

Notice of Rulemaking Hearing
Tennessee Department of Children's Services
Child Protective Services

There will be a hearing before the Tennessee Department of Children Services to consider promulgation of rules pursuant to T.C.A. § 37-5-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in Conference Room 7A of the Cordell Hull Building located at 436 6th Avenue North, Nashville, TN 37243 at 9:00 a.m. on the 16th day of May, 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Children's Services to discuss any auxiliary aids of services needed to facilitate participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department of Children's Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Children's Services ADA Coordinator, Maggie Winbush, Personnel Analyst 3, at 7th floor of the Cordell Hull Building, 8th Floor, 436 6th Avenue North, Nashville, TN 37243; (615) 532-5615.

For a copy of this notice of rulemaking hearing, contact: Shalonda Cawthon, Executive Director of Child Safety, 436 6th Avenue North, 8th Floor, Nashville, TN 37243-1290; (615) 741-8278.

0250-7-9-.01 through 0250-7-9-.10 is amended by deleting 0250-7-9-.01 through 0250-7-9-.10 in its entirety and adding the following so that as amended the rule shall read:

Substance of Proposed Amended Rules

Rules
of the
Tennessee Department Of Children's Services
Child Protective Services

Chapter 0250-7-9
Classification and Review of Reports of Child Abuse/Neglect
and
Due Process Procedures For Release of Child Abuse/Neglect Records

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0250-7-9-.01 Definitions

- (1) "Abuse" exists when a person under the age of eighteen (18) 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 caretaker. T.C.A. § 37-1-102(b)(1).

- (2) "Adult" means T.C.A. § 37-1-102(b)(3)
- (3) "Child" means T.C.A. § 37-1-102(b)(4)
- (4) "Child sexual abuse" means T.C.A. § 37-1-602(a)(3).
- (5) "Department" means the Tennessee Department of Children's Services.
- (6) "Neglect" is defined T.C.A. § 37-1-102(b)(12).
- (7) "Commissioner's designee" means the a person designated by the Commissioner of the Tennessee Department of Children's Services to act pursuant to this rule.
- (8) "Child care agency" T.C.A. § 37-1-602(a)(1).
- (9) "Indicated" T.C.A. § 37-1-406(i).
- (10) "Regional General Counsel" means the supervising attorney for one of the regional DCS office.
- (11) "Severe child abuse" T.C.A. § 37-1-102(b)(21).
- (12) "Record" includes files, reports, records, communications and working papers related to investigations or providing services, video tapes, photographs, electronic mails,
- (13) "Formal File Review" means the review established pursuant to 42 U.S.C. § 5106a(2)(B)(i) that is available to individuals whom the Department identifies or proposes to identify as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect. The Department shall use a formal file review as the sole form of due process when the information regarding the report and identity of the perpetrator shall be placed in the registry identified in Rule 02507-9-.02(1)(c). The Department shall use a formal file review as the initial form of due process when the information regarding the report and identity of a perpetrator must be released to any organization identified in Rule 02507-9-.02(1)(a) or (1)(b), and shall also afford the right to a hearing as provided in Rule 0250-7-9-.07.

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; 37-5-112(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.

0250-7-9-.02 Scope of Rules

- (1) These Rules shall apply to the following three categories of individuals:
 - (a) To individuals providing, care, supervision, instruction or treatment of a child or children either as an employee, employer or volunteer in:
 1. A child care program or child care agency as defined in T.C.A. §§ 49-1-1101 et seq. and §§ 37-5-501 et seq. or §§ 71-3-501 et seq.;
 2. In a public or private school for children;
 3. In a residential or institutional child caring entity;
 4. Through self employment; or
 5. In any other organization.
 - (b) To individuals whom the Department identifies or intends to identify as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to the following:
 1. The individual's employer or prospective employer, whether the individual is, or will be, a paid employee or under contract;
 2. The licensing authority of the employer or the individual; or

