitation.

341 Ind. Code § 31-34-15-4; 45 C.F.R. § 1356.21. See Foster Care for more information about Title IV-E.
343 A child representative selected under this section must be at least eighteen years of age to be a member of the case planning team. The individual may not be a foster parent of or caseworker for the child. The child may select one of the child representatives who is a member of the child's case planning team to also be the child's adviser and, as necessary, advocate, with respect to the application of the reasonable and prudent parent standard to the child. DCS may reject an individual selected by a child to be a member of the case planning team at any time if the Department has good cause to believe that the individual would not act in the best interests of the child.
B. Legal Settlement of a Child

If DCS, or a probation department, places or changes the placement of a student, the Department of Child Services or probation department that placed the student shall notify both the school corporation where the student has legal settlement and the school corporation where the student will attend school of the placement or change of placement. If a student's placement will continue for the ensuing school year, DCS or the probation department must notify both the preceding and current school corporation. A child placed in a state licensed private or public health care facility or childcare facility may attend school in the school corporation in which a facility is located if placement was: (1) by or with the consent of the DCS; (2) by a court order; or (3) by a child placing agency.

If a student is placed at the consent of DCS, by a court order, or by a child placing agency, in a home that is not located in the school corporation in which the student has legal settlement, the student may attend school in either the school corporation in which the foster family home or other home is located or the school corporation in which the student has legal settlement. The Department and the student's foster parents or caretaker will make the determination concerning where the student attends school, unless that determination is made by a court that has jurisdiction over the student. If a licensed child placing agency is responsible for oversight of the foster family home in which the student is placed or for providing services to the student, DCS must consult with the licensed child placing agency concerning the determination of, or the recommendations made to the court concerning, where the student attends school.

C. Access to Court Reports

A child, and the child’s parent, foster parent, guardian, GAL, CASA, custodian, or any other person who is entitled to receive notice of the periodic case review or permanency hearing is entitled, at the court’s discretion, to receive a report prepared by the state for the juvenile court’s review of the court’s dispositional decree or prepared for use at a periodic case review or permanency hearing. If a court enters a decree that requires a person to refrain from direct or indirect contact with a child, the clerk of the court shall comply with procedures pursuant to protective orders.

D. Terminating Parental Rights

A permanency plan in a CHINS case may include the initiation of proceedings to terminate the parent-child relationship. If a petition to terminate the parent-child

347 Ind. Code § 31-34-22-2. If the court determines on the record that the report contains information that should not be released to any person entitled to receive a report, the court is not required to make the report available to the person. However, the court shall provide a copy of the report to the following: (1) each attorney or GAL representing the child; (2) each attorney representing the child's parent, guardian, or custodian; and (3) each CASA. The court may also provide a factual summary of the report to the child or the child's parent, foster parent, guardian, or custodian.
348 Ind. Code § 5-2-9-1.2 "County clerk" refers to the clerk of the circuit court. Ind. Code § 5-2-9-1.3.
relationship of a CHINS is filed, or the court authorizes the filing of such a petition, the Department will facilitate a potential adoptive placement for the child by posting the following non-identifying information on the Internet.\textsuperscript{349}

- The child's age, gender, and summary of the child's educational, social, and medical background, including known disabilities.
- The reason the child was removed from the child's home.
- Whether a person has expressed an interest in adopting the child.
- The name, address, and telephone number of a contact person where a person who may be interested in adopting the child may obtain further information about adopting the child.
- Whether a petition to terminate the rights of the child's parents has been authorized or filed, and whether the rights of the child's parents have been terminated.
- An address and telephone number of where a person who may be interested in adopting the child may obtain further information about adopting the child.

The information posted may not identify the name of the child, the child's biological or adoptive parents, a sibling of the child, or a caretaker of the child. Any relevant information must be updated after each of the child's periodic reviews following a petition to terminate parental rights. If the child is reunited with the child's family or adopted, DCS will remove the information from the Internet.

The Department shall, at least once a month, provide to the ISDH a list containing the names and dates of birth of children identified in DCS’s records to whom all of the following apply.\textsuperscript{350}

- The parent-child relationship between the child and a birth parent was terminated.
- The child is less than twenty-one years old.
- The name of the child has not been included previously in a list provided to ISDH pursuant to termination proceedings.

E. Adoption

Prospective adoptive parents need an approved Family Preparation Assessment to be recommended for adoption of a child who is a ward of the state.\textsuperscript{351} A local DCS office or the private agency that contracts with the county must determine approval status. Prospective adoptive parents need a written approval before a child can be placed for adoption through the court. Indiana law requires that adoptions be granted only after a period of supervision has been met. A local DCS office or private child-placing agency contracting with the county must supervise the child and adoptive family relationship. The length of the supervision period is at the discretion of the court; however, most courts require a standard time period of six months.

\textsuperscript{349} Ind. Code § 31-34-21-7.3. See the Parent-Child Relationships for more information on terminating parental rights.
\textsuperscript{350} Ind. Code § 31-25-2-22.
\textsuperscript{351} See the Adoption section for more information.
The consent of the child's mother, if she is living, is required by law to complete an adoption. The consent of a child's father who has established paternity or signed a paternity affidavit is also required. The DCS county office may have completed a court action to terminate the parent-child relationship so that a child who is a ward can be legally free for adoption; whether the child's parents have consented or not determines the type of court action that is necessary. DCS can determine if a child is legally free for adoption. Prospective adoptive parents will need the consent of the DCS office that has wardship of the child for the court proceedings, unless the court finds that the officer’s consent is not necessary to serve the best interests of the child.

Recent legislation has changed privacy and confidentiality of adoption records. The new bill repeals, effective July 1, 2016, provisions applicable to adoptions finalized before January 1, 1994, that prohibit the release of identifying adoption information unless consent to release the information is on file. It also provides that, beginning July 1, 2016, identifying adoption information may be released unless a non-release is on file, regardless of when the adoption was filed. Under current law, this provision applies only to adoptions filed after December 31, 1993.

F. Transitional Service Plan

DCS is responsible for implementing a program that provides a transitional service plan for an individual who: (1) has become or will become eighteen years old or emancipated while in foster care; and (2) is at least eighteen, but less than twenty-two, years old and is receiving collaborative care. The individual’s child representative may participate in the development of a transitional service plan for the individual.

“Transitional service plan” means a plan that provides information concerning the following to certain individuals receiving foster care:

- Education.
- Employment.
- Housing.
- Healthcare.
- Development of problem solving skills.
- Available local, state, and federal financial assistance.

The plan contains a document that:

- Describes the rights of individual with respect to:
  - Health, visitation, court participation.
  - The right to be provided with the individual’s medical documents and any other medical information.
  - And the right to stay safe from exploitation.
- Includes a signed acknowledgement by the individual that:
  - The individual has been provided with a copy of the plan.

If a minor who has been in foster care for at least six months turns eighteen, DCS must provide to the individual all of the following documents:\(^{354}\)

- An official or certified copy of the individual's birth certificate.
- A Social Security card.
- Insurance records.
- A copy of the individual's medical records.
- A driver's license or identification card issued by the state.

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\(^{354}\) Ind. Code § 31-34-21-7.6.
I. JUVENILE LAW – FEDERAL

A. Juvenile Justice

Indiana juvenile law is focused on the needs of the child, the child’s family, and society. Specifically, “[i]t is the policy of the State of Indiana and the purpose of the juvenile law to:

- recognize the importance of family and children in our society;
- recognize the responsibility of the state to enhance the viability of children and family in our society;
- acknowledge the responsibility each person owes to the other;
- strengthen family life by assisting parents to fulfill their parental obligations;
- ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation;
- remove children from families only when it is in the child's best interest or in the best interest of public safety;
- provide for adoption as a viable permanency plan for children who are adjudicated children in need of services;
- provide a juvenile justice system that protects the public by enforcing the legal obligations that children have to society and society has to children;
- use diversionary programs when appropriate;
- provide a judicial procedure that:
  - ensures fair hearings;
  - recognizes and enforces the legal rights of children and their parents; and
  - recognizes and enforces the accountability of children and parents;
- promote public safety and individual accountability by the imposition of appropriate sanctions; and
- provide a continuum of services developed in a cooperative effort by local governments and the state.”

The three (3) branches of the Indiana government have worked together to advance this policy through initiatives and legislative actions, such as:

- The Juvenile Detention Alternatives Initiative (JDAI), which has diverted many juvenile delinquents away from the Indiana Department of Correction and juvenile detention centers, and kept children connected to the resources in their community.
- Dual status youth legislation, which recognizes that many children may currently be, or were recently, involved in the juvenile delinquency and the children in need of services (CHINS) process, and provides holistic services for the child and the child’s family.

355 Ind. Code § 31-10-2-1.
356 Ind. Code § 31-41 et seq.
The Commission for Improving the Status of Children, which brings together stakeholders from across all facets of the juvenile system to solve problems and propose innovations.  

B. Privacy Rule & Part 2

Juvenile courts may become involved with mental health and substance abuse treatment systems in a number of ways, including diversion programs and therapeutic courts. To accomplish the shared goals of treatment success and public safety, these programs require an ongoing exchange of information between court personnel and treatment providers at every stage of the process.

The privacy provisions in HIPAA (“Privacy Rule”) and 42 C.F.R. Part 2 (“Part 2”) are of utmost concern to correctional institutions because they are required to offer health and medical services within their facilities, an obvious consequence of maintaining custody and confinement. Institutions may contract out for medical services which reduces their culpability under these federal regulations.

