

**RULES  
OF THE  
TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES  
CHILD PROTECTIVE SERVICES**

**CHAPTER 0250-07-09  
CLASSIFICATION AND REVIEW OF REPORTS OF CHILD ABUSE/NEGLECT  
AND  
DUE PROCESS PROCEDURES FOR RELEASE OF CHILD ABUSE/NEGLECT RECORDS**

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**0250-07-09-.01 DEFINITIONS.**

- (1) "Abuse" exists when a child victim is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caregiver.
- (2) "Adult" means any person eighteen (18) years of age or older.
- (3) "Child victim" means a person under the age of eighteen (18) years of age or a delinquent youth in the Department's custody under the age of nineteen (19).
- (4) "Child sexual abuse" shall have the same meaning as set out in T.C.A. § 37-1-602(a) (2016 and as amended).
- (5) "Commissioner's designee" means the person designated by the Commissioner of the Tennessee Department of Children's Services to act pursuant to this rule.
- (6) "Covered Educational Entities" means the Department of Education, any local board of education, and any Local Educational Agency (LEA).
- (7) "Covered Individual" means any individual who is currently employed by or conditionally offered employment with one of the Covered Educational Entities.
- (8) "Department" means the Tennessee Department of Children's Services.
- (9) "Minor Perpetrator" means a perpetrator of any form of child abuse or neglect who was under the age of eighteen (18) at the time of substantiation and case closure. A minor perpetrator will follow all procedures for perpetrator throughout these Rules unless otherwise specifically noted.
- (10) "Neglect" means the actions or omissions of a parent, relative, guardian, or caregiver which subject a child victim to actual or threatened harm, including, but not limited to, conduct which leads to a child suffering from any of the conditions listed in the definition of "dependent and neglected child" set out at T.C.A. § 37-1-102(b)(13) (2016 and as amended).

(Rule 0250-07-09-.01, continued)

- (11) "Record" includes files, reports, records, communications and working papers related to investigations or providing services, video tapes, photographs, or electronic mails.
- (12) "Severe child abuse" shall have the same meaning as set out in T.C.A. § 37-1-102 (2016 and as amended).
- (13) "Substantiated" means the classification assigned to an individual determined to be a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect. The term substantiated also encompasses synonymous terms set out in rules, policy, and statute, including, but not limited to, "indicated", "founded", or other terms signifying the individual was determined to be the perpetrator of child abuse or neglect.
- (14) "Unsubstantiated" means the classification assigned to an individual who is not determined to be a perpetrator of abuse, severe child abuse, child sexual abuse or neglect. The term unsubstantiated encompasses synonymous terms set out in rules, policy, and statute, including, but not limited to, "unfounded" or other terms signifying the individual has not been determined to be the perpetrator of child abuse or neglect.

**Authority:** T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, 37-5-112(a), and 37-5-512(a). **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-07-09-.10 filed and effective March 25, 1999. Repeal and new rules filed September 11, 2006; effective November 25, 2006. Emergency rule filed July 19, 2013; effective through January 15, 2014. On January 16, 2014, the rule reverted to its previous status. Amendments filed October 6, 2017; effective January 4, 2018.

#### **0250-07-09-.02 SCOPE OF RULES.**

- (1) These Rules establish procedures to review substantiated cases and to release the identity and other related information of a perpetrator in substantiated reports of any form of abuse or neglect.
- (2) A release pursuant to these Rules shall be for purposes of protecting children from any form of child abuse or neglect and for purposes directly connected with the administration of T.C.A. §§ 37-1-401 et seq., 37-1-601 et seq., 49-1-1101 et seq., and 71-3-501 et seq.
- (3) These Rules shall not apply when the Department intends to release or has released records or information related to child abuse or neglect to any of the following:
  - (a) Any state or federal law enforcement agency investigating a report of known or suspected child abuse or neglect or any crimes involving children;
  - (b) Any state District Attorney, Attorney General, or United States Attorney or their authorized assistant involved in investigating or prosecuting crimes against children;
  - (c) Any state or federal grand jury by subpoena or presentation of evidence by the District Attorney or United States Attorney to such grand jury;
  - (d) Treatment professionals treating the child, his or her family, or the perpetrator;
  - (e) Department employees for purposes consistent with enforcement of the child abuse and neglect or child welfare licensing laws, including disclosure to other individuals for authorized purposes;

(Rule 0250-07-09-.02, continued)

- (f) Any state or federal social service or other agency investigating cases of child abuse or neglect or providing treatment or care for alleged or known victims of child abuse or neglect;
- (g) Any court official, probation counselor, parole officer, designated employee of any Department of Correction or other similarly situated individual charged with preparing information to be presented in any administrative or judicial proceeding concerning any individual charged with or convicted of any offense involving child abuse, child sexual abuse, or neglect;
- (h) The court, administrative board or hearing, the officials or employees thereof in the performance of their duties, the parties, or their legal representatives in any judicial or administrative proceeding or before any board or hearing officer for the purpose of protecting a child or children from any form of abuse or neglect, except when such court, administrative hearing, board, or hearing officer, other than the Department, is adjudicating a case affecting the perpetrator's ability to remain or become employed or licensed, in which situation such information shall be released only by order of the court or hearing officer;
- (i) The Department of Education and the Department of Human Services pursuant to T.C.A. §§ 37-5-512(a)(2) and (3) (2016 and as amended) regarding an individual who is the subject of an ongoing or completed investigation;
- (j) A foster care agency contractor to determine if an individual is a suitable placement for a DCS custodial child;
- (k) The Department of Intellectual and Developmental Disabilities, the Department of Mental Health and Substance Abuse Services, or any other department of state government with whom the Department has developed an appropriate Memorandum of Understanding;
- (l) An agency for the purposes of complying with the Department's employee and contractor background check policies;
- (m) An adoption and child placing agency for the purpose of complying with Hague Accreditation Standards;
- (n) An out-of-state entity for the purpose of complying with Adam Walsh Child Protection and Safety Act or other applicable federal or state law;
- (o) An out-of-state entity for the purpose of determining whether a placement is suitable for a child pursuant to the Interstate Compact for the Placement of Children;
- (p) An agency for the purposes of determining whether a kinship care placement is appropriate; or
- (q) Any agency or entity that is provided access under state or federal law.

**Authority:** T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, 37-5-112(a), and 37-5-512(a). **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.10 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006. Emergency rule filed July 19, 2013; effective through January 15, 2014. On January

(Rule 0250-07-09-.02, continued)

16, 2014, the rule reverted to its previous status. Amendments filed October 6, 2017; effective January 4, 2018.

**0250-07-09-.03. RELEASE TO COVERED EDUCATIONAL ENTITIES.**

- (1) This Rule shall apply only to child abuse and neglect investigation information mandated by T.C.A. § 49-5-413(e) (2016 and as amended) to be released to Covered Educational Entities relative to a Covered Individual, in which case this rule's procedures apply notwithstanding any language to the contrary contained elsewhere within these rules.
- (2) The Department shall offer the due process procedures set out in Rule 0250-07-09-.05(1), including the opportunity for a hearing pursuant to Rule 0250-07-09-.09, to any Covered Individual who has ever been found by the Department to have committed any form of child abuse or neglect and who has not previously waived or exhausted his or her due process rights to a hearing. When the Covered Individual's due process rights have been waived or fully concluded, the Department shall disclose its final finding to any relevant Covered Educational Entity.
- (3) In the case of any Covered Individual whose investigation has not been concluded or any Covered Individual whose due process rights have not yet been offered or are otherwise pending, the Department shall conduct an emergency file review pursuant to Rule 0250-07-09-.08. If the emergency file review results in a finding that the Covered Individual poses an immediate threat to the health, safety, or welfare of children, the Department shall disclose that threat to the relevant Covered Educational Entity.
- (4) If the Department's proceedings under these rules have been stayed pursuant to Rule 0250-07-09-.10 due to pending criminal charges against a Covered Individual, the Department shall notify the Covered Educational Entity of the pending criminal charge.

**Authority:** T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, 37-5-112(a), 37-5-512(a), and 49-5-413(e). **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-07-09-.10 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006. Emergency rule filed July 19, 2013; effective through January 15, 2014. On January 16, 2014, the rule reverted to its previous status. Amendments filed October 6, 2017; effective January 4, 2018.

