

**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**

Table of Contents

0250-7-9-.01 Definitions	0250-7-9-.07 Alleged Perpetrators with Current Access to Children; Emergency Notification
0250-7-9-.02 Scope of Rules	0250-7-9-.08 Right to Notice and Opportunity for Administrative Hearing
0250-7-9-.03 Prohibited Releases	0250-7-9-.09 Stay of Administrative Proceedings
0250-7-9-.04 When Rights Under this Chapter Attach	0250-7-9-.10 Conduct of Administrative Hearing
0250-7-9-.05 Standard and Criteria for Review of Classification of Reports of Child Abuse/Neglect as “Indicated”	0250-7-9-.11 Evidence; Standard of Proof at the Administrative Hearing
0250-7-9-.06 Right to Notice and Opportunity for Formal File Review	

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. Tenn. Code Ann. § 37-1-102(b)(1)
- (2) “Adult” means any person eighteen (18) years of age or older. Tenn. Code Ann. § 37-1-102(b)(3)
- (3) “Child” means (A) A person under the age of eighteen (18) years of age.
- (4) “Child sexual abuse” means:
 - (a) The commission of any act involving unlawful sexual abuse, molestation, fondling or carnal knowledge of a child that constitutes a criminal offense under Tennessee law; or
 - (b) One (1) or more of the following acts:
 1. Any penetration, however slight, of the vagina or anal opening of one (1) person by the penis of another person, whether or not there is the emission of semen;
 2. Any contact between the genitals or anal opening of one (1) person and the mouth or tongue of another person;
 3. Any intrusion by one (1) person into the genitals or anal opening of another person, including the use of any object for this purpose, except that it shall not include acts intended for a valid medical purpose;

4. The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that it shall not include:
 - (i) Acts that may reasonably be construed to be normal caretaker responsibilities, interactions with, or affection for a child; or
 - (ii) Acts intended for a valid medical purpose;
 5. The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;
 6. The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:
 - (i) Solicit for or engage in prostitution; or
 - (ii) Engage in an act prohibited by Tenn. Code Ann. § 39-17-1003;
- (c) For the purposes of the reporting, investigation, and treatment provisions of Tenn. Code Ann. §§ 37-1-603-- 37-1-615 "child sexual abuse" also means the commission of any act specified in subdivision Tenn. Code Ann. § 37-1-602(a)(3) against a child thirteen (13) years of age through seventeen (17) years of age if such act is committed against the child by a parent, guardian, relative, person residing in the child's home, or other person responsible for the care and custody of the child. Tenn. Code Ann. § 37-1-602(a)(3)
- (5) "Department" means the Tennessee Department of Children's Services.
 - (6) "Neglect" means a child: (A) Who is without a parent, guardian or legal custodian; (B) Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child; (C) Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school; (D) Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child; (E) Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law; (F) Who is in such conditions of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others; (G) Who is suffering from abuse or neglect; (H) Who has been in the care and control of an agency or person who is not related to such child by blood or marriage for a continuous period of eighteen (18) months or longer in the absence of a court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child; or (I) Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity. Tenn. Code Ann. § 37-1-102(b)(12)
 - (7) "Commissioner's designee" means the person designated by the Commissioner of the Tennessee Department of Children's Services to act pursuant to this rule.
 - (8) "Child care agency" means a place or facility, regardless of whether it is currently licensed, that is operated as a "family child care home", a "group child care home", a "child care center", or a "drop-in center", or that provides child care for five (5) or more children who

are not related to the primary caregiver for three (3) or more hours per day. Tenn. Code Ann. § 71-3-501.

- (9) “Indicated” means the classification assigned to an individual found to be a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect as the result of investigation of a report of abuse. Tenn. Code Ann. § 37-1-406(i)
- (10) “Regional General Counsel” means the supervising attorney for one of the regional DCS offices.
- (11) “Severe child abuse” means (A) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause great bodily harm or death and the knowing use of force on a child that is likely to cause great bodily harm or death; (B) Specific brutality, abuse or neglect towards a child that in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or retardation, or severe impairment of the child’s ability to function adequately in the child’s environment, and the knowing failure to protect a child from such conduct; (C) The commission of any act towards the child prohibited by Tenn. Code Ann. §§ 39-13-502 -- 39-13-504, 39-13-522, 39-15-302, and 39-17-1005 or the knowing failure to protect the child from the commission of any such act towards the child; or (D) Knowingly allowing a child to be present within a structure where the act of creating methamphetamine, as that substance is identified in Tenn. Code Ann. § 39-17-408(d)(2), is occurring. Tenn. Code Ann § 37-1-102(b)(21)
- (12) “Record” includes files, reports, records, communications and working papers related to investigations or providing services, video tapes, photographs, or electronic mails.
- (13) “Formal File Review” means the review established pursuant to 42 U.S.C. § 5106a(b)(2)(A)(xv)(II) that is available to an individual 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 initial form of due process when the information regarding the report and identity of a perpetrator must be released to any organization or individual and shall also afford the right to a hearing as provided in Rule 0250-7-9-.07.

Authority: *Tenn. Code Ann. §§ 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 all indicated cases of child abuse/neglect.
- (2) These Rules establish procedures to review indicated cases and 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.
- (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 Tenn. Code Ann. §§ 37-1-401 et seq.; 37-1-601 et seq.; 49-1-1101 et seq. and 71-3-501 et seq.
- (4) This rule shall apply to any release of information to the Department of Health in compliance with Tenn. Code Ann. § 68-11-1004(b)(2). Prior to such release, the individual shall have the right to an administrative hearing pursuant to these rules.