Neither HIPAA nor Part 2, respectively, require proceedings in a mental health court or a drug court to be closed. However, some courts have decided to close such hearings, despite the general presumption that criminal proceedings are open to the public. State law may give additional protections to youth involved in juvenile court proceedings.

Probation and parole agencies are not classified as “covered entities,” and thus are not regulated by the Privacy Rule or subsequent HIPAA provisions. Part 2 only applies to federally funded programs publicly identified as addiction treatment service providers.

II. JUVENILE LAW – INDIANA

A. Juvenile Court Jurisdiction

The juvenile court has exclusive original jurisdiction, including but not limited to, proceedings:

- In which a child is alleged to be a delinquent child, a Child In Need of Services (CHINS), or governing the detention of a child before a petition has been filed.
- Concerning paternity or to issue a protective order.

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357 Ind. Code § 2-5-36.
358 Other proceedings include those under Ind. Code § 31-25-5.8 and other proceedings as specified by law. Ind. Code § 31-30-1-1.
- Governing the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation of a child.
- In which a child less than sixteen years old is alleged to have committed an act that would be a misdemeanor traffic offense if committed by an adult, or proceedings in which a child is alleged to have committed an act that would be an offense if committed by an adult.  
- Guardianship proceedings for a child.
- For involuntary addiction treatment.
- Under the interstate compact for juveniles.
- In which a juvenile is alleged to have committed an intoxication violation.

Proceedings regarding a child who is alleged to be a CHINS or a delinquent child may commence in the county where the child resides, the act occurred, or the condition exists. The juvenile court may assign a case to a juvenile court in the county of a child’s residence at any time before the dispositional hearing upon the juvenile court’s own motion, the motion of a child, or the motion of the child’s parent, guardian, or custodian.

B. Concurrent Jurisdiction

The probate court has jurisdiction in all adoption matters. However, a juvenile court has concurrent jurisdiction with a probate court in proceedings to involuntarily commit children and to terminate the parent-child relationship. Unless otherwise authorized, DCS is responsible for giving all interested and relevant parties notice of a hearing or a proceeding in a CHINS case. The prosecuting attorney or the probation department of the juvenile court is responsible for giving all interested and relevant parties notice of a hearing or a proceeding in a delinquency case.

The juvenile court is responsible for reviewing the status of a child removed from a child’s home for abuse or neglect. If DCS determines that the best interest of the child requires action in the juvenile or criminal court, DCS will refer the case, or make a referral to the

361 The court does not have jurisdiction over a child who commits an infraction, violation of a municipal ordinance, or violation of a traffic law if the violation is a misdemeanor and the child is at least sixteen years old. It has jurisdiction over an act that would be an offense under Ind. Code § 9-30-5.
362 Guardianship proceedings for a child: (1) who has been adjudicated as a CHINS; (2) for whom a juvenile court has approved a permanency plan under Ind. Code § 31-34-21-7 that provides for the appointment of a guardian of the person; and (3) who is the subject of a pending CHINS proceeding under Ind. Code § 31-34.
364 Ind. Code § 31-30-1-1; Ind. Code § 9-30-5.
365 Additionally, the court may assign supervision of the child to a juvenile court in the county of the child’s residence. The assigning court must send the receiving court certified copies of all documents pertaining to the case. Ind. Code § 31-32-7-3.
367 Ind. Code § 31-30-1-5. The juvenile court’s jurisdiction is limited as described in Ind. Code § 12-26-1-4.
368 Ind. Code § 31-32-1-4.
369 Ind. Code § 31-33-16.
prosecuting attorney if criminal prosecution is appropriate.\textsuperscript{370} DCS shall then assist the juvenile court or the court having criminal jurisdiction during all stages of the proceedings.

Ind. Code § 31-34-10-3 requires the appointment of a GAL or CASA in most CHINS cases. The GAL and CASA are entitled to access confidential juvenile court records, including all reports relevant to the case, and any reports of examinations of the child’s parents or other person responsible for the child’s welfare.\textsuperscript{371}

C. Criminal Court & Juvenile Court Jurisdiction

These provisions apply to an offender who: (1) is less than eighteen years old, has been waived to a court with criminal jurisdiction, and charged is charged as an adult offender; or (2) is less than eighteen years old and does not come under the jurisdiction of a juvenile court because of the offense committed.\textsuperscript{372} A juvenile court may impose a sentence upon the conviction of an offender who is convicted or enters a guilty plea of committing a felony pursuant to motion of the court, the prosecuting attorney, or the offender’s legal representative,

However, the court may not impose a sentence on an offender until the prosecuting attorney has notified the victim of the felony of the possible sentencing and either the probation department of the court has reported its findings in a presentence investigation report or the Department of Correction has reported its diagnostic evaluations to the court. If the Department of Correction determines that there is space available for the offender in a juvenile facility of the Division of Youth Services of the Department, the sentencing court may order the offender to be placed in a juvenile facility under the custody of the Department of Correction.\textsuperscript{373}

D. Juvenile Court Personnel

The juvenile court judge appoints a chief probation officer, other probation officers, and employees as necessary to assist the probation department.\textsuperscript{374} The chief probation officer supervises the work of the probation department under the direction of the juvenile court. The duties of a probation officer include conducting investigations, preparing reports, supervising a child placed on probation, and keeping complete records of the officer’s work done in accordance with juvenile law.\textsuperscript{375}

The court reporter of a juvenile court reports the proceedings of the juvenile court in the same manner and under the same laws governing reporters for other courts of record.\textsuperscript{376}

\textsuperscript{370} Ind. Code § 31-33-14-1.  
\textsuperscript{371} Ind. Code § 31-33-15-2.  
\textsuperscript{372} Ind. Code § 31-30-4.  
\textsuperscript{373} The court may also: (1) impose an appropriate criminal sentence; (2) suspend the previous sentence; and (3) order the successful completion of the offender’s placement in a juvenile facility as a condition of the suspended criminal sentence. Ind. Code § 31-40-4-2.  
\textsuperscript{374} Ind. Code § 31-31-5-1.  
\textsuperscript{375} Ind. Code § 31-31-5-4.  
\textsuperscript{376} Ind. Code § 31-31-6-1.
Juvenile courts situated in adjacent counties may establish joint or multiple county GAL or CASA services in a CHINS or delinquency proceeding. A juvenile court may also contract with GAL or CASA services to represent the best interest of a child in a CHINS or delinquency proceeding.

The juvenile court may appoint a GAL, a CASA, or both, for the child at any time. The juvenile court may also appoint an early intervention advocate for a child who is participating in a preventative program for at-risk children. State law requires the appointment of a GAL or CASA in most CHINS cases. A GAL or CASA is not required to be an attorney, but the attorney representing the child may be appointed as the child’s GAL or CASA. An attorney may also represent a GAL or CASA. If necessary to protect the child’s interests, the court may appoint an attorney to represent the guardian ad litem or the court appointed special advocate. However, the court may only appoint one attorney. The GAL or CASA is an officer of the court for the purpose of representing the child’s interests. A GAL or CASA remains in service until the juvenile court enters an order for discharge. An early intervention advocate remains in service until the plan developed for an at-risk child is terminated.

377 Ind. Code § 31-31-7-1.
378 Ind. Code § 31-31-7-2; Ind. Code § 31-34; Ind. Code § 31-37.
380 Ind. Code § 31-32-3-1. A court may not appoint a party to the proceedings, an employee of a party to the proceedings, or a representative of a party to the proceedings as the: (1) guardian ad litem; (2) court appointed special advocate; (3) guardian ad litem program; or (4) court appointed special advocate program; for a child involved in the proceedings. Ind. Code § 31-32-3-2.
381 Ind. Code § 31-34-10-3.
382 Ind. Code § 31-32-3-4.
383 Ind. Code § 31-32-3-5.
385 Ind. Code § 31-32-3-8.
386 Ind. Code § 31-32-3-11.
**III. INDIANA JUVENILE COURT – JUVENILE COURT RECORDS**

**A. Juvenile Court Records**

All juvenile court records are confidential, including chronological case summaries, index entries, summonses, warrants, petitions, orders, motions, and decrees, and are only available as authorized by law. Confidentiality and privacy provisions apply to all juvenile court records, except the following:

- Records involving an adult charged with a crime or criminal contempt of court.
- Records involving a pregnant minor or her physician seeking to waive the requirement to obtain written parental consent.
- Records involving proceedings concerning a child born to parents who are not married to each other that pertain to: (1) paternity issues; (2) custody issues; (3) parenting time issues; or (4) child support issues, except that all paternity records created after July 1, 1941, and before July 1, 2014, are confidential.

A person who is the subject of records held by a juvenile court records may request the court to modify any information that the person believes is incorrect or misleading.