3. Any other person, entity or organization with which the individual is associated as a paid employee or contractor, or volunteer; and
- (c) To individuals who are to be placed on the registry of perpetrators of abuse or neglect established pursuant to Part 10, Chapter 11 of Title 68 of the Tennessee Code Annotated.
- (2) These Rules establish procedures to release the identity and other related information of a perpetrator in "indicated" reports of abuse, severe child abuse, child sexual abuse, or neglect to organizations or persons identified in paragraph 1 of this Rule.
 - (3) A release pursuant to these Rules shall be for purposes of protecting children from further abuse, severe child abuse, child sexual 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.
 - (4) These Rules shall not apply when the Department intends to release or has released any information about an individual who is an alleged perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to any of the following:
 - (a) any state(s) or federal law enforcement agency(ies) investigating a report of known or suspected child abuse or neglect or any crimes involving children;
 - (b) any state(s) District Attorney, Attorney General, or United States Attorney(s) or their authorized assistants, of the judicial districts or agencies involved in investigating or prosecuting crimes against children;
 - (c) any state(s) 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) in-house requests by employees of the Department for purposes consistent with enforcement of the child abuse and neglect or child welfare licensing laws of the State of Tennessee including disclosure to other individuals for purposes directly connected with the administration of Title 37, Chapter 1, Parts 4 and 6 or Title 71, Chapter 3, Part 5, of the Tennessee Code Annotated, other than disclosure to the employers, licensing authority other than the Department;
 - (f) any state(s) or federal social service or other agencies 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 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, child sexual abuse, or neglect;
 - (h) to 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;
 - (i) for the purpose of protecting a child or children from physical or severe child abuse, neglect, or child sexual abuse, except in such situation when such court, administrative hearing, board, or hearing officer, other than the Department of Children's Services, 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;

- (j) any release of information to the Departments of Education or Human Services pursuant to T.C.A. §§ 37-5-512(a)(2) and -512(a)(3) regarding an individual who is the subject of an on-going or a completed investigation of abuse, severe child abuse, child sexual abuse, or neglect by the Department may be released to the Departments of Education and Human Services.
 - 1. Any further release of information by the Departments of Education or Human Services of a finding by the Department that an individual has been classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect shall occur according to the procedures established by these Rules.; or
- (k) Any release to a foster care agency contractor of the Department for purposes of determining whether a child in the Department's custody should be placed with an individual.

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; 37-5-112(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.

0250-7-9-.03 Prohibited Releases

- (1) Any report of abuse, severe child abuse, child sexual abuse, or neglect is confidential pursuant to T.C.A. §§ 37-1-409(a)(1) and 37-1-609(a).
- (2) Any unauthorized release of a report of abuse, severe child abuse, child sexual abuse, or neglect constitutes a class B misdemeanor.
- (3) Unless the Department has complied with the requirements imposed by these Rules, the Department shall not release any information from its records to any organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b), for purposes of pre-employment screening or licensing, to identify any individual as a perpetrator abuse, severe child abuse, child sexual abuse, or neglect.
- (4) Unless the Department has complied with the requirements imposed by these Rules, the Department shall not release any information from its records to identify any individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to any organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b) that requests this information for purposes of routine or random screening of current employees, volunteers, or associates.
- (5) Unless the Department has complied with the requirements imposed by these Rules, the Department shall not release any information from its records to inform of any individual's status as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to any organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b) that requests this information for purposes of routine or random screening of current employees, volunteers, or associates.
- (6) If the Department does not begin procedures to release the identity and other related information of a perpetrator in an "indicated" report of abuse, severe child abuse, child sexual abuse, or neglect within two years of the initial classification, the Department shall not release

any information as to that report. This provision shall not, however, require expunction of this information from the Department's internal records.

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; 37-5-112(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.