**0250-07-09-.04 PROHIBITED RELEASES.**

- (1) Any report of abuse or neglect is confidential pursuant to T.C.A. §§ 37-1-409(a)(1), 37-1-612(a), and 37-5-107 (2016 and as amended).
- (2) Any unauthorized release of a report of abuse, severe child abuse, child sexual abuse, or neglect constitutes a class B misdemeanor.
- (3) Until an individual has exhausted all reviews, excluding the review set out in Rule 0250-07-09-.12, permitted by these Rules, the Department shall not release any information from its records to any organization or person for purposes of pre-employment screening or licensing, to identify the individual as a perpetrator of any form of abuse or neglect, unless such disclosure is necessary to comply with T.C.A. § 49-5-413(e) (2016 and as amended) or other applicable law.
- (4) Until an individual has exhausted all reviews permitted by these Rules, excluding the review set out in Rule 0250-07-09-.12, the Department shall not release any information from its

(Rule 0250-07-09-.04, continued)

records to identify the individual as a perpetrator of any form of abuse or neglect to any organization or person that requests this information for purposes of routine or random screening of current employees, volunteers, or associates.

**Authority:** T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, 37-5-112(a), 37-5-512(a), and 49-5-413(e). **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-07-09-.02 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006. Emergency rule filed July 19, 2013; effective through January 15, 2014. On January 16, 2014, the rule reverted to its previous status. Amendments filed October 6, 2017; effective January 4, 2018.

#### **0250-07-09-.05 WHEN RIGHTS UNDER THIS CHAPTER ATTACH.**

- (1) An individual whom the Department has classified in a substantiated report as a perpetrator of any form of abuse or neglect shall have the right to request a formal file review.
- (2) If at the conclusion of the formal file review the substantiation is upheld, with or without modification, the individual shall have the right to request an administrative hearing. An individual who fails to request a formal file review after proper notice waives their right to an administrative hearing.

**Authority:** T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112(a), 37-5-112, and 37-5-512(a). **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-07-09-.02 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006. Emergency rule filed July 19, 2013; effective through January 15, 2014. On January 16, 2014, the rule reverted to its previous status. Amendments filed October 6, 2017; effective January 4, 2018.

#### **0250-07-09-.06 STANDARD AND CRITERIA FOR REVIEW OF CLASSIFICATION OF REPORTS OF CHILD ABUSE/NEGLECT AS “SUBSTANTIATED.”**

A report made against an alleged perpetrator shall be classified as substantiated if the preponderance of the evidence, in light of the entire record, proves that the individual committed any form of abuse or neglect. In determining whether there is a preponderance of the evidence to uphold the substantiation, the reviewer may consider, but is not limited to, the following factors:

- (1) Medical and/or psychological information from a licensed physician, medical center, or other treatment professional, that substantiates that abuse or neglect occurred;
- (2) An admission by the perpetrator;
- (3) The statement of a credible witness or witnesses to the abusive or neglectful act;
- (4) The child victim’s statement that the abuse or neglect occurred;
- (5) Physiological indicators or signs of abuse or neglect, including, but not limited to, cuts, bruises, burns, broken bones or medically diagnosed physical conditions;
- (6) Physical evidence that could impact the classification decision;
- (7) The existence of behavioral patterns that may be indicative of child abuse or neglect and corroborate other evidence of any form of abuse or neglect;

(Rule 0250-07-09-.06, continued)

- (8) Circumstantial evidence linking the alleged perpetrator to the abusive or neglectful act(s) (e.g., child was in care of the alleged perpetrator at the time the abuse occurred and no other reasonable explanation of the cause of the abuse exists in the record).

**Authority:** T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, 37-5-112(a), and 37-5-512(a). **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-07-09-.02 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006. Emergency rule filed July 19, 2013; effective through January 15, 2014. On January 16, 2014, the rule reverted to its previous status. Amendments filed October 6, 2017; effective January 4, 2018.

#### **0250-07-09-.07 RIGHT TO NOTICE AND OPPORTUNITY FOR FORMAL FILE REVIEW.**

- (1) With the exception of minor perpetrators, within ten (10) business days after the Department has closed the case and classified an individual in a substantiated report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, the Department shall begin the process of notifying the individual of the classification. The notification shall be made through a delivery system capable of tracking to the individuals last known address. The notification shall inform the individual that he or she may request a formal file review by the Commissioner's designee to determine whether the report has been properly classified as "substantiated".
- (2) If the substantiated perpetrator is a minor perpetrator, the Department shall notify the minor, the child's parent or guardian, Child Protective Services, Regional General Counsel, and any known Guardian Ad Litem or other attorney for the child. The minor perpetrator shall automatically receive a formal file review as set out below. The minor perpetrator will not receive the notice set out in Rule 0250-07-09-.07(4) since the formal file review shall be automatic. The Department shall notify the minor perpetrator of the opportunity to submit rebuttal evidence in accordance with Rule 0250-07-09-.07(6) and shall otherwise follow the procedures and timeframes outlined in Rule 0250-07-09-.07(7) through Rule 0250-07-09-.07(11).
- (3) The Department shall determine whether the emergency procedures of Rule 0250-07-09-.08 apply to the individual whom the Department has classified as a substantiated perpetrator of any form of abuse or neglect in a substantiated report.
- (4) The notice to obtain a formal file review shall contain, at a minimum, the following:
  - (a) That the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in a substantiated report investigated by the Department;
  - (b) That the individual may request a formal file review by the Commissioner's designee within twenty (20) business days of the date of service of the notice, the notice must be received by the Commissioner's designee within the twenty (20) business days to be considered timely;
  - (c) That failure to submit a request for a formal file review within twenty (20) business days, absent a showing of good cause, shall result in the classified report becoming final and the individual shall waive any right to a formal file review; and
  - (d) That the request for a formal file review shall be submitted to the specific address listed in the notice.

(Rule 0250-07-09-.07, continued)

- (5) The Department shall date-stamp all requests for formal file reviews on the date received.
- (6) The Department shall respond to a timely filed request for a formal file review within ten (10) business days of receipt by sending written notice of the individual's obligations pursuant to a formal file review process. This additional notice shall include, at a minimum, the following:
  - (a) That the individual may submit additional written or documentary information on his or her behalf to the address identified in paragraph 4(d) of this Rule;
  - (b) That the individual must submit and the Department must receive the additional information within thirty (30) business days of the date of the notice;
  - (c) That if the information is not timely submitted, the formal file review shall proceed with the information provided in the file and that the individual's right to submit additional information shall be waived; and
  - (d) That the formal file review shall be completed within ninety (90) business days of the date of the notice.
- (7) Unless the emergency procedures in Rule 0250-07-09-.08 apply, during the twenty (20) business day period in which an individual may request a formal file review, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in a substantiated report. In addition, the Department shall not disclose any details about the case. The Department may only confirm that a child abuse, severe child abuse, child sexual abuse, or neglect investigation has commenced.
- (8) In conducting the formal file review, the Commissioner's designee shall determine whether a preponderance of the evidence available to the reviewer, including any submission by the alleged perpetrator, supports substantiation.
- (9) If the Commissioner's designee determines that a preponderance of evidence does not support substantiation, the report shall be reversed and it shall be classified as unsubstantiated. The Department shall not release information from its records identifying the individual as a perpetrator of any form of abuse or neglect. Nothing in these rules shall be construed to require the expunction of internal case records maintained by the Department. Within ten (10) business days of the date of completion of the formal file review, the Department shall send to the individual who was classified in a report of any form of abuse or neglect at his or her last known address written notice containing, at a minimum, the following:
  - (a) The formal file review has classified the report as unsubstantiated; and
  - (b) The Department shall not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect.
- (10) If the Commissioner's designee determines that the proof in the report supports a different conclusion than that reached by the Department, the report shall be modified and it shall be classified accordingly. The Commissioner's designee shall notify the individual of the outcome.
- (11) If the Commissioner's designee determines that a preponderance of the evidence supports substantiation, the report shall be upheld and it shall be classified as substantiated. Within

(Rule 0250-07-09-.07, continued)

ten (10) business days of the date of completion of the formal file review, the Department shall send to the individual who was classified in a report of any form of abuse or neglect at his or her last known address written notice containing at a minimum, the following:

- (a) That the individual has been identified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in a substantiated report investigated by the Department; and
- (b) That, after conducting a formal file review, the “substantiated” report was upheld.
- (c) That the individual may request a hearing within twenty (20) business days of the date of the notice before an administrative law judge by completing the form provided to the individual by the Department.
- (d) That if the individual requests a hearing, he or she shall complete the attached form and mail or fax it to the Department’s Administrative Procedures Division.
- (e) That if the individual fails to timely request a hearing absent good cause, he or she shall waive the right to an administrative hearing.
- (f) That if the individual fails to timely request a hearing absent good cause, the Department will release its finding of abuse, severe child abuse, child sexual abuse, or neglect to any individual or organization consistent with these rules.