**B. Access Without Court Order**

The following entities are entitled to access juvenile court records without a court order:

- The judge, or any authorized staff member;
- Any party and the party's attorney;
- The judge of a court having criminal jurisdiction, or any authorized staff member, only if the record is to be used in a presentence investigation in that court;
- The prosecuting attorney, or any authorized staff member;
- The attorney for DCS, or any authorized staff member of a local DCS office, DCS, the IDOC, or the DCS ombudsman;

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389 Ind. Code § 16-34-2-4.
390 Ind. Administrative Rule 9(G)(2)(k).
393 The party and the party's attorney may only review the records applicable to the proceeding in which the person is a party. Ind. Code § 31-39-2-3.
Parents of a child whenever the custody or support of that child is an issue in an action for the dissolution of a marriage, a legal separation, or regarding the support of children and other dependents;\textsuperscript{397}

A parent, guardian, custodian, or any other suitable relative or person with a significant or caretaking relationship to the child whenever the child is the subject of a CHINS matter;\textsuperscript{398} and

A DCS employee, caseworker, or juvenile probation officer conducting a criminal history check to determine the appropriateness of an out-of-home placement for a child at-risk of imminent placement, a CHINS, or a delinquent child.\textsuperscript{399}

However, a child excluded from a hearing may be denied access to records pertaining to that subject matter.\textsuperscript{400} In addition, an individual who was denied access to a predisposition report or the records for a dispositional hearing may be denied access to records regarding that subject matter.\textsuperscript{401}

C. Access Pursuant to Court Order or Agreement

A juvenile court must provide the following entities access to court records:

\begin{itemize}
  \item An individual authorized as a person involved in a legitimate research activity. The court shall grant access to an individual if:
    \begin{enumerate}
      \item The person conducting the research provides written information about:
        \begin{enumerate}
          \item the purpose of the person's project, including any intent to publish the person's findings;
          \item the nature of the data the person seeks to collect and how the person intends to analyze the data;
          \item the records the person seeks to review; and
          \item the safeguards the person will take to protect the identity of the persons whose records the person will be reviewing;
        \end{enumerate}
      \item The proposed safeguards are adequate to protect the identity of each person whose records the researcher will review;
      \item The court informs the researcher of the provisions of Ind. Code §§ 31-39-1 and -2, including the criminal liability of a person who recklessly fails to protect the records; and
      \item An agreement is executed between the court and the person responsible for the research that specifies the terms of the researcher's use of the records.\textsuperscript{402}
    \end{enumerate}
  \item Any party to a criminal or juvenile delinquency proceeding may be granted access to juvenile court records, if the information will be used to impeach the person as a
\end{itemize}

\textsuperscript{398} Ind. Code § 31-34-21-4.
\textsuperscript{400} Ind. Code § 31-32-6.
\textsuperscript{401} Ind. Code § 31-39-2-3.
\textsuperscript{402} Ind. Code § 31-39-2-11.
witness or to discredit the person's reputation if the person places reputation in issue.\textsuperscript{403}

A court may grant the following individuals access to juvenile court records:\textsuperscript{404}

- Any person providing services to the child or the child’s family. However, access is limited to information on the child and the child’s family.\textsuperscript{405}
- Any person, at the discretion of the court, authorized as having a legitimate interest in the work of the court or in a particular case. An individual granted access to records pursuant to this exception is not bound by confidentiality protections and may disclose the records.\textsuperscript{406}
- The victim of a delinquent act or a member of the victim's family, if the information is to be used in a civil action against the child who committed the act or the child's parent.\textsuperscript{407}

\textbf{D. Interagency Exchange of Records}

The following entities and agencies may exchange records regarding a CHINS or delinquent child, if the disclosures do not otherwise violate state or federal law:\textsuperscript{408}

- A court.
- A law enforcement agency.
- The Indiana Department of Correction.
- DCS.
- Office of the Secretary of Family and Social Services.
- A primary or secondary school, including a public or nonpublic school.
- The DCS ombudsman.

\textbf{E. Access Order or Agreement}

Whenever the juvenile court grants access to its records, the court must include a copy of the access order in the files of any individual whose records were disclosed. However, if the access order is a general access order or an agreement created pursuant to a legitimate research activity, the copy of the access order must be placed in a file containing all general access orders or agreements. An individual who is at least eighteen years old may waive the restrictions on access to the person's records if the person does so in writing, stating the terms of the person's waiver.\textsuperscript{409}

\textsuperscript{403} The information described may only be used in criminal or juvenile delinquency proceedings in accordance with the Indiana Rules of Evidence. Ind. Code § 31-39-2-12.
\textsuperscript{405} Ind. Code § 31-39-2-9.
\textsuperscript{406} In exercising its discretion, the court shall consider that the best interests of the safety and welfare of the community are generally served by the public’s ability to obtain information about: (1) the alleged commission of an act that would be murder or a felony if committed by an adult; (2) the alleged commission of an act that would be part of a pattern of less serious offenses. Ind. Code § 31-39-2-10.
\textsuperscript{407} A person having access to the records pursuant to this exception may disclose the contents of the record if disclosure is necessary to prosecute any civil action. Ind. Code § 31-39-2-13.
\textsuperscript{408} Ind. Code § 31-39-9-1.
IV. INDIANA JUVENILE COURT – INTRODUCTION TO DELINQUENCY

A. Probation Officers

The judge of the juvenile court appoints probation officers and an appropriate number of other employees to assist the probation department. A probation officer shall, for the purpose of carrying out the juvenile law:

- Conduct such investigations and prepare such reports and recommendations as the court directs and keep a written record of those investigations, reports, and recommendations;
- Receive and examine complaints and allegations concerning matters covered by the juvenile law and make preliminary inquiries and investigations;
- Implement informal adjustments;
- Prepare and submit the predisposition report required for a dispositional hearing under the juvenile law;
- Supervise and assist by all suitable methods a child placed on probation or in the probation officer’s care by order of the court or other legal authority;
- Keep complete records of the probation officer’s work and comply with any order of the court concerning the collection, protection, and distribution of any money or other property coming into the probation officer’s hands; and
- Perform such other functions as are designated by the juvenile law or by the court in accordance with the juvenile law.

B. Juvenile Court Probation Department Records

The probation department for the juvenile court maintains information relating to delinquent children receiving juvenile law services. Juvenile court probation departments annually report to the Indiana Office of Court Services information the court’s probation department is required to maintain, including:

- The number of delinquent children who receive juvenile law services.
- Demographic information relating to the delinquent children receiving juvenile law services.
- All financial information relating to juvenile law services provided to delinquent children.

C. Juvenile Detention

410 Ind. Code § 31-31-5-1. The chief probation officer, under the direction of the juvenile court, shall supervise the work of the probation department. Ind. Code § 31-31-5-3.
411 Ind. Code § 31-31-5-4. Except for carrying a handgun as authorized under Ind. Code § 11-13-1-3.5, a probation officer does not have the powers of a law enforcement officer. Ind. Code § 31-31-5-5.
412 Ind. Code § 31-31-10-1.
413 Ind. Code § 31-31-10-2.
A juvenile detention facility is a secure facility that is only used for the lawful custody and treatment of juveniles. Secure facility, for purposes of the juvenile law, means a place of residence, other than a shelter care facility, that prohibits the departure of a child and is licensed by DCS. A "secure private facility" means a secure private facility other than the following: a juvenile detention facility, a facility operated by the IDOC, a county jail, or a detention center operated by a county sheriff.

A juvenile detention facility that is located on the same grounds or in the same building as an adult jail or lockup must meet standards of total separation between juvenile and adult facility spatial areas so that there could be no haphazard or accidental contact among juvenile and adult residents in the respective facilities.

Juvenile detention facilities shall be operated in accordance with rules adopted by the Indiana Department of Correction (IDOC). The term "secure detention facility" includes a juvenile detention center or a secure facility, including any separate unit or structure that is not licensed by DCS or located outside Indiana.

**D. Delinquent Children**

A child is a delinquent child if before becoming eighteen years old the child commits an act that would be an offense if committed by an adult, except for those acts in which the court lacks jurisdiction. These juveniles are referred to as "delinquents" or sometimes "crime delinquents."

A child is a delinquent child if the court determines that the child needs care, treatment, or rehabilitation that the child is not receiving, unlikely to accept voluntarily, and is unlikely to be provided or accepted without the coercive intervention of the court, and commits one of certain other acts that are offenses only if committed by a child before becoming eighteen years old. These special offenses involve leaving home without permission, being truant, being habitually disobedient, violating curfew, violating certain alcoholic beverage laws, and violating certain fireworks laws. These juveniles are sometimes referred to as "status offenders" or "status delinquents."

**E. Delinquency Petition**

A prosecuting attorney may file a delinquency petition with a juvenile court. The petition must be verified, and must give a concise statement of the facts upon which it is based. It must include the statutes giving the juvenile court jurisdiction and the statutes

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415 Ind. Code § 31-9-2-114.
417 Ind. Code § 31-31-8-2.
418 Ind. Code § 31-9-2-113.7; Ind. Code § 31-40-1-1.5.
421 Ind. Code § 31-37-10-1.
alleged to have been violated. It must also give identifying information on the juvenile and the juvenile’s parent, guardian, or custodian. The court may approve the filing of a delinquency petition upon finding probable cause to believe that the delinquent act was committed, and it is in the best interest of the child or the public. Once approved, the juvenile court may take the juvenile into custody, if supported by sworn testimony or affidavit.

F. Notice

The probation department shall send notice of the hearing to each of the following:

- The child’s parent, guardian, or custodian;
- An attorney who has entered an appearance on behalf of the child's parent, guardian, or custodian;
- The child or an attorney who has entered an appearance on behalf of the child; and
- A prospective adoptive parent named in a petition for adoption of the child if:
  1. Each consent to adoption of the child that is required has been executed in form and manner, and filed with the local office;
  2. The court having jurisdiction in the adoption case has determined that consent to adoption is not required from a parent, guardian, or custodian; or
  3. A petition to terminate the parent-child relationship between the child and any parent who has not executed a written consent to adoption has been filed and is pending.