0250-7-9-.04 Criteria for Classification of Reports of Child Abuse/ Neglect as "Indicated"

- (1) A report made against an alleged perpetrator shall be classified as "indicated" if the preponderance of the evidence, in light of the entire record, proves that the individual committed abuse, severe child abuse, child sexual abuse, or neglect. Proof of one or more of the following factors, linking the abusive act(s) to the alleged perpetrator may constitute a preponderance of the evidence:
 - (a) medical and/or psychological information from a licensed physician, medical center, or other treatment professional, that substantiates that physical abuse, sexual abuse, or severe physical abuse occurred;
 - (b) an admission by the perpetrator;
 - (c) the statement of a credible witness or witnesses to the abusive or neglectful act;
 - (d) the child victim's statement that the abuse occurred;
 - (e) physiological indicators or signs of abuse or neglect, including, but not limited to, cuts, bruises, burns, broken bones or medically diagnosed physical conditions;
 - (f) physical evidence that could impact the classification decision;
 - (h) The existence of behavioral patterns that may be indicative of child abuse/neglect and corroborates other evidence of abuse, severe child abuse, child sexual abuse, or neglect should be examined;
 - (i) The existence of 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; 37-5-112(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-.02 filed and effective March 25, 1999.

0250-7-9-.05 When Rights Under This Chapter Attach

- (1) An individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect shall have the right to a formal file review and to a hearing under these Rules if:
 - (a) The Department intends to or shall release the individual's name under the emergency procedures of Rule 0250-7-3-.11 to any organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b); or

- (b) The Department intends to or shall release the individual's name in non-emergency situations to any organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b).
- (2) An individual whom the Department has been classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect and whose identity shall be placed in the registry identified in Rule 0250-7-9-.02(1)(c) shall only have the right to a formal file review under these Rules.
- (a) This paragraph applies when the Department will not identify or does not intend to identify to any organization or person in Rules 0250-7-9-.02(1)(a) or (1)(b) that it has classified an individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect.
 - (b) If after an individual exhausts the due process afforded by paragraph 2 of this Rule, and if within the two-year period from the date of the initial classification of the report the Department intends to identify to any organization or person in Rules 0250-7-9-.02(1)(a) or (1)(b) that it has classified the individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, the Department shall not release this information unless the individual is afforded the right to a hearing under Rule 0250-7-9.07. The Department shall insure that the individual is notified in accordance 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; 37-5-112(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-.02 filed and effective March 25, 1999.

0250-7-9-.06 Right to Notice and Opportunity for Formal File Review

- (1) Within 10 business days after the Department has classified an individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, the Department shall notify, in writing at the individual's last known address, of the classification and 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 "indicated."
 - (a) If the indicated perpetrator in the classified report is a minor in the custody of his or her parent or guardian, the Department shall notify the minor with attention to the parent or guardian. Either the parent or guardian may request a formal file review on the minor's behalf.
 - (b) If the indicated perpetrator in the classified report is a minor in State custody, the Department shall notify the minor and Child Protective Services. The Department shall also notify the Regional General Counsel.
- (2) If the individual whom the Department has classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report falls under the categories set forth in Rules 0250-7-9-.02(1)(a) or (1)(b), the Department shall also determine whether the emergency procedures of Rule 0250-7-9-.11 apply.
- (3) 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 an "indicated" report investigated by the Department;
 - (b) that the individual may request a formal file review by the Commissioner's designee within 10 business days of the date of the notice;
 - (c) that failure to submit a request for a formal file review within 10 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;
 - (d) that the request for a formal file review shall be submitted to State of Tennessee Department of Children's Services, Child Protective Services Division, Formal File Review, Cordell Hull Building, 436 Sixth Ave. North, Nashville, Tennessee, 37243; and
 - (e) that if the individual provides care, supervision, instruction or treatment to a child or children to any organization or individual specified in Rule 0250-7-9-.02(1)(a) or (1)(b), the formal file review decision may have an impact on the individual's employment, and that, in this case, the individual also shall have the right to an administrative hearing under Rule 0250-7-9-.07.
- (4) The Department shall date-stamp all requests for formal file reviews on the date received.
- (5) The Department shall respond to a timely filed request for a formal file review within 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 pursuant to the Department's Rules the individual may submit additional information on his or her behalf to the address identified in paragraph 3(d) of this Rule;
 - (b) That the individual must submit the additional information within 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 90 business days of the date of the notice.
- (6) Unless the emergency procedures in Rule 0250-7-9-.11 apply, during the 10-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 an "indicated" 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.
- (7) In conducting the formal file review, the Commissioner's designee shall determine whether the evidentiary standards set forth in Rule 0250-7-9-.04 have been satisfied.
- (8) If the Commissioner's designee determines that the standards in Rule 0250-7-9-.04 are not met, the report shall be reversed and it shall be classified as "not indicated." 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 to the organizations or persons identified in Rule 0250-7-9-.02(1)(a) or (1)(b). Nothing in these rules shall be construed to require the expunction of internal case records maintained by the Department.