**Authority:** T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, 37-5-112(a), and 37-5-512(a). **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-07-09-.02 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006. Emergency rule filed July 19, 2013; effective through January 15, 2014. On January 16, 2014, the rule reverted to its previous status. Amendments filed October 6, 2017; effective January 4, 2018.

**0250-07-09-.08 ALLEGED PERPETRATORS WITH CURRENT ACCESS TO CHILDREN;  
EMERGENCY NOTIFICATION.**

- (1) The provisions of this Rule apply to individuals classified as perpetrators of any form of abuse or neglect in a substantiated report who pose an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.
- (2) As soon as reasonably possible, the Commissioner’s designee shall conduct an emergency file review to determine if an individual identified in a substantiated report as a perpetrator of any form of abuse or neglect poses an immediate threat to the health, safety, or welfare of a child or children to whom the individual has access.
- (3) In completing an emergency file review, the Commissioner’s designee shall determine whether the substantiated report should be upheld, and whether there is an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.
  - (a) If both factors are met, the Department shall then follow the procedures set forth in paragraphs (4), (5) and (6) of this Rule.
  - (b) If no such immediate threat exists, the Department shall not immediately reveal the alleged perpetrator’s identity.

(Rule 0250-07-09-.08, continued)

- (4) As soon as reasonably possible, the Department shall notify in writing both the alleged perpetrator and the organization or person with whom the individual is associated, if the Commissioner's designee determines the alleged perpetrator poses an immediate threat to the health, safety, or welfare of a child or children to whom the individual has access.
  - (a) The notice shall contain the information set forth in Rule 0250-07-09-.07(11); and
  - (b) A statement that the organization or person with which the individual is associated shall receive notice of the Department's determination. The notice shall contain the following:
    1. That the organization or person shall ensure that the individual is not a threat to the safety of any child in their care; and
    2. That the individual has been notified of his or her rights to a hearing on the allegations, and that the organization or person shall be notified of the final decision regarding the allegations.
- (5) If the individual fails timely to request a hearing absent good cause, the individual shall waive his or her right to a hearing. The Department's substantiated report regarding the individual shall then be available for dissemination, in accordance with these rules, to any associated organization or associated person and the individual's identity shall be placed in the registry. The Department must receive the request for a hearing within the time frame set out in Rule 0250-07-09-.09(2) for the request to be considered timely.
- (6) If the individual timely requests a hearing, pursuant to Rule 0250-07-09-.09(2), the Department shall follow the procedures set forth in Rule 0250-07-09-.09(4).

**Authority:** T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, 37-5-112(a), and 37-5-512(a). **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-07-09-.05 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006. Emergency rule filed July 19, 2013; effective through January 15, 2014. On January 16, 2014, the rule reverted to its previous status. Amendments filed October 6, 2017; effective January 4, 2018.

#### **0250-07-09-.09 RIGHT TO NOTICE AND OPPORTUNITY FOR ADMINISTRATIVE HEARING.**

- (1) An individual whom the Department has classified in a substantiated report as a perpetrator of any form of abuse or neglect and whose classification has been upheld pursuant to a formal file review may request an administrative hearing before an administrative judge of the Administrative Procedures Division of the Department.
- (2) An individual shall request an administrative hearing within twenty (20) business days from the date of the notice of the outcome of the formal file review. The Department must receive the request for an administrative hearing by the twentieth (20<sup>th</sup>) business day for the request to be considered timely.
- (3) Unless the emergency procedures in Rule 0250-07-09-.08 apply, during the twenty (20) business day period in which an individual may request a hearing, the Department shall not disclose that the individual has been classified as the perpetrator of any form of abuse or neglect in a substantiated report. In addition, the Department shall not disclose any details about the case. The Department may only confirm that an investigation involving child abuse

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or neglect has commenced. If the individual timely requests a hearing, the Department may only release a statement stating that a hearing concerning the individual pursuant to the child abuse laws of this State is currently pending.

- (4) If the individual timely requests a hearing, the Department shall schedule a hearing and give the individual adequate notice of the hearing, as provided by Rule 0250-05-04-.01.
- (5) The hearing will be held, and an initial order entered therein, within one hundred twenty (120) business days of the date of the notice required in Rule 0250-07-09-.07(11), unless:
  - (a) The time limit is extended or waived by agreement of the parties, or for good cause shown; or
  - (b) The proceedings are stayed pursuant to Rule 0250-07-09-.10.
- (6) If the individual fails to timely request a hearing absent good cause, the individual shall waive his or her right to a hearing. The Department's substantiated report regarding the individual shall then be available for dissemination, in accordance with these rules, to any associated organization or associated individual and the individual's identity as a substantiated perpetrator shall be placed in the registry.
- (7) An individual who fails to timely request a hearing may be granted a hearing provided that he or she shows good cause for failure to make a timely request.
- (8) Good cause is limited to a failure to receive the notice referred to in Rule 0250-07-09-.07(11), severe illness, or some other circumstance that substantially prevented the individual from timely requesting a hearing.

**Authority:** T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, 37-5-112(a), and 37-5-512(a). **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-07-09-.06 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006. Emergency rule filed July 19, 2013; effective through January 15, 2014. On January 16, 2014, the rule reverted to its previous status. Amendments filed October 6, 2017; effective January 4, 2018.

#### **0250-07-09-.10 STAY OF ADMINISTRATIVE PROCEEDINGS.**

- (1) The Department shall stay all administrative proceedings under these Rules:
  - (a) If an individual whom the Department has classified in a substantiated report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect has been arrested or indicted on criminal charges that are derived from the same allegations that caused the Department to investigate; or
  - (b) If an individual whom the Department has classified in a substantiated report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect is the subject of other administrative or civil proceedings that are derived from the same allegations that caused the Department to investigate.
- (2) If the arrest, indictment, or initiation of other judicial or other administrative proceedings occurs any time prior to the entry of a final order by the Department, all proceedings under these Rules shall be immediately stayed pending final resolution, including appeals of the judicial or administrative proceedings. Provided, however, that the Department shall notify an

(Rule 0250-07-09-.10, continued)

individual in accordance with Rules 0250-07-09-.07, 0250-07-09-.08, or 0250-07-09-.09, as appropriate. The individual shall comply with the provisions of these Rules, as appropriate, in order to preserve his or her future rights to a hearing or to judicial review. During the stay, unless the emergency procedures in Rule 0250-07-09-.08 apply, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in a substantiated report until the proceedings referred to in paragraph (1) of this Rule become final. The Department may only release the fact that judicial or administrative proceedings involving allegations of abuse, severe child abuse, child sexual abuse, or neglect by the individual are pending before a specified court or administrative body.

- (3) A final criminal conviction and/or civil adjudication will be conclusive evidence the individual is the perpetrator classified in the substantiated report and the individual will have no right to a hearing provided for in Rule 0250-07-09-.09 in regard to that particular report and the Department may release information and the perpetrator as permitted under these Rules when:
  - (a) A criminal prosecution results in a conviction or guilty plea for any offense listed in T.C.A. § 37-1-602(a)(3) (2016 and as amended), or any act which would constitute child abuse or neglect;
  - (b) The individual is found guilty or pleads guilty to any lesser offense derived from the offenses or acts alleged under T.C.A. § 37-1-602(a)(3) or § 37-1-102(b)(21) (2016 and as amended); or
  - (c) Any court or administrative proceeding results in a judicial or administrative adjudication that the individual has committed, or has knowingly allowed to be committed any act against a child which would constitute abuse, severe child abuse, child sexual abuse, or neglect.
- (4) If the criminal, civil or administrative proceeding does not result in a conviction or in a finding as specified in paragraph (3) of this Rule, including pretrial diversion, this fact shall be admissible in the Department's administrative hearing, but may not be dispositive to the issue of whether the report is properly classified as substantiated.
- (5) If administrative proceedings were stayed pursuant to this Rule, they shall resume at the point at which they were stayed if the alleged perpetrator so requests in writing to the address listed on the notification to stay proceedings, within thirty (30) days of entry of a final order by a court or other administrative body favorably disposing of the issue of child abuse or neglect involving the alleged perpetrator or of any disposition other than guilty by a court in a criminal proceeding. If the alleged perpetrator fails timely to make such a written request, he or she shall waive his or her rights to a hearing in regard to that report. The substantiated report and information regarding the perpetrator will be released as permitted under these Rules. If the Department learns the civil or criminal proceedings were resolved and thirty (30) days have passed since the resolution of the matter, the Department may reinstate due process at the point at which it was stayed and take the appropriate action.
- (6) Unless the individual has waived his or her rights to a formal file review or to an administrative hearing by failing to timely request same or by other action or inaction, if administrative proceedings have been stayed, the Department shall notify in writing the individual as follows:

(Rule 0250-07-09-.10, continued)

- (a) That administrative proceedings have been stayed pending the final outcome of judicial or other administrative proceedings concerning allegations of child abuse involving the individual;
- (b) That the individual may reinstitute the administrative proceedings under these rules at the point they were stayed only if the individual requests such in writing to the Department at the address listed on the notice of stay within thirty (30) days of the entry of a final order by the court or administrative tribunal or verdict by a criminal court (unless the order or verdict is a conviction or guilty plea as specified in paragraph (3) above);
- (c) If the individual fails timely to make such a written request, he or she shall waive his or her rights to a formal file review or an administrative hearing in regard to the report and be finally determined as a "substantiated" perpetrator of child abuse or neglect.

**Authority:** T.C.A. §§ 4-5-226(b)(2), 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, 37-5-112(a), and 37-5-512(a). **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-07-09-.07 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006. Emergency rule filed July 19, 2013; effective through January 15, 2014. On January 16, 2014, the rule reverted to its previous status. Amendments filed October 6, 2017; effective January 4, 2018.

#### **0250-07-09-.11 CONDUCT OF ADMINISTRATIVE HEARING.**

- (1) The administrative hearing will be conducted in accordance with the provisions of the Uniform Administrative Procedures Act and of Rule 0250-05-06.
- (2) The sole issue for the administrative judge to determine is whether the preponderance of the evidence, in light of the entire record, proves that the individual committed any form of abuse or neglect.
- (3) Unless the emergency procedures in Rule 0250-07-09-.08 apply, the Department shall not disclose that the individual has been classified as the perpetrator of any form of abuse or neglect in a substantiated report until the individual has exhausted all of his or her appeal rights under these Rules, including judicial review of a final order by the Department. The Department may only release the fact that a hearing concerning the individual pursuant to the child abuse laws of the State is pending.
- (4) If the administrative judge concludes that a preponderance of the evidence does not support a conclusion that the individual committed the act of abuse or neglect, or if a reviewing court reverses a departmental determination of abuse or neglect, the report shall be classified as unsubstantiated. The Department shall not release information from its records identifying the individual as a perpetrator of any form of abuse or neglect. If the Department had previously disclosed to any organization or person that an individual was under investigation under the child abuse laws of Tennessee, the Department shall immediately notify that organization or person that the report was unsubstantiated. Nothing in this rule shall be construed to require expunction of any information from internal case records maintained by the Department.
- (5) The decision of the administrative law judge may be appealed in accordance with the Uniform Administrative Procedures Act.

**Authority:** T.C.A. §§ 4-5-226(b)(2), 4-5-313, 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-107, 37-5-112, 37-5-112(a), and 37-5-512(a). **Administrative History:** Original rule filed

(Rule 0250-07-09-.11, continued)

*September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-07-09-.08 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006. Emergency rule filed July 19, 2013; effective through January 15, 2014. On January 16, 2014, the rule reverted to its previous status. Amendments filed October 6, 2017; effective January 4, 2018.*

**0250-07-09-.12 RESERVED.**

**Authority:** T.C.A. §§ 4-5-226(b)(2), 4-5-313, 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, and 37-5-112(a). **Administrative History:** *Emergency rule filed July 19, 2013; effective through January 15, 2014. On January 16, 2014, the rule reverted to its previous status. Amendments filed October 6, 2017; to have become effective January 4, 2018. However, withdrawal of rule 0250-07-09-.12 filed December 21, 2017.*

# **2010 Tennessee Code**

## **Title 4 - State Government**

### **Chapter 5 - Uniform Administrative Procedures Act**

#### **Part 2 - Rulemaking and Publications**

#### **4-5-226 - Expiration of rules Review by general assembly.**

#### **4-5-226. Expiration of rules Review by general assembly.**

**(a)** Notwithstanding any other law to the contrary, unless legislation is enacted to continue a rule to a date certain or indefinitely, any permanent rule filed in the office of the secretary of state shall expire on June 30 of the year following the year of its filing.

**(b) (1)** Notwithstanding any other law to the contrary, unless legislation is enacted to continue a rule to a date certain or to a date indefinitely beyond the date upon which an agency terminates, each permanent rule that does not expire under subsection (a), shall expire on the day provided in chapter 29, part 2 of this title for termination of the agency that promulgated such rule; provided, that if such agency continues in existence pursuant to § 4-29-112, such agency rule shall expire upon completion of such wind-up period.

**(2)** All rules and regulations issued or promulgated by any department or agency of state government whose functions, duties, or responsibilities have been transferred to another department or agency shall remain in full force and effect, and shall thereafter be administered and enforced by the agency or department assuming responsibility for those functions, duties, or responsibilities as rules of that agency or department, and all proposed rules pending with the attorney general and reporter or secretary of state, unless withdrawn, shall continue that status as proposed rules until becoming effective as rules of the agency assuming the functions, duties, or responsibilities. The agency or department assuming

responsibility for such functions, duties, or responsibilities shall have the authority to promulgate new rules and regulations pursuant to this chapter to effectuate its duties and responsibilities. To this end, the department or agency shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions transferred.

**(c)** Rules promulgated pursuant to this chapter may be reviewed by the government operations committees of the senate and the house of representatives meeting jointly or separately; or, alternatively, at the discretion of the chair of either of such committees, such rule may be reviewed by a subcommittee of the government operations committees. Members of the government operations committees of the senate and the house of representatives shall serve as members of such committees until their successors are duly appointed; provided, that such members remain members of the general assembly. Any member of either government operations committee who ceases to be a member of the general assembly shall cease to be a member of the government operations committee on the same date such member's membership in the general assembly ceases, as provided in the Constitution of Tennessee. In the event a majority of the membership of either government operations committee shall cease to be members of the general assembly, the speaker of the senate or the speaker of the house of representatives, as the case may be, may designate an appropriate number of members to serve interim appointments until the government operations committee is reconstituted. The house and senate government operations committees shall strive to hear rules within ninety (90) days of such rules being filed in the office of the secretary of state.

**(d)** In conducting the review required by subsection (c), the committees or subcommittees shall hold at least one (1) public hearing to receive testimony from the public and from the administrative head of the agency. At such hearing, the agency shall have the burden of demonstrating that consideration of the factors enumerated in subsection (e) justifies the continued existence of an agency rule. Notice of the time and place of the public hearing shall be on the general assembly web site prior to the hearing. To the extent reasonably practicable, the committees or subcommittees shall conduct hearings on newly filed rules, other than emergency rules, during the ninety-day period immediately following the filing of the original of such rule in the office of the secretary of state.

**(e)** In conducting the review of agency rules, the committees or subcommittees shall consider the following factors:

**(1)** Authority;

**(2)** Clarity;

**(3)** Consistency;

**(4)** Justification;

**(5)** Necessity, which shall include the need for a regulation where no regulations presently apply; and

**(6)** Reference.

**(f)** As used in subsection (e):

**(1)** "Authority" means provisions of law that permit or obligate the agency to adopt, amend or repeal a regulation;

**(2)** "Clarity" means the grammatical and structural soundness of a rule that tends to ensure that the rule will be easily understood by those persons directly affected by such rule;

**(3)** "Consistency" means the quality of being in harmony with, and not in conflict with or contradictory to, existing provisions of laws;

**(4)** "Justification" refers to the diligent, knowledgeable, zealous and timely efforts of the agency proposing continuation of a rule to produce all pertinent and relevant documents, records, written and verbal comments, and other items of information needed to justify continuation of the rule to the committee;

**(5)** "Necessity" means the need for and usefulness of a regulation as dictated by public policy considerations; and

**(6)** "Reference" means the statute, court decision or other provision of law that the agency implements, interprets or makes specific by adopting, amending or repealing a regulation.