- Any other person who the probation department has knowledge is currently providing care for the child and is not required to be licensed to provide care for the child.
- Any other suitable relative.

The court shall provide to an individual who is required to receive notice an opportunity to be heard and to make any recommendations to the court. The right to be heard and to make recommendations includes: (1) the right of a person to submit a written statement to the court that, if served upon all parties to the delinquency proceeding and the persons, may be made a part of the court record; and (2) the right to present oral testimony to the court and cross-examine any of the witnesses at the hearing.

G. Copies of Reports & Factual Summaries of Reports

A report prepared by the state for the juvenile court's review of the court's dispositional decree, or for use at a periodic case review or hearing, shall be made available to the child, and the child's parent, foster parent, guardian, guardian ad litem, custodian, court appointed special advocate, or any other person who is entitled to receive notice within a reasonable time after the report's presentation to the court or before the hearing. This includes allowing a copy of the child’s case plan to be provided to any agency that has

the legal responsibility or authorization to care for, treat, or supervise the child placed out
of home, and to anyone selected as a child representative.  

If the court determines on the record that the report contains information that should not
be released to any person who is entitled to receive a report, the court is not required to
make the report available to the person as required. However, the court shall provide a
copy of the report to the following:
   ▪ Each attorney or a guardian ad litem representing the child.
   ▪ Each attorney representing the child’s parent, guardian, or custodian.
   ▪ A court appointed special advocate.
   ▪ The court may also provide a factual summary of the report to the child or the
   child’s parent, foster parent, guardian, or custodian.  

V. INDIANA JUVENILE COURT – DELINQUENCY RECORDS

   A. Public Access to Juvenile Delinquency Proceeding Records

The records of the juvenile court are available without a court order to the public, subject
to certain restrictions, whenever a petition has been filed alleging that a child is
delinquent as the result of the specific alleged acts:  
   ▪ An act that would be murder or a felony if committed by an adult.
   ▪ An aggregate of two unrelated acts that would be misdemeanors if committed by
an adult if the child was at least twelve years of age when the acts were committed.
   ▪ An aggregate of five unrelated acts that would be misdemeanors if committed by
an adult if the child was less than twelve years of age when the acts were
committed.

Only the following information or documents may be released pursuant to this exception:
   ▪ The child’s name.
   ▪ The child’s age.
   ▪ The nature of the offense.
   ▪ Chronological case summaries.
   ▪ Index entries.
   ▪ Summonses.
   ▪ Warrants.
   ▪ Petitions.
   ▪ Orders.
   ▪ Motions, excluding motions concerning psychological evaluations and motions
concerning child abuse and neglect.
   ▪ Decrees.
   ▪ The child’s photograph, if the child is adjudicated as a delinquent child for the
specific act.

However, the identifying information of any child who is a victim or a witness shall remain confidential. The clerk of the juvenile court must place all other records of the child alleged to be or adjudicated as a delinquent child in an envelope marked "confidential" inside the court's file pertaining to the child. Records placed in the confidential envelope may only be released to certain authorized individuals. 426

B. Disclosure of Predispositional Reports

A probation department and the Division of Family Resources, a local office, and DCS may exchange information for use in preparing a predispositional report in accordance with federal law. 427 Predispositional reports are to be made available within a reasonable time before the dispositional hearing, unless a juvenile court determines on the record that the reports contain information that should not be released to the child or the child's parent, guardian, or custodian. 428 The court must provide a copy of the report to the child's attorney and GAL/CASA, and to each attorney representing the child's parent, guardian, or custodian. The court may provide a factual summary of the report to the child or the child's parent, guardian, or custodian.

C. Expungement of Records

These rules only apply to records created as a result of allegations that a child is a CHINS or delinquent child. 429 Any person may petition a juvenile court at any time to remove records pertaining to the person's involvement in juvenile court proceedings from: 430

- The court's files;
- The files of law enforcement agencies; and
- The files of any other person who has provided services to a child under a court order.

In considering whether to grant the petition, the juvenile court may review: 431

- The best interest of the child;
- The age of the person during the person's contact with the juvenile court or law enforcement agency;
- The nature of any allegations;
- Whether there was an informal adjustment or an adjudication;
- The disposition of the case;

426 The juvenile court judge and staff, Ind. Code § 31-39-2-2; the child and the child’s attorney, Ind. Code § 31-39-2-3; a criminal court judge using the record in a presentence investigation, Ind. Code § 31-39-2-4; the prosecuting attorney and staff, Ind. Code § 31-39-2-5; the attorney for DCS, and staff for DCS, IDOC, or the DCS ombudsman, Ind. Code § 31-39-2-6; the child’s parents when custody or support is in issue, Ind. Code § 31-39-2-7; and, other interested persons if the child waives the restrictions on access, Ind. Code § 31-39-2-10 and -15.
The manner in which the person participated in any court ordered or supervised services;
- The time during which the person has been without contact with the juvenile court or with any law enforcement agency;
- Whether the person acquired a criminal record; and
- The person's current status.

Records and information regarding child abuse or neglect may only be expunged if the probative value of the information is so doubtful as to outweigh the information's validity. However, information and records regarding child abuse or neglect records must be expunged if the allegations are unsubstantiated after an investigation conducted by DCS or as determined in a court proceeding.

If the court grants the expungement petition, the court shall order each law enforcement agency and each individual who provided treatment for the child under an order of the court to send the child’s records held by that entity to the court. The records may either be given to the child or destroyed.

If an individual whose records have been expunged brings an action that might be defended with the contents of the records, the defendant is presumed to have a complete defense to the action. For the plaintiff to recover on such an action, the plaintiff must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether the plaintiff had records created within the juvenile justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove the existence of the records in any manner compatible with the Indiana Rules of Evidence.

VI. INDIANA JUVENILE COURT – CHILDREN IN NEED OF SERVICES COURT RECORDS

Access to Court Reports

A child, and the child’s parent, foster parent, guardian, GAL, CASA, custodian, or any other person who is entitled to receive notice of the periodic case review or permanency hearing is entitled receive a report prepared by the state for the juvenile court’s review of the court’s dispositional decree or prepared for use at a periodic case review or permanency hearing. If the court determines on the record that the report contains information that should not be released to any person entitled to receive a report, the court is not required to make the report available to the person.

However, the court shall provide a copy of the report to the following:
- Each attorney or guardian ad litem representing the child.

Each attorney representing the child's parent, guardian, or custodian.
Each court appointed special advocate.
The court may also provide a factual summary of the report to the child or the child's parent, foster parent, guardian, or custodian.

**DUAL STATUS YOUTH**

**VII. INDIANA JUVENILE COURT – DUAL STATUS YOUTH**

**A. Introduction**

Children and families in court are potentially subject to two separate yet equally important systems. The dependency system, designed to address issues of parental abuse and neglect, and the delinquency system, designed to address acts of crime and delinquency. Youth with histories of involvement in both the child welfare and juvenile justice systems, or “dual status youth,” comprise a particularly complex at-risk and vulnerable population.

A new law on CHINS and delinquent children aims to coordinate services when a child is identified as both a CHINS and a delinquent. The law authorizes the juvenile court to order a dual status assessment to be conducted by a dual status assessment team and make recommendations to the juvenile court including which agency, DCS or the probation department, will be the primary supervising agency.

"Dual status child" means: 436

- A child who is alleged to be or is presently adjudicated to be a CHINS and is alleged to be or is presently adjudicated to be a delinquent child;
- A child who is presently named in an informal adjustment and who is either adjudicated a delinquent child or a CHINS;
- A child who was: (1) previously adjudicated to be a CHINS or was a participant in a program of informal adjustment; (2) under a wardship that had been terminated or was in a program of informal adjustment that had concluded before the current delinquency petition;
- A child who was: (1) previously adjudicated to be a delinquent child that was closed; and (2) a participant in a program of informal adjustment which was concluded prior to a CHINS proceeding; and
- A child who is eligible for release from commitment to the IDOC whose parent, guardian, or custodian cannot be located or is unwilling to take custody of the child, and for whom the IDOC is requesting a modification of the dispositional decree. 437

**B. Preliminary Inquiry**

437 Ind. Code § 31-30-2-4.
A person may give an intake officer written information indicating that a child is a CHINS. If the preliminary officer completing the preliminary inquiry has reason to believe that a child is a CHINS, the intake officer shall make a preliminary inquiry to determine whether the status of the child requires further action and complete a dual status screening tool on the child. The preliminary inquiry should include information on the child’s background, current status, and school performance.

The intake officer will send to the attorney for DCS a copy of the preliminary inquiry, to include a recommendation on whether the child should be referred to an assessment by a dual status team. The intake officer will recommend whether to:

- File a petition, or file and recommend referral;
- Informally adjust the case, or adjust the case and recommend referral;
- Refer the child to another agency; or
- Dismiss the case.

C. Dual Status Assessment Team

After a juvenile court has determined that a child is a dual status child, the juvenile court shall refer the child to be assessed by a dual status assessment team. "Dual status assessment team" means a committee assembled and convened by a juvenile court to recommend the proper legal course for a dual status child. All statements communicated in a dual status assessment team meeting are not admissible as evidence against the child in any judicial proceeding and not discoverable in any litigation.