- (5) 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, or 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 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;
 - (i) any release of information to the Departments of Education or Human Services pursuant to Tenn. Code Ann. §§ 37-5-512(a)(2) and (3) regarding an individual who is the subject of an ongoing 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

- (j) 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: *Tenn. Code Ann. §§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 Tenn. Code Ann. §§ 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) Until the affected individual has exhausted all reviews 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 any individual as a perpetrator abuse, severe child abuse, child sexual abuse, or neglect.
- (4) Until the affected individual has exhausted all reviews permitted 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 that requests this information for purposes of routine or random screening of current employees, volunteers, or associates.
- (5) 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: *Tenn. Code Ann. §§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 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 0250-7-9-.11 to any organization or person; or
 - (b) The Department intends to or shall release the individual's name in non-emergency situations to any organization or person.
- (2) 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 identity shall be placed in the Department's registry of perpetrators of abuse or neglect 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 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 formal file review 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 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: *Tenn. Code Ann. §§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 STANDARDS AND CRITERIA FOR REVIEW OF 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;
 - (g) 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;
 - (h) 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: *Tenn. Code Ann. §§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 the individual, 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.”
- (2) If the indicated perpetrator in the classified report is a minor, the Department shall notify the minor, the child’s parent or guardian, Child Protective Services, Regional General Counsel, and any Guardian Ad Litem or other attorney for the child. The parent, guardian, Guardian Ad Litem, or the child’s attorney may request a formal file review on the minor’s behalf.
- (3) The Department shall determine whether the emergency procedures of Rule 0250-7-9-.11 apply to the individual whom the Department has classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an “indicated” 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 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 (the date of the notice must reflect the actual mailing date);
 - (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, 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.
- (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 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 written or documentary 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.
- (7) Unless the emergency procedures in Rule 0250-7-9-.07 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.
- (8) In conducting the formal file review, the Commissioner's designee shall determine whether the evidentiary standards set forth in Rule 0250-7-9-.05 have been satisfied.
- (9) If the Commissioner's designee determines that the standards in Rule 0250-7-9-.05 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. 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"; and
 - 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.
- (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 shall notify the individual in accordance with paragraphs 8 or 10 of this Rule.
- (11) If the Commissioner's designee determines that the standards in Rule 0250-7-9-.05 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) The notice in this paragraph shall also contain, at a minimum, the following:

1. That, if the individual meets the standards for an administrative hearing pursuant to 0250-7-9-.08, 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.

Authority: *Tenn. Code Ann. §§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 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 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 after the Department has investigated and identified an individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, who poses an immediate threat to the health, safety or welfare of a child or children to whom the alleged perpetrator has access, the Department shall conduct an emergency file review in accordance with this rule.
- (3) The Commissioner's designee shall determine: (1) Whether the indication should be upheld; and (2) 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 reveal the alleged perpetrator's identity.
- (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 both the alleged perpetrator and the organization or person with whom the individual is associated identified of such immediate threat.
 - (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 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 then be available for dissemination to any organization or individual and the individual's identity shall be placed in the registry.
- (6) If the individual timely requests a hearing, the Department shall follow the procedures set forth in Rule 0250-7-9-.08(4).

Authority: Tenn. Code Ann. §§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-.08 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 if the Department is going to release information or if the indication will affect their employment or any professional license.
- (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-.07 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 1360-4-1.
 - (a) 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-.09.

- (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 person with whom the individual is associated and the individual's identity shall be placed in the registry.
- (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: *Tenn. Code Ann. §§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-.09 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 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 individual in accordance with Rules 0250-7-9-.06, 0250-7-9-.07, or 0250-7-9-.08, 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-.07 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 Tenn. Code Ann. § 37-1-602(a)(3), or for any act which would constitute physical abuse, sexual abuse, or severe physical abuse as defined in Tenn. Code Ann. § 37-1-102(21), or if the individual is found guilty or pleads guilty to any lesser offense derived from the offenses or acts alleged under Tenn. Code Ann. §37-1-602(a)(3) or Tenn. Code Ann. §37-1-102(21), 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 Tenn. Code Ann. §37-1-102(21) or any act which constitutes child sexual abuse as defined in Tenn.

Code Ann. §37-1-602(a)(3), 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-.08 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 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 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 an administrative hearing in regard to the report.

Authority: *Tenn. Code Ann. §§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-.10 CONDUCT OF THE ADMINISTRATIVE HEARING

- (1) The hearing provided for in 0250-7-9-.08 will be conducted in accordance with the provisions of the Uniform Administrative Procedures Act and of Rule 0250-5-6.
- (2) In hearings pursuant to 0250-7-9-.08, the sole issue for the hearing officer is to determine whether 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. 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-.07 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-.05 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.
 - (a) If the Department had previously disclosed 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 indicated.” Nothing in this rule shall be construed to require the expunction of any information from internal case records maintained by the Department.
- (5) If the Individual is dissatisfied with the decision of the Department, a Petition for Reconsideration of the Final Order may be filed within fifteen (15) days from the date of the Order. Further, the individual may petition for review in the Chancery Court of his/her county of residence or in Davidson County within sixty (60) days of the date of this order.

Authority: *Tenn. Code Ann. §§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-.11 EVIDENCE; STANDARD OF PROOF AT THE ADMINISTRATIVE HEARING

- (1) Admissibility of evidence in hearings pursuant to 0250-7-9-.08 is governed by the provisions of Tenn. Code Ann. §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 Tenn. Code Ann. §§ 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.
- (3) 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 with whom the individual is associated of its decision.
 - (a) If the classification of the report as “indicated” is upheld, the organization or person 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 will be promptly notified of the reversal of the indication and 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: *Tenn. Code Ann. §§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.