**(g)** Nothing contained in this chapter shall be construed to prohibit the general assembly by legislative enactment from directly or indirectly repealing or amending any rule.

**(h)** The committees or subcommittees have the authority to hold hearings, subpoena records, documents and persons, and to exercise all powers otherwise vested upon committees of the general assembly by title 3, chapter 3, and by the rules of the appropriate house.

**(i) (1)** All agencies, upon filing a rule in the office of the secretary of state, shall also submit the following information:

**(A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

**(B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

**(C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

**(D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

**(E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

**(F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

**(G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

**(H)** Office address, e-mail address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

**(I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

**(2) (A)** All amendments to existing executive agency rules to be reviewed by the committees or subcommittees pursuant to this part shall be filed with the secretary of state. One (1) copy of the amendments shall be filed in redline form for review by the committees or subcommittees.

**(B)** As used in subdivision (i)(2)(A), "redline form" means to denote all amendments to an existing rule by placing a line through all language to be deleted and by including all language to be added in brackets or underlined or by another clearly recognizable method that indicates the changes made to the rule.

**(3)** Failure to comply with the provisions of this subsection (i) may be considered as evidence of the failure by an agency to meet its burden of proof required by subsection (d).

**(4)** The secretary of state shall refuse to accept the filing of any rule that fails to comply with this subsection (i).

**(j) (1)** The committee may express its disapproval of a rule that fails to satisfy any or all of the factors enumerated in subsection (e), by voting to allow such rule to expire upon its established expiration date or by voting to request the agency to repeal, amend or withdraw this rule before such established expiration date. Notice of the committee's disapproval of a rule whether by vote to allow the rule to expire or by vote to request the agency to repeal, amend or withdraw a rule shall be posted on the administrative register web site as soon as possible after the committee meeting in which such action was taken.

**(2)** In the event an agency fails to comply with the committee's request to repeal, amend or withdraw a rule within a reasonable time and before the established expiration date, the committee may vote to request the general assembly to suspend any or all of such agency's rulemaking authority for any reasonable period of time or with respect to any particular subject matter, by legislative enactment.

**(k)** [Deleted by 2009 amendment.]

**(l)** In addition to the grounds stated in subdivision (j) it shall also be grounds for the government operations committee to recommend to the general assembly to terminate a rule promulgated under authority of any provision of title 68, chapters 201221, or title 69, chapter 3, that imposes environmental requirements or restrictions on municipalities or counties that are more stringent than federal statutes or rules on the same subject, and that result in increased expenditure requirements on municipalities or counties beyond those required to meet the federal requirements, unless the general assembly has appropriated funds to the affected local government or governments to cover the increased expenditures, in addition to those they receive pursuant to other laws; provided, a timely comment was addressed to the promulgating authority pursuant to § 4-5-204, raising this issue and specifying the level of increased expenditure mandated by the rule.

**(m)** If, pursuant to this section, the general assembly terminates a rule amending a previously existing rule, then such previously existing rule shall continue in effect until it is later amended, repealed or superseded by law.

**(n)** If, pursuant to this chapter, an agency withdraws a rule amending a previously existing rule, then such previously existing rule shall continue in effect until it is later amended, repealed or superseded by law.

[Acts 1982, ch. 874, § 67; 1983, ch. 479, §§ 2-5; 1984, ch. 707, § 1; 1984, ch. 969, §§ 3, 4; 1985, ch. 440, § 3; 1986, ch. 575, §§ 3, 4; 1986, ch. 738, §§ 8, 9; 1988, ch. 700, § 3; 1990, ch. 838, § 1; 1991, ch. 206, § 1; 1992, ch. 703, § 1; 1993, ch. 316, § 3; 1994, ch. 878, § 1; 1995, ch. 546, §§ 1, 3; 1996, ch. 844, § 1; 1997, ch. 162, § 1; T.C.A., § 4-5-225; Acts 1999, ch. 381, § 1; 2008, ch. 741, § 1; 2009, ch. 566, § 19.]

## **2010 Tennessee Code**

### **Title 37 - Juveniles**

#### **Chapter 1 - Juvenile Courts and Proceedings**

##### **Part 6 - Child Sexual Abuse**

# **37-1-612 - Confidentiality of records and reports Violations Access to records Confirmation of investigation Anonymity of abuse reporters.**

## **37-1-612. Confidentiality of records and reports Violations Access to records Confirmation of investigation Anonymity of abuse reporters.**

**(a)** In order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records concerning reports of child sexual abuse, including files, reports, records, communications and working papers related to investigations or providing services; video tapes; reports made to the abuse registry and to local offices of the department; and all records generated as a result of such processes and reports, shall be confidential and exempt from other provisions of law, and shall not be disclosed, except as specifically authorized by title 37, chapter 5, part 5, the provisions of this part and part 4 of this chapter.

**(b)** Except as otherwise provided in § 37-5-107, this part or part 4 of this chapter, it is unlawful for any person, except for purposes directly connected with the administration of this part, to disclose, receive, make use of, authorize or knowingly permit, participate in, or acquiesce to the use of any list or name, or any information concerning a report or investigation of a report of harm under this part, directly or indirectly derived from the records, papers, files or communications of the department or other entities authorized by law to assist the department when such information was acquired in the course of the performance of official duties. Disclosure may be made to persons and entities directly involved in administration of this part, including:

**(1)** Department employees, medical professionals, and contract or other agency employees who provide services, including those from child advocacy centers, to children and families; and

**(2)** The attorney or guardian ad litem for a child who is the subject of the records. Information shared with such persons and entities does not lose its character as confidential.

**(c)** In addition to such other purposes as may be directly connected with the administration of this part, access to such records, excluding the name of the reporter, which shall be released only as provided in subsection (g), shall be granted to the following persons, officials, or agencies for the following purposes:

**(1)** A law enforcement agency investigating a report of known or suspected child sexual abuse;

**(2)** The district attorney general of the judicial district in which the child resides or in which the alleged abuse occurred;

**(3)** A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business;

**(4)** Any person engaged in bona fide research or audit purposes. However, no information identifying the subjects of the report shall be made available to the researcher unless such information is absolutely essential to the research purpose, suitable provision is made to maintain the confidentiality of the data and the department has given written approval;

**(5)** A court official, probation and parole officer, designated employee of the department of correction or board of probation and parole or other similarly situated individual charged with the responsibility of preparing information to be presented in any administrative or judicial proceeding concerning any individual charged with or convicted of any offense involving child abuse or neglect or child sexual abuse;

**(6)** An attorney or next friend who is authorized to act on behalf of the child, who is the subject of the records, for the purpose of recovering damages or other remedies authorized by law in a civil cause of action against the perpetrator or other person or persons who may be responsible for the actions of the perpetrator;

**(7)** An attorney or next friend who is authorized to act on behalf of another child, who has been the victim of other abuse by the same perpetrator, for the purpose of recovering damages or other remedies authorized by law in a civil cause of action against the perpetrator or other person or persons who may be responsible for the actions of the perpetrator against such other child; provided, however, that:

**(A)** The name and identity of such other child shall be revealed only to the attorney or next friend of such other child, to the parties and to their respective counsel in the civil cause of action in which such damages or other remedies are sought, and to the trial judge who presides over the action;

**(B)** An appropriate protective order must be entered prior to such disclosure;  
and

**(C)** Before any attempt is made to introduce into evidence in the civil cause of action either the records or information obtained from the records, written consent must be obtained from:

**(i)** Each parent or guardian having sole or joint custody of such other child, if the child has not yet attained the age of majority; or,

**(ii)** The former child, if such child has now attained the age of majority;  
and

**(8)** Members of the Tennessee claims commission, its staff and employees of the division of claims administration for the purpose of determining if:

**(A)** A claim filed with the commission based on facts contained in the record constitutes a compensable criminal offense under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13;

**(B)** The offense alleged occurred; and

**(C)** The claimant's injuries were the result of the offense.

**(d)** The department may release to professional persons such information as is necessary for the diagnosis and treatment of the child or the person perpetrating the sexual abuse.

**(e)** The department may confirm whether a child sexual abuse investigation has been commenced, but may not divulge, except as permitted under this part, any details about the case, including, but not limited to, the name of the reporter, the alleged victim, or the alleged perpetrator.