A "dual status assessment" means a review by a dual status assessment team to assess a child's status, best interests, need for services, and level of the child’s needs, strengths, and risks. A facilitator shall convene the dual status assessment team to consider any allegations of abuse or neglect suffered by the child, and any allegation that the child is a delinquent child.

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438 “Dual status screening tool" means a factual review of a child's status and history conducted by the case manager or the probation officer to determine whether a child meets the criteria for being a dual status child. Ind. Code § 31-41-1-3.
439 Ind. Code § 31-34-7-1.
440 Ind. Code § 31-41-1-5.
441 Ind. Code § 31-41-1-4.
D. Team Membership

**TABLE 1: DUAL STATUS ASSESSMENT TEAM MEMBERSHIP**

<table>
<thead>
<tr>
<th>Shall Include</th>
<th>May Include</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>The case manager, if the child has a DCS case manager</em></td>
<td><em>The child, if the juvenile court deems the child is age appropriate</em></td>
</tr>
<tr>
<td><em>A representative of the DCS appointed by the local DCS director, if the child does not have a DCS case manager</em></td>
<td><em>The child’s public defender or attorney</em></td>
</tr>
<tr>
<td><em>A probation officer, if the child has a probation officer</em></td>
<td><em>The child’s parent, guardian, custodian, GAL/CASA, or foster parent; and his or her attorney</em></td>
</tr>
<tr>
<td><em>A probation officer appointed by the court, if the child does not have a probation officer</em></td>
<td><em>A prosecuting attorney</em></td>
</tr>
<tr>
<td><em>A meeting facilitator</em></td>
<td><em>The attorney for DCS</em></td>
</tr>
<tr>
<td></td>
<td><em>A representative from the IDOC</em></td>
</tr>
<tr>
<td></td>
<td><em>A school representative and an educator</em></td>
</tr>
<tr>
<td></td>
<td><em>A therapist</em></td>
</tr>
<tr>
<td></td>
<td><em>A service provider appointed by the team or juvenile court</em></td>
</tr>
</tbody>
</table>

E. Considerations

**TABLE 2: DUAL STATUS ASSESSMENT TEAM CONSIDERATIONS**

<table>
<thead>
<tr>
<th>Assessment Team Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The child's mental health, including any diagnosis;</td>
</tr>
<tr>
<td>11. The child's placement needs;</td>
</tr>
<tr>
<td>12. Restorative justice practices that may be appropriate;</td>
</tr>
</tbody>
</table>

444 The meeting facilitator may be a member of the dual status assessment or may be a person appointed by the juvenile court.
445 Ind. Code § 31-41-2-5.
2. The child's school records, including attendance and achievement level;
3. The child's statements;
4. The statements of the child's parent, guardian, or custodian;
5. The impact of the child's behavior on any victim;
6. The safety of the community;
7. The child's needs, strengths, and risks;
8. The need for a parent participation plan;
9. The efficacy and availability of services and community providers;
10. Whether appropriate supervision of the child can be achieved by the: (1) dismissal of a delinquency adjudication in deference to a CHIN adjudication; or (2) by combining a delinquency adjudication or informal adjustment with a CHINS petition
11. Whether a CHINS services petition or informal adjustment should be filed or dismissed;
12. Whether a delinquency petition or informal adjustment should be filed or dismissed;
13. The availability of coordinated services regardless of whether the child is adjudicated to be a CHINS or a delinquent child;
14. Whether the team recommends the exercise of dual adjudication and if so, designate a lead agency to provide supervision of the child; and
15. Any other information considered appropriate by the team.

F. Dual Status Team Reports

After a dual status assessment team has met to assess a child, the team shall designate a member to prepare the written report for the juvenile court and provide recommendations, including:

- Whether the court should proceed with an additional initial hearing regarding the CHINS petition and dismiss a pending delinquency petition or informal adjustment at the conclusion of a CHINS adjudication;
- Whether the court should proceed with an additional initial hearing regarding a delinquency petition and dismiss a pending CHINS petition or informal adjustment upon conclusion of the delinquency adjudication;
- Whether the court should proceed with an additional initial hearing and adjudication or informal adjustment concerning a CHINS petition and a delinquency petition;
- What agency should be the lead agency in a child's supervision; and
- Any other matters relevant to the child's best interests, including any services to be included in a dispositional decree.

G. Lead Agency Determinations

If the probation department of the juvenile court is designated as the lead agency, any recommendations made by the dual status assessment team must be consistent with the

446 Ind. Code § 31-37-1.
447 Id.
delinquency law funding provisions. If a child has been adjudicated to be a CHINS and a delinquent child, the court making the later adjudication may determine if DCS or the probation department of the juvenile court shall be the lead agency that will supervise the dual status child, unless the court adopts a contrary recommendation by a dual status assessment team.

In making a determination, the court shall consider:
- The child's social and family situation;
- The child's experiences with the DCS;
- The child's prior adjudications of delinquency;
- The recommendations of the dual status assessment team; and
- The needs, strengths, and risks of the child.

The court may require the DCS and the probation department of the juvenile court to work together in the supervision of a dual status child and for the purposes of filing a modification. If the probation department of the juvenile court is designated as the lead agency under this chapter, any recommendations made by the probation department must be consistent with delinquency law funding provisions. A court may order any service for a dual status child that is available to a CHINS or to a delinquent child.

**JUVENILE COURT - FAQs**

**VIII. INDIANA INFORMATION SHARING – JUVENILE JUSTICE RECORDS**

*A. Education*

**When may a juvenile court disclose confidential information and juvenile court records to an educational entity?**

The juvenile court may grant a school access to all or a portion of the juvenile court records of a child who is a student at the school, upon written request provided by a superintendent, the chief administrative officer of a nonpublic school, or an individual with administrative control within a charter school. The written request must establish that the juvenile court records are necessary for the school to serve the educational needs of the child whose records are being released, or to protect the safety or health of a student, an employee, or a volunteer at the school. A school or individual receiving juvenile court records must maintain the confidentiality of those records.

A court that releases information and records pursuant to this exception must: (1) provide notice to the child and to the child's parent, guardian, or custodian that the child's juvenile records were disclosed to the school; and (2) issue an order requiring the school to keep

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448 Ind. Code § 31-41-2-6.
449 Ind. Code § 31-41-3-1.
the juvenile court records confidential. A confidentiality order issued under does not
prohibit re-disclosure, as long re-disclosure is to:451

• Another school.
• A person as authorized by the child’s parent, guardian, or custodian.
• A court, any LEA, DCS and the DCS ombudsman, the IDOC, and the office of the
  Secretary of Family and Social Services.452

When must a representative from a child’s school be involved in the consultation
conference held to prepare a predispositional report for a CHINS?

If a CHINS is known to be eligible for special education services or placement, the
conference must include a representative from the child's school for the purpose of assisting
the preparation of the report in recommending the care, treatment, rehabilitation, or
placement of the child.453

B. Court’s Own Records

Which agencies, entities, or people are allowed to receive juvenile court records
without a court order?

• The judge, or any authorized staff member;454
• Any party and the party's attorney;455
• The judge of a court having criminal jurisdiction, or any authorized staff member,
  only if the record is to be used in a presentence investigation;456
• The prosecuting attorney, or any authorized staff member;457
• The attorney for DCS, or any authorized staff member of a local DCS office, DCS,
  the IDOC, or the DCS ombudsman;458
• Parents of a child, whenever the custody or support of that child is an issue in an
  action for the dissolution of a marriage, a legal separation, or regarding the support
  of children and other dependents;459 and
• A DCS employee, caseworker, or juvenile probation officer conducting a criminal
  history check to determine the appropriateness of an out-of-home placement for a
  child at risk of imminent placement, a CHINS, or a delinquent child.460

Which agencies, entities, and individuals may obtain juvenile court records with an
appropriate court order and a statutory exception?

451 Id.
453 Ind. Code § 31-34-18-1.3.
455 'The party and the party's attorney may only review the records applicable to the proceeding in which
  the person is a party. Ind. Code § 31-39-2-3.
An individual authorized as a person involved in a legitimate research activity.

Any party to a criminal or juvenile delinquency proceeding access, if the information will be used to impeach the person as a witness or to discredit the person's reputation if the person places reputation in issue.\textsuperscript{461}

Any person providing services to the child or the child’s family. However, access is limited to information on the child and the child’s family.\textsuperscript{462}

Any person, at the discretion of the court, authorized as having a legitimate interest in the work of the court or in a particular case. An individual granted access the records pursuant to this exception is not bound by confidentiality protections and may disclose the records.\textsuperscript{463}

The victim of a delinquent act or a member of the victim's family, if the information is to be used in a civil action against the child who committed the act or the child's parent.\textsuperscript{464}

\textit{C. Interagency Sharing}

\textbf{Which agencies are statutorily authorized to share records on a CHINS or delinquent child?}

The following entities and agencies may exchange records regarding a CHINS or delinquent child, if the disclosures do not otherwise violate state or federal law:\textsuperscript{465}

- A court.
- A law enforcement agency.
- The Indiana Department of Correction.
- DCS.
- Office of the Secretary of Family and Social Services.
- A primary or secondary school, including a public or nonpublic school.
- The DCS ombudsman.