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

1. that the formal file review has classified the report as “not indicated”;
2. that the Department will not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to the organizations identified in Rule 0250-7-9-.02(1)(a) or (1)(b); and
3. that the Department shall not place the individual’s identity in the registry identified in Rule 0250-7-9-.02(1)(c).

(9) 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 shall notify the individual in accordance with paragraphs 8 or 10 of this Rule.

(10) If the Commissioner’s designee determines that the standards in Rule 0250-7-9-.03 are met, the report shall be upheld and it shall be classified as “indicated.”

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

1. that the individual has been identified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an “indicated” report investigated by the Department; and
2. that, after conducting a formal file review, the “indicated” report was upheld.

(b) If the individual falls under the categories set forth in Rules 0250-7-9-.02(1)(a) or (1)(b), the notice in this paragraph shall also contain, at a minimum, the following:

1. that the individual may request a hearing within 10 business days of the date of the notice before an administrative law judge by filling out an attached request for administrative hearing;
2. 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;
3. that, if the individual fails to timely request a hearing absent good cause, he or she shall waive the right to an administrative hearing; and

4. 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 specified in Rules 0250-7-9-.02(1)(a) or (1)(b).
- (c) If, however, the individual falls under the category set forth in Rule 0250-7-9-.02(1)(c), the notice in addition to containing the information in this paragraph 8(a) of this Rule shall also state the following:
 1. That if, within two years from the date of the initial classification of the report, the individual intends to provide care, supervision, instruction or treatment to a child or children to any organization or for any person specified in Rules 0250-7-9-.02(1)(a) or (1)(b), the individual also shall have the right to an administrative hearing under Rule 0250-7-9-.06.

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; 37-5-112(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-.02 filed and effective March 25, 1999.

0250-7-9-.07 Right to Notice and Opportunity for Administrative Hearing

- (1) An individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect and whose classification has been upheld pursuant to a formal file review may request an administrative hearing before a hearing officer of the Administrative Procedures Division of the Department.
- (2) An individual shall request an administrative hearing within 10 business days from the date of the notice of the outcome of the formal file review. A request for a hearing submitted before a case file review has been completed shall be invalid.
- (3) Unless the emergency procedures in Rule 0250-7-9-.11 apply, during the 10-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 abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" 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.
 - (a) 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 Rules 0250-5-4.
 - (b) The hearing will be held, and an initial order entered therein, within 90 business days of the date of the notice required in Rule 0250-7-9-.06(10), unless:
 1. the time limit is extended or waived by agreement of the parties, or for good cause shown; or
 2. the proceedings are stayed pursuant to Rule 0250-7-9-.08.
- (5) If the individual fails timely to request a hearing, the individual shall waive his or her right to a hearing. The Department's "indicated" report regarding the individual shall be then be available for dissemination to any organization or individual identified in Rules 0250-7-9-

.02(1(a) or (1)(b) and the individual's identity shall be placed in the registry identified in Rule 0250-7-9-.02(1)(c).

- (6) An individual who fails timely to request a hearing may be granted a hearing provided that he or she shows good cause for his or her failure to make a timely request.
 - (a) Good cause is limited to a failure to receive the notice referred to in Rule 0250-7-9.06(10), 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; 37-5-112(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-.05 filed and effective March 25, 1999.