**(f)** The department shall adopt such rules as may be necessary to carry out the following purposes:

**(1)** The establishment of administrative and due process procedures for the disclosure of the contents of its files and the results of its investigations for the purpose of protecting children from child sexual abuse; and

**(2)** For other purposes directly connected with the administration of this chapter, including, but not limited to, cooperation with schools, child care agencies, residential and institutional child care providers, child protection agencies, individuals providing care or protection for the child, medical and mental health personnel providing care for the child and the child's family and the perpetrator of any form of child abuse or neglect, law enforcement agencies, the judicial and correctional systems, and for cooperation with scientific and governmental research on child abuse and neglect.

**(g)** The name of any person reporting child sexual abuse shall in no case be released to any person other than employees of the department or other child protection team members responsible for child protective services, the abuse registry, or the appropriate district attorney general upon subpoena of the Tennessee bureau of investigation without the written consent of the person reporting. This shall not prohibit the subpoenaing of a person reporting child sexual abuse when deemed necessary by the district attorney general or the department to protect a child who is the subject of a report; provided, that the fact that such person made the report is not disclosed. Any person who reports a case of child sexual abuse may, at the time the person makes the report, request that the department notify such person that a child protective investigation occurred as a result of the report. The department shall mail such a notice to the reporter within ten (10) days of the completion of the child protective investigation.

**(h)** For purposes directly connected with the administration of this part and part 4 of this chapter, the department may disclose any relevant information to the court, administrative board or hearing officer, the parties, or their legal representatives in any proceeding that may be brought in any court, or before any administrative board or hearing officer, for the purpose of protecting a child or children from child abuse or neglect or child sexual abuse. In the event of any disagreement between the department and any other parties as to what information should be disclosed, the court, administrative board or hearing officer may enter an order allowing access to any information that it finds necessary for the proper disposition of the case. The court, administrative board or hearing officer may order any information disclosed in such proceeding to be placed and kept under seal and not to be open to public inspection to the extent it finds it necessary to protect the child. This

provision shall not be construed to allow any person to gain access to any identifying information about a child who is not the subject of the proceeding.

**2010 Tennessee Code**  
**Title 37 - Juveniles**  
**Chapter 1 - Juvenile Courts and Proceedings**  
**Part 6 - Child Sexual Abuse**  
**37-1-616 - Rules and regulations.**

**37-1-616. Rules and regulations.**

The department may promulgate necessary rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, in furtherance of the provisions of this part.

[Acts 1985, ch. 478, § 17.]

**2010 Tennessee Code**  
**Title 37 - Juveniles**  
**Chapter 1 - Juvenile Courts and Proceedings**  
**Part 1 - General Provisions**  
**37-1-101 - Purpose Jurisdiction.**

**37-1-101. Purpose Jurisdiction.**

(a) This part shall be construed to effectuate the following public purposes:

**(1)** Provide for the care, protection, and wholesome moral, mental and physical development of children coming within its provisions;

**(2)** Consistent with the protection of the public interest, remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and substitute therefor a program of treatment, training and rehabilitation;

**(3)** Achieve the foregoing purposes in a family environment whenever possible, separating the child from such child's parents only when necessary for such child's welfare or in the interest of public safety;

**(4)** Provide a simple judicial procedure through which this part is executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced;

**(5)** Provide simple interstate procedures that permit resort to cooperative measures among the juvenile courts of the several states when required to effectuate the purposes of this part; and

**(6)** Generally deinstitutionalize children who have not been found to be delinquent.

**(b)** It is the intention of the general assembly in the passage of this part to promulgate laws relative to children that are to be uniform in application throughout the state.

**(c)** Each of the juvenile courts in all the counties and municipalities of the state as described in § 37-1-102 have all of the jurisdiction, authority, rights, powers and duties prescribed by the provisions of this part, and any additional jurisdiction, authority, rights, powers or duties conferred by special or private act upon any of the juvenile courts in the state are not intended to be invalidated or repealed by this part, except where inconsistent or in conflict with any provisions of this part.

**(d)** Whenever a juvenile court conducts a child custody proceeding, as defined in § 36-6-205, the court shall ensure compliance with the Indian Child Welfare Act, compiled in 25 U.S.C. § 1901 et seq.

[Acts 1970, ch. 600, §§ 1, 59; 1979, ch. 289, § 1; T.C.A., §§ 37-201, 37-259; Acts 2009, ch. 317, § 1.]

**2010 Tennessee Code**  
**Title 37 - Juveniles**  
**Chapter 5 - Department of Children's Services**  
**Part 1 - General Provisions**  
**37-5-101 - Creation of department Division of juvenile justice Deputy commissioner of juvenile justice Powers and duties Funding.**

**37-5-101. Creation of department Division of juvenile justice Deputy commissioner of juvenile justice Powers and duties Funding.**

**(a)** There is hereby created the department of children's services.

**(b) (1)** Within the department, there is created a division of juvenile justice to serve children who are adjudicated delinquent.

**(2)** The deputy commissioner of juvenile justice shall be appointed to lead the division of juvenile justice and shall serve at the pleasure of the commissioner. The commissioner shall appoint a person qualified by training and experience in the area of juvenile justice to perform the duties of deputy commissioner of juvenile justice. The appointee must be a graduate of an accredited college or university and be experienced in the field of juvenile justice.

**(3)** It is the duty and responsibility of the division of juvenile justice to serve children who are adjudicated delinquent. The deputy commissioner shall have the powers and duties that the commissioner shall prescribe, in order to effectively administer, develop and oversee all state programs and services for delinquent children, their families and their communities.

(4) The commissioner shall earmark a sum sufficient to be used exclusively for the division of juvenile justice. This budget shall include all appropriations for residential and nonresidential services provided for the prevention of delinquency and the rehabilitation, treatment and training of delinquent youth.

[Acts 1996, ch. 1079, § 2; 2006, ch. 818, § 1.]

## **2010 Tennessee Code**

### **Title 37 - Juveniles**

#### **Chapter 5 - Department of Children's Services**

##### **Part 1 - General Provisions**

##### **37-5-106 - Powers of the department.**

###### **37-5-106. Powers of the department.**

(a) The department has the following powers:

(1) Administer, develop or oversee programs, or any of these things including, but not limited to, state children's services agencies, except those operated by the department of mental health and developmental disabilities, assessment services, probation services, aftercare supervision services, child protective services and other services as required by law or as otherwise reasonably necessary for unruly, delinquent, dependent and neglected children, and their respective families, as well as children who are at imminent risk and in need of services to prevent entry into state custody, who are in state custody pending family reunification or other permanent placement, or as otherwise may be required for such children and their families pursuant to state law; provided, however, that such administration shall be consistent with and subject to licensing or approval authority of any other state agency that has responsibility for licensing or approval of any portion of program services or facilities provided by the department. Nothing herein shall preclude the service of at risk children by the department of mental health and developmental disabilities who are classified as seriously emotionally disturbed and for whom that department has primary responsibility;

**(2)** Provide services as required by law to children committed to its custody pursuant to the provisions of titles 33, 34, 37 or 39, or provide services to children who are in need of services as required or permitted by law under the provisions of the Interstate Compact on the Placement of Juveniles in §§ 37-4-101 37-4-106, the Interstate Compact on the Placement of Children in §§ 37-4-201 37-4-207, or who are committed to the department by any order of the courts as a result of a divorce or adoption or guardianship proceeding;

**(3) (A)** License or approve and supervise child care agencies, as defined in title 37, chapter 5, part 5, that are placed within the department's jurisdiction pursuant to law;

**(B)** License or approve and supervise all facilities that were previously operated by the department of youth development;

**(C)** License or approve and supervise any entity that provides services consistent with this chapter and the exceptions set forth therein;

**(4)** For the purposes of treatment, reunification and rehabilitation, allow delinquent children committed to the department's custody to make home visits to the natural parent(s), relatives or legal guardian. Such visits must be approved by the committing juvenile court, unless such court declines to exercise decision making in regard to home passes, in which case the commissioner has authority to grant passes without any further court approval or action;

**(5)** Receive and administer state funds appropriated for children being served by the department of children's services;

**(6)** Seek, apply for, receive and administer federal funds as well as any other grants or funds that can be used for children being served by the department of children's services;

**(7)** Administer the contractual obligations and functions and the funding arrangements for the department;

**(8)** Enter into contracts with the departments of human services, mental health and developmental disabilities, education and health, with agencies of such departments, or any other department or agency of state government, with private individuals and corporations, and with associations, organizations or any other entities, governmental or otherwise, for services that the department of children's

services may deem necessary to carry out the purposes of this title. Such services may include, but are not limited to, health, psychological, social, education, transportation, program evaluation, placement, detention, prevention, assessment and case management;