\textbf{May a judge directly contact a local DCS office regarding a potential case of child abuse or neglect?}

When confronted with a potential case of child abuse or neglect, a judge who wishes to contact DCS should first use the child abuse hotline to report the suspected child abuse or neglect to the department. The judge may contact a local DCS office to report the suspected child abuse or neglect if the: (1) judge does not obtain a response from the child abuse

\textsuperscript{461} The information described may only be used in criminal or juvenile delinquency proceedings in accordance with the Indiana Rules of Evidence. Ind. Code § 31-39-2-12.

\textsuperscript{462} Ind. Code § 31-39-2-9.

\textsuperscript{463} In exercising its discretion, the court shall consider that the best interests of the safety and welfare of the community are generally served by the public’s ability to obtain information about: (1) the alleged commission of an act that would be murder or a felony if committed by an adult; (2) the alleged commission of an act that would be part of a pattern of less serious offenses. Ind. Code § 31-39-2-10.

\textsuperscript{464} A person having access to the records pursuant to this exception may disclose the contents of the record if disclosure is necessary to prosecute any civil action. Ind. Code § 31-39-2-13.

\textsuperscript{465} Ind. Code § 31-39-9-1.
hotline; or (2) the response the judge obtains from the hotline will not, in the opinion of the judge, serve the best interests of the child.\textsuperscript{466}

**May a juvenile court order a mental or physical examination of a child without prior parental consent?**

In cases involving investigations of known or suspected child abuse and neglect, the juvenile court may order a mental or physical examination of a child either with or without the custodial parent, guardian, or custodian being present. The court shall specify in the order the efforts DCS made to obtain the consent of the parent, guardian, or custodian.\textsuperscript{467}

**D. Involuntary Addiction Treatment**

**May a juvenile court judge disclose an order for involuntary addiction treatment to the minor’s parent, guardian, or custodian?**

Yes. In fact, the juvenile court judge must inform each parent, guardian, or custodian of the child that the parent, guardian, or custodian may be ordered to participate in any aspect of the child's treatment. Involuntary addiction treatment may include appropriate placement in an inpatient or outpatient program or facility. However, a minor ordered to complete inpatient addiction treatment may not be placed in a facility that is owned or operated by the state. The judge must also explain that the child’s parent, guardian, or custodian may be ordered to participate in any aspect of the child's treatment as well.\textsuperscript{468}

On a related note, medical tests showing the presence of HIV must be shared by the court with the Indiana State Department of Health if the child committed a sexual offense or an offense related to controlled substances that created a risk of transmission.\textsuperscript{469}

\textsuperscript{466} Ind. Code § 31-33-1-2.  
\textsuperscript{467} Ind. Code § 31-33-8-8.  
\textsuperscript{468} Ind. Code § 31-37-15.  
\textsuperscript{469} Ind. Code § 31-37-19-12.
GUARDIAN AD LITEM/CASA

I. DEFINITIONS

“Court Appointed Special Advocate,” for purposes of Ind. Code § 31-15-6, Ind. Code § 31-17-6, Ind. Code § 31-19-16, Ind. Code § 31-19-16.5, Ind. Code § 31-28-5, and the juvenile law, means a community volunteer who: (1) has completed a training program approved by the court; (2) has been appointed by a court to represent and protect the best interests of a child; and (3) may research, examine, advocate, facilitate, and monitor a child’s situation.470

“Court Appointed Special Advocate” for purposes of Ind. Code § 31-33, Ind. Code § 31-34, Ind. Code § 31-35 and Ind. Code § 31-37, means a community volunteer who: (1) has completed a training program approved by the court that includes training in: (A) the identification and treatment of child abuse and neglect; and (B) early childhood, child and adolescent development; as required by 42 U.S.C. § 5106a(b)(2)(B)(xiii); (2) has been appointed by a court to represent and protect the best interests of a child; and (3) may research, examine, advocate, facilitate, and monitor a child’s situation.471

“Guardian ad litem” for purposes of, Ind. Code § 31-15-6, Ind. Code § 31-19-16, Ind. Code § 31-19-16.5, Ind. Code § 31-28-5 and the juvenile law, means an attorney, a volunteer, or an employee of a county program designated under Ind. Code § 33-24-6-4 who is appointed by the court to: (1) represent and protect the best interests of a child; and (2) provide the child with services requested by the court, including: researching, examining, advocating, facilitating, and monitoring a child’s situation. A guardian ad litem who is not an attorney must complete the same court approved training program that is required for a court appointed special advocate under Ind. Code § 31-9-2-28.472

“Guardian ad litem” for purposes of Ind. Code § 31-33, Ind. Code § 31-34, Ind. Code § 31-35 and Ind. Code § 31-37, means an attorney, a volunteer, or an employee of a county program designated under Ind. Code § 33-24-6-4 who is appointed by the court to: (1) represent and protect the best interests of a child; and (2) provide the child with services requested by the court, including: researching, examining, advocating, facilitating, and monitoring a child’s situation and (3) has completed training appropriate for the person’s role, including training in: (A) the identification and treatment of child abuse and neglect; and (B) early childhood, child, and adolescent development; as required by 42 U.S.C. § 5106a(b)(2)(B)(xiii). A guardian ad litem who is not an attorney must complete the same court approved training program that is required for a court appointed special advocate under Ind. Code § 31-9-2-28.473

II. THE ROLE OF THE GAL/CASA ADVOCATE IN CHILD WELFARE CASES

471 Id.
473 Id.
As of July 1, 2005, a GAL, a CASA, or both must be appointed for every child in every CHINS case.\textsuperscript{474} The juvenile court may appoint a guardian ad litem or a court appointed special advocate, or both, for the child at any time.\textsuperscript{475} This statute gives the juvenile court authority to appoint a GAL/CASA in any juvenile court proceeding, including an informal adjustment or a juvenile delinquency proceeding. A GAL/CASA advocate is mandatory in an involuntary Termination of Parental Rights (TPR) action.\textsuperscript{476} The proceedings and requirements that apply in a CHINS case (including for the GAL/CASA) apply in a TPR cases as well.\textsuperscript{477} If the juvenile or probate court terminates the parent-child relationship and refers the matter to the court for adoption proceedings, the GAL/CASA must review the adoption plan and provide information to DCS and to the court as to what is in the best interests of the child regarding the plan and the plan’s appropriateness.\textsuperscript{478} A GAL/CASA can be appointed if a child receiving foster care requests sibling visitation.\textsuperscript{479} A GAL/CASA advocate may request that DCS establish sibling visitation.\textsuperscript{480} A GAL/CASA can also be appointed in a post adoption sibling contact proceeding and a post-adoption sibling contact proceeding.\textsuperscript{481} A GAL/CASA can also be appointed to an older youth who is seeking to receive or is receiving services under a collaborative care agreement.\textsuperscript{482} A GAL/CASA can also be appointed in a guardianship case.\textsuperscript{483} GAL/CASA advocates are legal parties to the proceedings and have all party rights.\textsuperscript{484} GAL/CASA advocates are officers of the court for purposes of representing the child’s best interests.\textsuperscript{485} A GAL/CASA advocate’s role is to represent and protect the best interests of the child.\textsuperscript{486} A GAL/CASA is immune from civil liability absent gross misconduct.\textsuperscript{487} A GAL/CASA advocate can request a no contact order for a child or for a foster family.\textsuperscript{488} At hearings after the CHINS fact-finding hearing, the GAL/CASA report can be admitted into evidence even if the report contains hearsay, as long as the hearsay is of probative value.\textsuperscript{489} A GAL/CASA can file a pre-dispositional report, a parental participation petition, and a request that the court modify its dispositional

\textsuperscript{474} Ind. Code § 31-34-10-3.  
\textsuperscript{475} Ind. Code § 31-32-3-1.  
\textsuperscript{476} Ind. Code § 31-35-2-7.  
\textsuperscript{477} Ind. Code § 31-35-1-2.  
\textsuperscript{478} Ind. Code § 31-35-6-2.  
\textsuperscript{479} Ind. Code § 31-28-5-5.  
\textsuperscript{480} Ind. Code § 31-28-5-3.  
\textsuperscript{482} Ind. Code § 31-28-5-8-6.  
\textsuperscript{483} Ind. Code § 29-3-2-3; Ind. Code § 29-3-3-6.  
\textsuperscript{484} Ind. Code § 31-34-9-7.  
\textsuperscript{485} Ind. Code § 31-32-3.7.  
\textsuperscript{486} Ind. Code § 31-32-3-6.  
\textsuperscript{487} Ind. Code § 31-32-3-10.  
\textsuperscript{488} Ind. Code § 31-34-25-1.  
\textsuperscript{489} Ind. Code § 31-34-19-2 (pre-dispositional report); Ind. Code § 31-34-22-3 (periodic case review report); Ind. Code § 31-34-23-4 (dispositional modification report).
A GAL/CASA advocate serves until the juvenile court enters an order for discharge. The GAL/CASA is also a party to an appeal of a CHINS or TPR case.

### III. Access to Documents

GAL/CASAs have access to all the records concerning the case. This includes photographs, x-rays, or physical examination reports for use in the court proceeding regarding a report of child abuse or neglect. The GAL/CASA has access to all reports relevant to the case and any reports of examinations of the child’s parents or other persons responsible for the child’s welfare. The GAL/CASA has access to all information obtained, reports written and other information in the possession of DCS regarding an abused and neglected child. As a party to the case, the GAL/CASA also has access to the records of a law enforcement agency involving allegations that a child is a delinquent child or a child in need of services. The GAL/CASA is also provided access to the child’s school records in the Court Order Appointing GAL/CASA. All juvenile court records are confidential and, therefore, cannot be shared by GAL/CASA with any person who is not a party to the juvenile court case.