0250-7-9-.08 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 an "indicated" 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 an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect is the subject of other administrative 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 individual in accordance with Rules 025-7-9-.06, 0250-7-9-.07, or 0250-7-9-.11, 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 0250-7-9-.11 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 an "indicated" 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 proceeding.
- (3) If a criminal prosecution results in a conviction or guilty plea for any offense listed in T.C.A. § 37-1-602(a)(2), or for any act which would constitute physical abuse, sexual abuse, or severe physical abuse as defined in T.C.A. § 37-1-102(10) and (19), or if 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)(2) or T.C.A. §37-1-102(10) and (19), or if 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 which would constitute physical abuse, sexual abuse, or severe physical abuse, as defined in T.C.A. §37-1-102(10) and (19) or any act which constitutes child sexual abuse as defined in T.C.A. §37-1-602(2), then such conviction and/or adjudication will be conclusive evidence that the individual is the perpetrator classified in the "indicated" report and the individual will have no right to a

hearing provided for in 0250-7-9-.07 in regard to that particular report. In this event, the Department may release information about the perpetrator as permitted under these Rules.

- (a) 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 shall not be conclusive on the issue of whether the report is properly classified as "indicated."
- (4) 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 such in writing to Tennessee Department of Children's Services, Case File Review, 8th Floor, Cordell Hull Building, Child Protect Services, 436 6th Ave. N., Nashville, Tennessee 37243, within 30 days of entry of a final order by a court or other administrative body favorably disposing of the issue of child abuse 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 indicated report and information regarding the perpetrator will be released as permitted under these Rules.
- (5) Unless the individual has waived his or her rights to a formal file review or to an administrative hearing by failing timely to request same, if administrative proceedings have been stayed, the Department shall notify in writing the individual as follows:
 - (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 administrative proceedings under these rules will be reinstated at the point they were stayed only if the individual requests such in writing to the local office of the Department which issued the original notice within 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 as specified in paragraph (1)(b) above);
 - (c) if the individual fails timely to make such a written request, he or she will shall waive his or her rights to an administrative hearing in regard to the report.

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; 37-5-112(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-.06 filed and effective March 25, 1999.

0250-7-9-.09 Conduct of the Administrative Hearing

- (1) The hearing provided for in 0250-7-9-.07 will be conducted in accordance with the provisions of the Uniform Administrative Procedures Act and of Rules 0250-5-6.
- (2) In hearings pursuant to 0250-7-9-.07, the sole issue for the hearing officer is to determine whether the standards for classifying the report as "indicated," as provided in 0250-7-9-.03 have been met. In making this determination, the hearing officer shall consider whatever relevant and admissible proof the individual offers that the report is not properly classified as indicated and shall further consider any competent and admissible proof concerning the dynamics of child abuse relevant to whether the classification is proper.
- (3) Unless the emergency procedures in Rule 0250-7-9-.11 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 an "indicated" 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 Department, or a court of competent jurisdiction in the event of judicial review, concludes that the standards in Rule 0250-7-9-.04 are not met, the report shall be classified as "not indicated." 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 to the organizations or persons identified in Rules 0250-7-9-.02(1)(a) or (1)(b).
 - (a) If the Department had previously disclosed to an organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b) that an individual was under investigation under the child abuse laws of this State, the Department shall forthwith notify that organization or person that the report was not "not indicated." Nothing in this rule shall be construed to require the expunction of any information from internal case records maintained by the Department.
- (5) The final order shall include a statement of the available procedures and time limits for seeking reconsideration and/or judicial review.
- (6) The final order shall also comply with Rules 0250-7-8-.03 and 0250-7-10.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(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-.07 filed and effective March 25, 1999.