**(9)** Develop and maintain a system for the purpose of handling, coordinating, processing and disseminating the information generated by the department's activities and services;

**(10)** Provide appropriate training, either through the department or by contract, to individuals within the department and may provide training to those entities delivering services for the department of children's services. All child protective services workers must be trained in their legal duties to protect the constitutional and statutory rights of children and families from the initial time of contact, during the investigation, and through the treatment;

**(11)** Provide for all adoption services responsibilities as it may be required to perform pursuant to title 36, chapter 1, part 1, and for the operation of the putative father registry pursuant to § 36-2-318;

**(12)** Administer the Title IV-E Foster Care and Adoption Assistance Program established pursuant to the Social Security Act in 42 U.S.C. § 670, et seq., or any successor entitlements;

**(13)** Establish rules and regulations concerning the provision of financial assistance to persons who adopt a child who has special needs, is difficult to place because of physical handicap, mental or emotional condition, or other serious impediments to adoption;

**(14)** Administer the Interstate Compact on Adoption and Medical Assistance pursuant to title 36, chapter 1, part 2;

**(15) (A)** Establish, notwithstanding any law to the contrary, rules and regulations for charging fees for the department's preparation and presentation, for any purpose, of social reports of homes or the parent or parents or other persons, when ordered by the courts unless:

**(i)** The order is based upon a finding that the child or children who are the subjects of the order are victims of abuse or neglect;

**(ii)** The order is based upon a finding that the child or children who are the subjects of the order have been alleged in the proceedings to be victims of abuse or neglect; or

**(iii)** The department has received a report of harm pursuant to § 37-1-403 or § 37-1-605, concerning the child or children who are the subjects of the order. The department may, for purposes of this section, disclose such fact to the court;

**(B)** Provide by rule or regulation that the parent or parents of the child or children or any person or persons legally responsible for the child or children or any other party to the case, as the court may determine, shall be assessed the costs of the social report. The costs shall not exceed the department's cost to provide the service;

**(C)** Provide by rule for waiver of costs for any person or persons who are indigent, as determined by the department;

**(D)** Costs of such reports shall be reported by the department to the court and such costs shall be assessed by the court as court costs, as determined by the court, against the parent or parents or other parties or person legally responsible for the child or children and such costs shall be enforced accordingly by the court;

**(E)** Such costs shall be paid by the court clerk to the department, and the funds received by the department shall be deposited to the state treasury pursuant to § 9-4-301;

**(16)** Establish by policy, rule or regulation appropriate and necessary guidelines for consent to health care treatment for children in state custody or who are being served by the department;

**(17)** The department may acquire, hold or alienate property or leaseholds necessary or desirable for the performance of any of its functions that are vested in it by law;

**(18) (A)** The department is specifically authorized to establish any programs for the use of volunteers who may be able to provide assistance to the department in any of the services that are vested in it by law or that it may provide as a necessary part of such services. To the extent funds are available, and if necessary and desirable, the department may reimburse such volunteers for actual travel or other reasonable expenses for their services. All reimbursement for travel expenses shall

be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. Meals may be furnished without charge at department facilities if the scheduled volunteer assignment extends over an established meal period. The department may use any funds available, including federal, state or local funds or private donations, that it has for any expenses associated with these programs;

**(B)** Any volunteers who are registered by the department with the board of claims shall be accorded the same protections, legal representation authorization and immunities as state employees pursuant to § 8-42-101, et seq., and § 9-8-307 for civil or criminal actions brought against them within the scope and course of their activities in such volunteer programs; provided, however, that they shall not be covered by workers' compensation pursuant to § 9-8-307; and

**(C)** Volunteers may use state vehicles when their assignments so require, subject to the approval of the department and in compliance with any policies or rules or regulations that may be promulgated by the department;

**(19)** Administer and fully implement the multi-level response system for children and families, compiled in part 6 of this chapter, including making such contracts as may be necessary to carry out the evaluations called for in that part;

**(20)** Review the status of any person who has reached eighteen (18) years of age who was in the legal custody of the department and whose last commitment was based on an adjudication of dependent and neglected, unruly or in need of services pursuant to § 37-1-175, to determine if the person should receive services from the department in order to complete high school or other educational training or for the purpose of receiving other services. The department may provide services to the person who chooses to receive services from the department on a voluntary basis, subject to funding availability, budgetary constraints and compliance with department policy; and

**(21)** Review the status of any person who has reached nineteen (19) years of age who was in the legal custody of the department and whose last commitment was based on an adjudication of delinquency to determine if the person should receive services from the department in order to complete high school or other educational training or for the purpose of receiving other services. The department may continue to provide services to the person who chooses to receive services

from the department on a voluntary basis, subject to funding availability, budgetary constraints and compliance with department policy.

**(b)** The attorney general and reporter shall, upon request, advise the department on matters of law.

## **2010 Tennessee Code**

### **Title 37 - Juveniles**

#### **Chapter 5 - Department of Children's Services**

##### **Part 1 - General Provisions**

##### **37-5-107 - Confidentiality of records.**

###### **37-5-107. Confidentiality of records.**

**(a)** All applications, certificates, records, reports and all legal documents, petitions and records made or information received pursuant to this title that directly or indirectly identify a child or family receiving services from the department or that identify the person who made a report of harm pursuant to § 37-1-403 or § 37-1-605 shall be kept confidential and shall not be disclosed, except as provided by this section and §§ 37-1-131, 37-1-409, 37-1-612 and 49-6-3051.

**(b)** The department may use or release information in the following circumstances:

**(1)** The department may utilize any information it has or may acquire to provide services to the child; and

**(2)** The department may release records to a person or entity that may be providing system or program evaluation.

**(c)** The department shall release information in the following circumstances:

**(1)** Upon request, the department shall release records to any child abuse review teams or child fatality review teams that are created or authorized by state

law to review the activities of the department or to evaluate or investigate the cause of injury to or death of a child;

**(2)** Records to any law enforcement agency, grand jury or court upon presentation of an appropriate court order;

**(3)** Upon written request, records to any federal, state or local government entity or agent of such entity that has a need for the information in order to carry out its responsibilities under law to protect children from abuse and neglect in compliance with 42 U.S.C. § 5106a(b)(2)(A)(ix);

**(4)** To provide for the public disclosure of information about any case that results in a child fatality or near fatality in compliance with 42 U.S.C. § 5106a(b)(2)(A)(x). For purposes of this subdivision (c)(4), "near fatality" means a child had a serious or critical medical condition resulting from child abuse or child sexual abuse, as reported by a physician who has examined the child subsequent to the abuse;

**(5)** Records to any person or entity who provides system or program evaluation at the request of the department;

**(6)** To the commission on children and youth any and all records requested by the commission that the commission believes necessary to perform its duties and responsibilities pursuant to § 37-3-103, particularly for the purpose of evaluating the delivery of services to children and their families served by the department; and

**(7)** Upon written request, records to any person who is the subject of a report made to the department, or to the person's parent or legal guardian if the person is a minor and the parent or legal guardian is not the alleged perpetrator of or in any way responsible for the child abuse, child neglect or child sexual abuse against the child whose records are being requested. A person provided access to records pursuant to this subdivision (c)(7) shall maintain the confidentiality of the records except to the extent necessary for proper supervision, care or treatment of the subject of the report.

**(d)** Pursuant to subdivision (c)(3), the department shall disclose records and information to any member of the general assembly to enable the member to determine whether the laws of this state are being complied with to protect children from abuse and neglect and whether the laws of this state need to be

changed to enhance such protection; provided, that the procedures set out in subdivisions (d)(1)-(3) and any other procedures required by law are followed.

**(1)** If a member of the general assembly receives a written inquiry regarding whether the laws of this state that protect children from abuse and neglect are being complied with or whether the laws of this state need to be changed to enhance protection of children, the member of the general assembly may submit a written request to the department, requesting review of the records and information relating to the inquiry. The member's request shall state the name of the child whose case file is to be reviewed and any other information that will assist the department in locating the information.

**(2)** The member shall sign a form, before reviewing the records and information, that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information. All records and information being reviewed by any member shall remain in the department's possession.

**(3)** After reviewing the records and information, if the member requests additional information, the department shall discuss the circumstances related to the records and information being disclosed.

