

# HOUSE BILL No. 1189

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 31-33.

**Synopsis:** Child fatality information. Provides that the department of child services (department) shall disclose to the public certain information regarding child fatalities or near fatalities. Provides that, upon request, the department shall provide additional information regarding cases of child fatalities or near fatalities after consulting with the county attorney about the potential for specific, material harm to a criminal investigation or prosecution. Allows a person to bring a cause of action to seek judicial review of the department's decision not to disclose additional information. Makes technical and conforming changes.

**Effective:** July 1, 2023.

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January 10, 2023, read first time and referred to Committee on Family, Children and Human Affairs.

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First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

## HOUSE BILL No. 1189

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A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 31-33-18-1, AS AMENDED BY P.L.119-2013,  
2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2023]: Sec. 1. (a) Except as provided in section 1.5 of this  
4 chapter **and IC 31-33-18.5**, the following are confidential:  
5 (1) Reports made under this article (or IC 31-6-11 before its  
6 repeal).  
7 (2) Any other information obtained, reports written, or  
8 photographs taken concerning the reports in the possession of:  
9 (A) the division of family resources;  
10 (B) the local office;  
11 (C) the department; or  
12 (D) the department of child services ombudsman established  
13 by IC 4-13-19-3.  
14 (b) Except as provided in section 1.5 of this chapter **and**  
15 **IC 31-33-18.5**, all records held by:  
16 (1) the division of family resources;  
17 (2) a local office;



- 1 (3) the department;
- 2 (4) a local child fatality review team established under
- 3 IC 16-49-2;
- 4 (5) the statewide child fatality review committee established
- 5 under IC 16-49-4; or
- 6 (6) the department of child services ombudsman established by
- 7 IC 4-13-19-3;
- 8 regarding the death of a child determined to be a result of abuse,
- 9 abandonment, or neglect are confidential and may not be disclosed.
- 10 SECTION 2. IC 31-33-18-1.5, AS AMENDED BY P.L.40-2019,
- 11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 12 JULY 1, 2023]: Sec. 1.5. (a) This section applies to records held by:
- 13 (1) a local office;
- 14 (2) the department; or
- 15 (3) the department of child services ombudsman established by
- 16 IC 4-13-19-3;
- 17 regarding a child whose death or near fatality may have been the result
- 18 of abuse, abandonment, or neglect.
- 19 (b) For purposes of subsection (a), a child's death or near fatality
- 20 may have been the result of abuse, abandonment, or neglect if:
- 21 (1) an entity described in subsection (a) determines that the child's
- 22 death or near fatality is the result of abuse, abandonment, or
- 23 neglect; or
- 24 (2) a prosecuting attorney files:
- 25 (A) an indictment or information; or
- 26 (B) a complaint alleging the commission of a delinquent act;
- 27 that, if proven, would cause a reasonable person to believe that
- 28 the child's death or near fatality may have been the result of
- 29 abuse, abandonment, or neglect.
- 30 Upon the request of any person, or upon its own motion, the court
- 31 exercising juvenile jurisdiction in the county in which the child's death
- 32 or near fatality occurred shall determine whether the allegations
- 33 contained in the indictment, information, or complaint described in
- 34 subdivision (2), if proven, would cause a reasonable person to believe
- 35 that the child's death or near fatality may have been the result of abuse,
- 36 abandonment, or neglect.
- 37 (c) If the juvenile court finds that the child's death or near fatality
- 38 was the result of abuse, abandonment, or neglect, the court shall make
- 39 written findings and provide a copy of the findings and the indictment,
- 40 information, or complaint described under subsection (b)(2) to the
- 41 department.
- 42 (d) As used in this section:



- 1 (1) "case" means:  
 2 (A) any intake report generated by the department;  
 3 (B) any investigation or assessment conducted by the  
 4 department; or  
 5 (C) ongoing involvement between the department and a child  
 6 or family that is the result of:  
 7 (i) a program of informal adjustment; or  
 8 (ii) a child in need of services action;  
 9 for which related records and documents have not been expunged  
 10 as required by law or by a court at the time the department is  
 11 notified of a fatality or near fatality;
- 12 (2) "contact" means in person communication about a case in  
 13 which:  
 14 (A) the child who is the victim of a fatality or near fatality is  
 15 alleged to be a victim; or  
 16 (B) the perpetrator of the fatality or near fatality is alleged to  
 17 be the perpetrator;
- 18 (3) "identifying information" means information that identifies an  
 19 individual, including an individual's:  
 20 (A) name, address, date of birth, occupation, place of  
 21 employment, and telephone number;  
 22 (B) employer identification number, mother's maiden name,  
 23 Social Security number, or any identification number issued by  
 24 a governmental entity;  
 25 (C) unique biometric data, including the individual's  
 26 fingerprint, voice print, or retina or iris image;  
 27 (D) unique electronic identification number, address, or  
 28 routing code;  
 29 (E) telecommunication identifying information; or  
 30 (F) telecommunication access device, including a card, a plate,  
 31 a code, an account number, a personal identification number,  
 32 an electronic serial number, a mobile identification number, or  
 33 another telecommunications service or device or means of  
 34 account access;
- 35 (4) "life threatening" means an injury or condition that is  
 36 categorized as "serious" or "critical" in patient hospital records;  
 37 and
- 38 (5) "near fatality" means a severe childhood injury or condition  
 39 that is certified by a physician as being life threatening.
- 40 **(e) This subsection does not apply to records concerning a child**  
 41 **fatality or near fatality that the department is required to publish**  
 42 **under IC 31-33-18.5. Unless:**