The GAL/CASA is appointed by an order at or after the initial hearing in a CHINS proceeding. A sample Order Appointing GAL/CASA is included in the Appendices. In the order of appointment, the court authorizes the GAL/CASA to have access to all hospital, school, police, medical, mental health, DCS and other records of the child or the child’s parents, without the consent of the child or the parents, so that the GAL/CASA can advocate for the child’s best interests. The order also typically states that the GAL/CASA must maintain the confidentiality of any information received from any source and will not disclose the information to anyone except the court and parties to the case. The order also requires all parties and their attorneys to cooperate with the GAL/CASA and to allow the GAL/CASA access to the child. Finally, the order requires parties to notify the GAL/CASA of any hearings, orders, conferences, staffings, or other proceedings concerning the child, and to notify the GAL/CASA prior to any action taken on behalf of the child by any party.

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490 Ind. Code § 31-34-18-1 (pre-dispositional report); Ind. Code § 31-34-16-1 (parental participation petition); and Ind. Code § 31-34-23-1 (modification of dispositional order).
491 Ind. Code § 31-32-3-8.
492 Ind. Appellate Rule 17(A).
496 Ind. Code § 31-33-18-2(7).
498 Ind. Code § 31-39-1-2; see also the GAL/CASA State Office Code of Ethics, paragraph 9.
499 Ind. Code § 31-34-10-3.
DEPARTMENT OF CORRECTION

I. DEPARTMENT OF CORRECTION – FEDERAL

A. HIPAA & the Privacy Rule

The Privacy Rule defines a correctional institution as any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program operated by or under contract to federal, state, municipal, or Native American tribal government. The institution must exist for the confinement or rehabilitation of individuals charged with or convicted of an offense.\(^{500}\)

Correctional facilities are generally not “covered entities” under HIPAA unless they declare themselves as such. However, many correctional facilities, as well as state departments of correction, have defined themselves as covered entities. Clinical staff who work for a correctional facility, whether employed directly by the correctional facility or under contract, meet the definition of healthcare provider under HIPAA. Healthcare service agencies contracting with correctional facilities must independently determine their status as a covered entity.

B. Lawful Disclosures

The Privacy Rule’s “lawful custody exception” explicitly allows correctional institutions to access inmates’ health information without consent if the information is necessary to provide health care to the individual or to ensure the safety and security of the inmate and others housed or working in the facility. This exception also applies to any emergency in which staff of a service provider agency are at risk (within the institution or the community), relevant to law enforcement and probation/parole agents as well. HIPAA liability is contingent largely on whether the institution in question is deemed a “covered entity.” A covered entity is: (1) a health plan; (2) a health care clearinghouse; or (3) a health care provider that transmits any health information in electronic form in connection with a transaction covered by HIPAA.

II. INDIANA DEPARTMENT OF CORRECTION – CORRECTIONAL RECORDS

A. Confidential Information

“Personal information” means any information that describes, locates, or indexes anything about an individual or that affords a basis for inferring personal characteristics about an individual including, but not limited to, his education, financial transactions, medical history, criminal or employment records, finger and voice prints, photographs, or

\(^{500}\) 45 C.F.R. § 164.512(k)(5).
his presence, registration, or membership in an organization or activity or admission to an institution.  

The IDOC is tasked with collecting, maintaining, and using only personal information that is relevant and necessary to accomplish its statutory purposes. All juvenile records are considered confidential, whether generated by IDOC or obtained from other agencies.  

B. Mandatory Disclosures

The IDOC may deny the person who is the subject of the records, and other individuals, access to information classified as confidential. However, confidential information shall be disclosed:  

- Upon the order of a court;  
- To employees of the Department who need the information in the performance of their lawful duties;  
- To other authorized agencies;  
- To the governor;  
- To authorized individuals for legitimate research purposes;  
- To the IDOC ombudsman bureau;  
- To a person who is or may be the victim of inmate fraud, if the commissioner determines that the interest in disclosure overrides the interest to be served by nondisclosure;  
- If the commissioner determines there exists a compelling public interest for disclosure overriding the interest to be served by nondisclosure;  
- To an attorney representing the juvenile, or the juvenile’s parent or legal guardian, unless such release is contrary to the health, welfare, or safety of the juvenile.  

The IDOC shall disclose information classified as confidential to a physician, psychiatrist, or psychologist designated in writing by the person who is the subject of the information. The IDOC may disclose confidential information to the following:  

- A provider of sex offender management, treatment, or programming.  
- A provider of mental health services.  

501 Ind. Code § 4-1-6. “Confidential” means information that has been so designated by statute or by promulgated rule or regulation based on statutory authority. “Personal information system” means any recordkeeping process, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.  

503 Ind. Code § 11-8-5-2.  
504 210 Ind. Admin. Code 1-6-6(a).  
505 Ind. Code § 4-1-6-2(m); Ind. Code § 4-1-6-8.5.  
506 Ind. Code § 4-1-6-8.6(b), and 210 Ind. Admin. Code 1-6-7.  
507 Ind. Code § 11-11-1.5.  
509 Ind. Code § 4-1-6-1.  
510 210 Ind. Admin. Code 1-6-6(b).
Any other service provider working with the Department to assist in the successful return of an offender to the community following the offender's release from incarceration.

A person or agency providing lawful service on behalf of IDOC, or related to or on behalf of a juvenile, so long as the request is in writing, the release is limited to documents related to the service performed, and the direct benefit to the juvenile is clearly indicated.511

A law enforcement agency performing a criminal investigation.512

However, these regulations do not prohibit the ISPD from sharing information available on the Indiana sex offender registry with another entity.

511 210 Ind. Admin. Code 1-6-6(c).
512 210 Ind. Admin. Code 1-6-6(c)(3).
LAW ENFORCEMENT

I. INTRODUCTION

Access law enforcement records involving allegations that a child is a delinquent child or a child in need of services is regulated by the Juvenile Code. All law enforcement records under this section are confidential and only available as authorized by law. Each Law Enforcement Agency (LEA) is responsible for protecting confidential records from unauthorized disclosures.

Law enforcement agencies must interpret a broad exception to the law requiring the release of public records when the record is an investigatory record. An investigatory record means information compiled in the course of the investigation of a crime. The practical application of the ‘investigatory record’ exception used by law enforcement agencies varies significantly – some release everything, while others release only what is required by law.

A. Access to Records

A LEA’s records are available without specific permission from the agency head to the following entities:

- A law enforcement officer acting within the scope of the officer's lawful duties.
- The judge of the juvenile court or any authorized staff member.
- Any party to a juvenile court proceeding and the party’s attorney, limited to the records applicable to the proceeding in which the person is a party.
- The judge of a court having criminal jurisdiction or any authorized staff member, if the record is to be used in a presentence investigation in that court.
- The prosecuting attorney or any authorized member of the staff of the prosecuting attorney.
- The attorney for DCS or any authorized staff member.
- Any authorized staff member of the DCS ombudsman.

The head of a LEA may grant the following individuals access to the agency’s confidential records:

514 Ind. Code §31-39-4-1 et seq.
515 Ind. Code §5-14-3-4(b) (1).
516 Ind. Code §5-14-3-2.
519 However, a child excluded from a hearing by Ind. Code §31-32-6 and a person who was denied access to a pre-dispositional report or the records for a dispositional hearing may be denied access to the records pertaining to that subject matter. Ind. Code §31-39-4-4.
520 Ind. Code §31-39-4-5.
Any individual having a legitimate interest in the work of the agency or in a particular case. An individual accessing records pursuant to this exception is not bound by confidentiality provisions and may disclose the contents of the records. Any authorized individual involved in a legitimate research activity.

In exercising discretion, the head of a law enforcement agency will consider that the best interests of the safety and welfare of the community are generally served by the public's ability to obtain information about: (1) the identity of anyone charged with the alleged commission of any act that would be murder or a felony if committed by an adult; and (2) the identity of anyone charged with the alleged commission of an act that would be part of a pattern of less serious offenses.

The head of a LEA must grant the following individuals access to the agency’s confidential records:

- Any party to a criminal or juvenile delinquency proceeding, if the information may be used to impeach the person as a witness or to discredit the person’s reputation.

If victim of a delinquent act asks a LEA if there is probable cause to believe that a specified child committed the act, the head of the agency must release the child's name to the victim for the purpose of pursuing civil action for damages.

If a child was named in a written report of a crime as a victim of the crime or in a written report of a crime, and the law enforcement agency that receives the report reasonably believes that the child may be a victim of a crime, the law enforcement agency that receives the report shall make a reasonable attempt to notify the parent, guardian, or custodian of the child UNLESS the parent, guardian, or custodian is the alleged perpetrator of the crime; or notification would not be in the best interests of the child due to the relationship of the parent, guardian, or custodian with the alleged perpetrator of the crime.

For certain offenses, law enforcement is required to provide certain information to the chief administrative officer of the school in which the child was enrolled. Law enforcement agencies may not disclose information that is confidential under state or federal law to a school.