**(e) (1)** Any person or entity, including the commission on children and youth, that is provided access to records under this section shall be required to maintain the records in accordance with state and federal laws and regulations regarding confidentiality.

**(2)** It is an offense for any person who has received or has been provided access to confidential information pursuant to this section to knowingly disclose or knowingly cause to be disclosed the information to any person or entity not otherwise provided access to the records by law.

**(3)** A violation of this subsection (e) is a Class B misdemeanor.

**(f)** Upon placement of a child in the custody of the department of children's services, all state, county and local agencies shall, notwithstanding any state laws or regulations to the contrary, grant access to any and all records in their possession that relate to the child for use by the department of children's services to determine a child's condition, needs, treatment or any other area of management; provided, however, that release of health care information must be consistent with the laws and policies of the departments of health and mental health and

developmental disabilities. The department of children's services shall comply with federal statutes and regulations concerning confidentiality of records. Any records that are confidential by law upon the enactment of this legislation shall be maintained as confidential by the department of children's services.

**(g)** Except as otherwise provided pursuant to 20 U.S.C. § 1232g(b)(1), prior to the release of student records, the local education agency must give written notice to the student and parent as required by 20 U.S.C. § 1232g(b)(1), and must provide the parent with a copy of all records released.

**(h)** Release of drug and alcohol records must comply with federal and state laws and regulations regarding the release of these records.

**(i)** Except as provided for in subsection (c)(2), nothing in this section shall ever be construed to permit or require the department to release or disclose the identification of the person making a report of harm in accordance with § 37-1-403.

**(j)** The department, in consultation with the commission on children and youth, shall adopt rules and regulations that may be necessary to establish administrative and due process procedures for the disclosure of records and other information pursuant to this section.

[Acts 1996, ch. 1079, § 8; imp. am. Acts 2000, ch. 947, § 6; 2008, ch. 1146, § 1; 2009, ch. 86, §§ 1, 2; 2009, ch. 358, § 4.]

## **2010 Tennessee Code**

### **Title 37 - Juveniles**

#### **Chapter 5 - Department of Children's Services**

##### **Part 1 - General Provisions**

##### **37-5-112 - Rules.**

**37-5-112. Rules.**

All current rules, regulations, orders, decisions and policies heretofore issued or promulgated by any departments of state government whose functions have been transferred under the provisions of this chapter shall remain in full force and effect and shall hereafter be administered and enforced by the department. To this end, the department of children's services, through its commissioner, shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred herein, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions herein transferred. The application of rules and regulations and the policies of the department shall be uniform and consistent throughout the state.

[Acts 1996, ch. 1079, § 13; 2009, ch. 87, § 1.]

## **2010 Tennessee Code**

### **Title 37 - Juveniles**

#### **Chapter 5 - Department of Children's Services**

##### **Part 5 - Child Care Agencies**

##### **37-5-512 - Abuse, neglect, or sexual abuse.**

###### **37-5-512. Abuse, neglect, or sexual abuse.**

**(a) (1)** Notwithstanding the provisions of § 71-3-503 or § 37-5-503, the department has the authority and responsibility to fully investigate, in accordance with the provisions of title 37, chapter 1, parts 1, 4 and 6, any allegation of abuse, neglect or sexual abuse that it receives regarding any child or children in the care of, or subject to the supervision, instruction or treatment of, any public or private entity or any person, whether or not such entity or person is subject to licensure or approval pursuant to this part or title 71, chapter 3, part 5, or title 49, chapter 1, part 11.

**(2)** The departments of education and human services shall immediately report all allegations of abuse or neglect in any child care agency or child care program that they may license, approve, or certify to the department of children's services for investigation and shall cooperate with the department of children's services in any investigations of abuse or neglect involving any such agency or program. If the department of children's services receives a report of abuse or neglect in any child care program certified by the department of education or a child care agency licensed by the department of human services, it shall immediately notify the appropriate department of its investigation.

**(3) (A)** The departments of children's services, education and human services shall utilize any information obtained in the course of such investigations in the determination of whether appropriate care is being provided to children who may be in the care of any child care agency or child care program that the departments of children's services, education or human services license, approve or certify.

**(B)** For purposes related to that determination and any appropriate licensing or approval action, the departments of education and human services shall be permitted access to the department of children's services' records; provided, that any information contained in any record of the departments of education or human services, or records relating to the investigation of the report of harm by the department of children's services shall be confidential and shall be released:

**(i)** Only in the proceedings concerning any certification, licensing or approval action or injunctive action by the department of education or human services permitted by title 49, chapter 1, part 11, or title 71, chapter 3, part 5; or

**(ii)** As otherwise permitted by the restrictions and conditions for the release of confidential records of the department of children's services pursuant to title 4 and title 37, chapter 1, part 4 or 6; or

**(iii)** As otherwise permitted by the department of children's services' regulations concerning procedures for release of information of validated perpetrators of child abuse; or

**(iv)** Notwithstanding the provisions of any other law to the contrary, including any provisions related to expunction of records under title 40, the limited release of confidential records pursuant to this section shall not alter the confidential character of such records, which shall be maintained, as necessary, to protect children.

**(C)** For purposes of this subdivision (a)(3), the rules of the department of children's services concerning release procedures for due process purposes shall apply to the release procedures of the departments of education and human services regarding perpetrators of child abuse validated by the department of children's services. Nothing herein shall be construed to permit the release of the name or identifying information of any person reporting child abuse or neglect under title 37, chapter 1, part 4 or 6.

**(4)** In the conduct of such investigations involving the alleged abuse or neglect of any child or in the evaluation of the appropriateness of any child care program or child care agency or the appropriateness of the care provided by any person, the departments of children's services, education and human services shall be granted access to the records of children in the care of the person or entity and to all personnel files of the director and employees of the person or entity and to all records of the person or entity. They shall be allowed to inspect all the premises in which children are kept or cared for and shall be allowed to interview any and all children in the care of such person or entity if the departments of children's services, education or human services determine that it is necessary to do so.

**(b)** If admission to the places, facilities or homes of the entities or persons involved in the care, supervision, instruction or treatment of the child is denied or delayed for any reason, the chancery, circuit or juvenile court of the county where the entity or person is located shall, upon cause shown by the department of children's services in investigations of abuse or neglect or sexual abuse involving any person or entity or in any of its licensing or approval activities, or upon cause shown by the departments of education or human services in any certification, licensing or approval activities, immediately, by ex parte order, direct the persons in charge of such places, facilities or any persons having responsibility for the care, supervision, instruction or treatment, of the child or children to allow entrance for the review of records, inspection of the premises, and to permit any interviews with or examinations of the children as permitted pursuant to title 37, chapter 1, title 49, chapter 1, part 11, or title 71, chapter 3, part 5.

**(c) (1)** If the departments of children's services, education or human services determine at any time that any person employed or associated in any manner with any person or entity, or any person providing care, supervision, instruction or treatment, of children has, at any time, abused, neglected or sexually abused a child, the department with certification, licensing or approval authority may take certificate or licensing action to prevent any child care program or child care agency certified, licensed or approved by it from continuing to provide care for children if

such program or agency fails or refuses to take appropriate or timely action to prevent future abuse, neglect or sexual abuse by that person.

**(2)** If the entity or person is subject to certification by the department of education pursuant to title 49, chapter 1, part 11, or is subject to licensure or approval by the department of human services pursuant to title 71, chapter 3, part 5, those departments may, in addition to any certificate, licensing or approval action, bring an action in the chancery, circuit or juvenile court of the county where the abuse, neglect or sexual abuse occurred or where the person resides to enjoin the entity found to have failed to protect the child or children from abuse, neglect or sexual abuse or the person who, at anytime, abused, neglected or sexually abused a child or children, from continuing currently, or in the future, to provide care, supervision, instruction or treatment for children on a full-time or part-time basis, or to enjoin the person who perpetrated the abuse or neglect from being associated in any manner with any entities or persons providing care, supervision, instruction or treatment for children.

**(3)** If the department of children's services determines at any time that any person employed or associated in any manner with an entity or person, or any person individually, providing care, supervision, instruction or treatment of children, has at any time abused, neglected or sexually abused a child, the department may bring an action for injunctive relief as permitted by subdivision (c)(2), whether or not the entity or person is subject to certification, licensure or approval by the departments of children's services, education or human services.

**(4)** In order to facilitate the protection of children, the departments of children's services, education and human services are specifically authorized to enter into inter-agency agreements for cooperative arrangements in any investigations or litigation authorized by this part.