0250-7-9-.10 Evidence; Standard of Proof

- (1) Admissibility of evidence in hearings pursuant to 0250-7-9-.07 is governed by the provisions of T.C.A. §4-5-313. Provided, however, that "evidence admissible in a court" shall, for purposes of hearings pursuant to this chapter, refer also to evidence admissible in any juvenile court of this state. Provided further that the evidentiary provisions of Title 24, Chapter 7, Part I of the Tennessee Code Annotated and T.C.A. §§ 37-1-401 et seq. and 37-1-601 et seq., including the use of videotape testimony, shall be applicable to such hearings.
- (2) An individual will be indicated as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect only after the case is proven by a preponderance of the evidence.

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; 37-5-112(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-.08 filed and effective March 25, 1999.

0250-7-9-.11 Alleged Perpetrators with Current Access to Children; Emergency Notification

- (1) The provisions of this Rule apply to individuals classified as perpetrators of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report who fall under the categories set forth in Rules 0250-7-9-.02(1)(a) or (1)(b).
- (2) The purpose of this Rule is to determine whether an alleged perpetrator abuse, severe child abuse, child sexual abuse, or neglect poses an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.
- (3) As soon as reasonably possible after the Department has investigated and recommended to classify an individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, the Department may conduct an ex parte formal file review under Rule 0250-7-9-.06.

- (a) If the Commissioner's designee determines that the standards in Rule 0250-7-9-.04 are met, the report shall be upheld and it shall be classified as "indicated."
 - (b) The Commissioner's designee also shall determine whether there is an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.
 - 1. If such threat exists, the Department shall follow the procedures set forth in paragraphs (4), (5) and (6) of this Rule.
 - (c) If no such immediate threat exists, the Department shall not reveal the alleged perpetrator's identity and shall follow the procedures set forth in Rule 0250-7-9-.06.
- (4) As soon as reasonably possible after the Commissioner's designee has determined that an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access exists, the Department shall notify in writing to both the alleged perpetrator and to the organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b).
- (a) The notice shall contain the information set forth in Rule 0250-7-9-.06(10)(b); and
 - (b) A statement that the organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b) with which the individual is associated shall receive notice of the Department's determination.
 - 1. The notice shall also contain the following:
 - i. that the organization or person shall ensure that the individual is not a threat to the safety of any child in their care; and
 - ii. 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 "indicated" report regarding the individual shall be then be available for dissemination to any organization or individual identified in Rules 0250-7-9-.02(1)(a) or (1)(b) and the individual's identity shall be placed in the registry identified in Rule 0250-7-9-.02(1)(c).
- (6) If the individual timely requests a hearing, the Department shall follow the procedures set forth in Rule 0250-7-9-.07(4).
- (7) An individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect and who poses an immediate threat to the health, safety, or welfare of a child or children as determined by the Commissioner's designee may request a hearing pursuant to Rule 0250-7-9-.07.
- (8) Following final resolution of the case, whether by administrative hearing, court order, or waiver by the alleged perpetrator, the Department shall promptly notify of its decision the organization or person set forth in Rules 0250-7-9-.02(1)(a) or (1)(b).
- (a) If the classification of the report as "indicated" is upheld, the organization or person set forth in Rules 0250-7-9-.02(1)(a) or (1)(b) shall continue to assure that the individual is not a threat to the safety of any child in their care, and the notice shall so state.

- (b) If the classification of the report as "indicated" is reversed, the organization or person set forth in Rules 0250-7-9-.02(1)(a) or (1)(b) will not be required to assure that the individual is not a threat to the safety of any child in their care, and the notice shall so state.

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; 37-5-112(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-.02 filed and effective March 25, 1999.

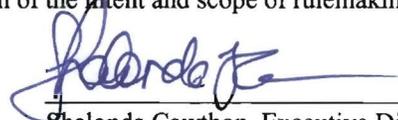
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I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Department of Children's Services.


 Shalonda Cawthon, Executive Director
 Child Safety

Subscribed and sworn to before me this 2nd day of March, 2006.


 Andrea Luikes
 Notary Public

My Commission Expires on the 4th day of October, 2006.

The notice of rulemaking set out herein was properly filed in the Department of State on the 7 day of March, 2006.


 Riley C. Darnell
 Secretary of State

By: 

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