**B. Public Access to Juvenile Delinquency Records**

527 The information may only be used in criminal or juvenile delinquency proceedings in accordance with the laws of evidence. Ind. Code §31-39-4-10.
528 Ind. Code §31-39-4-11.
530 Ind. Code §31-37-4-3(b).
531 Ind. Code §31-37-4-3(d).
This section applies to all law enforcement records involving allegations that a child is a delinquent child. The following information contained in law enforcement records involving allegations of delinquency that would be a crime if committed by an adult is considered public information:

- The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location, and property involved.
- The identity of any victim.
- A description of the method of apprehension.
- Any instrument of physical force used.
- The identity of any officers assigned to the investigation, except for the undercover units.
- The age and sex of any child apprehended or sought for the alleged commission of the offense.
- The identity of a child, if the child is apprehended or sought for the alleged commission of an offense over which a juvenile court does not have jurisdiction.
- Records relating to the detention of any child in a secure facility.

All other LEA records are confidential, including those involving the investigation of a status offense. Status offenses are acts that are only considered unlawful because the person is under the age of 18. Examples of status offenses include leaving home without permission, violating the compulsory school attendance law, habitual disobedience, violating curfew, certain acts involving minors and alcoholic beverages and certain acts involving minors and fireworks. A child may also be a delinquent child due to the commission of a status offense if the child is found to be in need of care, treatment, or rehabilitation that the child is not receiving, is unlikely to accept voluntarily, and is unlikely to be provided with or accept without the coercive intervention of the court.

C. Juvenile Custodial Interrogation Records

A recording of juvenile custodial interrogation is confidential at the discretion of the court. However, a LEA retains a copy of the recording if:

- The juvenile is adjudicated a delinquent child for committing an act that would be a crime if committed by an adult, until the juvenile has exhausted all appeals related to the adjudication.

532 Ind. Code §31-39-3-1.
534 Ind. Code §31-30-1-2; Ind. Code §1-30-1-4; Ind. Code §31-30-3-3.
537 Ind. Code §31-37-2-1 et seq.
538 Ind. Code §31-37-2-1 et seq.
539 Ind. Code §31-37-2-1.
540 Ind. Code §31-30.5-1-5.
541 Ind. Code §31-30.5-1-4.
The juvenile is convicted of a felony as an adult, until:
  o The felony conviction is final.
  o The juvenile has exhausted all direct and habeas corpus appeals related to
    the conviction.
  o Until a prosecution of the juvenile for a felony is barred by law.

D. Fingerprints or Photographs of a Child

A LEA may take and file the fingerprints or photographs of a child if the child is taken
into custody for an act that would be a felony if committed by an adult, and the child was
at least fourteen years old when the act was allegedly committed.\(^{542}\)

A juvenile court may, by general order, limit fingerprinting and photographing of
children to situations in which children are charged with specified offenses. Fingerprint
and photograph files of children must be separated from those of adults.\(^{543}\) The files are
subject to the confidentiality provisions applicable to all law enforcement records
involving allegations that a child is a CHINS or a delinquent child.\(^{544}\) Each LEA shall
take appropriate actions to protect these records from unauthorized disclosure, including
storing them in such a way that persons without authority to access juvenile records
cannot gain access to them.\(^{545}\)

E. Right to Request the Destruction of a Child’s Fingerprints or Photograph

A LEA must destroy or deliver to the child any of the child’s fingerprints or photographs
held by the agency upon written request of the child or the child’s parent, guardian, or
custodian, if:\(^{546}\)
  ▪ The child was taken into custody and no petition was filed against the child;
  ▪ The petition was dismissed because of mistaken identity;
  ▪ The petition was dismissed because no delinquent act was actually committed; or
  ▪ The petition was dismissed for lack of probable cause.

However, if the child has a record of prior arrests or if another charge is pending against
the child, the law enforcement agency does not have to destroy the child’s fingerprints or
photographs.

F. Access to Law Enforcement Recordings

Law enforcement recordings (“recordings”) are defined as audio, visual, or audiovisual
recordings of a law enforcement activity captured by a camera or other device that are
provided to or used by a law enforcement officer in the scope of the officer’s duties, and
are designed to be worn by a law enforcement officer or attached to the vehicle or

\(^{542}\) Ind. Code §31-39-5.
\(^{544}\) Ind. Code §31-39-3.
\(^{545}\) Ind. Code §31-39-3-4.

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transportation of a law enforcement officer. Under all circumstances, in order to inspect a recording every “requestor” must submit a request that conforms to Indiana law. Importantly, the request must particularly provide the following information about the law enforcement activity:

- The date and time;
- The specific location; and,
- The name of at least one (1) person, other than a law enforcement officer, directly involved.

Recordings are able to be inspected, but only by certain individuals and under certain circumstances. The following is the list of these “requestors” able to inspect such recordings:

- Individuals depicted in the recording;
- Certain relatives, an attorney, or a personal representative of a deceased individual depicted;
- A legal guardian or attorney of an incapacitated individual depicted;
- An owner, tenant, lessee, or occupant of real property, if the interior of the property is depicted;
- A victim of a crime if events in the recording are relevant to the crime committed against the victim; or,
- Someone that suffers personal; injury or property loss if events in the recordings are relevant to the loss.

If one of these requestors has submitted the proper request the public agency shall allow the record to be inspected at least twice while in the presence of the requestor’s attorney. The recording cannot be copied or recorded during the inspection. Some information in some recordings may be obscured.

A public agency shall permit inspection and copying of a recording unless it finds that access to or dissemination of a recording:

- Creates a significant risk of harm to anyone or the general public;
- Is likely to interfere with a person to receive a fair trial due to creating prejudice or bias concerning the person; or,
- May affect an ongoing investigation, if the recording is an investigatory record;

If the public agency with a recording is not the state or a state agency, these recordings must be kept, unaltered, for at least one hundred ninety (190) days after the date of recording. For the state or state agencies, this period is for two hundred eighty (280) days. If one of the listed requestors notifies the record holder that the recording is to be

547 Ind. Code §5-14-3-2(k) Version a.
548 Ind. Code §5-14-3-3(i).
549 Ind. Code §5-14-3-5.1(a).
550 Ind. Code §5-14-3-5.1(c).
551 Ind. Code §5-14-3-5.2(a).
552 Ind. Code §5-14-3-2(i) Version b.
553 Ind. Code §5-14-3-5.3(a).
554 Ind. Code §5-14-3-5.3(b).
retained, or files a formal or informal complaint with the record holder, within one hundred eighty (180) days for non-state/state agencies, or two hundred seventy (270) days for the state/state agencies, the recording shall be kept, unaltered, for at least two (2) years after the date of recording.\textsuperscript{555} If the recording is used in a civil, criminal, or administrative proceeding the public agency shall retain it until final disposition of all appeals and order of the court.\textsuperscript{556}

\textsuperscript{555}Ind. Code §5-14-3-5.3(c)(1); Ind. Code §5-14-3-5.3(c)(2).
\textsuperscript{556}Ind. Code §5-14-3-5.3(c)(3).
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• 511 IAC 7-32-70, “Parent” defined
• 511 IAC 7-32-73, “Personally identifiable information” defined
• 511 IAC 7-32-77, “Public agency” defined
• 511 IAC 7-32-92, “Student with a disability” defined
• 511 IAC 7-32-100, “Transition services” defined
• 511 IAC 7-32-105, “Ward of the state” defined

511 Ind. Admin. Code 7-33, General Provisions
• 511 IAC 7-33-2, Public schools’ special education programs; organizational and administrative structures
• 511 IAC 7-33-3, Other public agencies’ special education programs; state level interagency agreements

511 Ind. Admin. Code 7-38, Confidentiality of Information
• 511 IAC 7-38-1, Access to and disclosure of educational records

511 Ind. Admin. Code 7-39, Educational Surrogate Parents
• 511 IAC 7-39-2, Method for assigning an educational surrogate parent

511 Ind. Admin. Code 7-40, Identification and Evaluation
• 511 IAC 7-40-1, Child find
• 511 IAC 7-40-4, Initial educational evaluation; public agency written notice and parental consent

511 Ind. Admin. Code 7-41, Eligibility Criteria
• 511 IAC 7-41-7, Emotional disability

511 Ind. Admin. Code 7-42, Determination of Special Education Services
• 511 IAC 7-42-3, Case conference committee participants
• 511 IAC 7-42-6, Developing an individualized education program; components and parent copy

511 Ind. Admin. Code 7-43, Related Services; Transitions; Transfer of Rights
• 511 IAC 7-43-1, Related services
• 511 IAC 7-43-4, Transition individualized education program
• 511 IAC 7-43-6, Appointment of an educational representative

511 Ind. Admin. Code 7-45, Complaints, Mediation, and Due Process Procedures
• 511 IAC 7-45-3, Due process hearing requests
• 511 IAC 7-45-6, Resolution meeting
• 511 IAC 7-45-7, Conducting the hearing

844 Ind. Admin. Code 5-2, Standards of Professional Conduct
• 844 IAC 5-2-3, Information to patient

844 Ind. Admin. Code 5-3, Appropriate Use of the Internet in Medical Practice
• 844 IAC 5-3-5, Informed consent
• 844 IAC 5-3-6, Medical records

868 Ind. Admin. Code 1.1-11, Code of Professional Conduct
• 868 IAC 1.1-11-4.2, Record keeping; discontinuation of practice