- 1 (1) a police investigation or criminal prosecution is ongoing; or  
 2 (2) information in a record is otherwise confidential under state  
 3 or federal law;
- 4 a record described in subsection (a) that has been redacted in  
 5 accordance with this section is not confidential and may be disclosed  
 6 to any person who requests the record. The person requesting the  
 7 record may be required to pay the reasonable expenses of copying the  
 8 record.
- 9 (f) When a person requests a record described in subsection (a), the  
 10 entity having control of the record shall immediately transmit a copy of  
 11 the record to the court exercising juvenile jurisdiction in the county in  
 12 which the death or near fatality of the child occurred. However, if the  
 13 court requests that the entity having control of a record transmit the  
 14 original record, the entity shall transmit the original record.
- 15 (g) Upon receipt of the record described in subsection (a), the court  
 16 shall, within thirty (30) days, redact the record to exclude:
- 17 (1) identifying information described in subsection (d)(3)(B)  
 18 through (d)(3)(F) of a person; and  
 19 (2) all identifying information of a child less than eighteen (18)  
 20 years of age.
- 21 (h) The court shall disclose the record redacted in accordance with  
 22 subsection (g) to any person who requests the record, if the person has  
 23 paid:
- 24 (1) to the entity having control of the record, the reasonable  
 25 expenses of copying under IC 5-14-3-8; and  
 26 (2) to the court, the reasonable expenses of copying the record.
- 27 (i) The data and information in a record disclosed under this section  
 28 must include the following:
- 29 (1) A summary of the report of abuse or neglect and a factual  
 30 description of the contents of the report.  
 31 (2) The age and gender of the child.  
 32 (3) The cause of the fatality or near fatality, if the cause has been  
 33 determined.  
 34 (4) Whether the department had any contact with the child or the  
 35 perpetrator before the fatality or near fatality, and, if the  
 36 department had contact, the following:
- 37 (A) The frequency of the contact with the child or the  
 38 perpetrator before the fatality or near fatality and the date on  
 39 which the last contact occurred before the fatality or near  
 40 fatality.  
 41 (B) A summary of the status of the child's case at the time of  
 42 the fatality or near fatality, including:



1 (i) whether the child's case was closed by the department  
2 before the fatality or near fatality; and

3 (ii) if the child's case was closed as described under item (i),  
4 the date of closure and the reasons that the case was closed.

5 (j) The court's determination under subsection (g) that certain  
6 identifying information or other information is not relevant to  
7 establishing the facts and circumstances leading to the death or near  
8 fatality of a child is not admissible in a criminal proceeding or civil  
9 action.

10 SECTION 3. IC 31-33-18-5, AS ADDED BY P.L.48-2012,  
11 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
12 JULY 1, 2023]: Sec. 5. (a) **Except as provided in IC 31-33-18.5**, an  
13 audio recording of a telephone call to the child abuse hotline is  
14 confidential and may be released only upon court order.

15 (b) An audio recording of a report of child abuse or neglect that is  
16 the subject of a complaint made to a prosecuting attorney under  
17 IC 31-33-22-3 shall be released without a court order to the prosecuting  
18 attorney upon written request of the prosecuting attorney.

19 SECTION 4. IC 31-33-18.5 IS ADDED TO THE INDIANA CODE  
20 AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE  
21 JULY 1, 2023]:

22 **Chapter 18.5. Child Fatalities Public Transparency**

23 **Sec. 1. This chapter applies to the following:**

24 (1) **Reports made under this article (or IC 31-6-11 before its**  
25 **repeal).**

26 (2) **Any other information obtained, reports written, or**  
27 **photographs taken concerning the reports in the possession**  
28 **of:**

29 (A) **the division of family resources;**

30 (B) **the local office;**

31 (C) **the department; or**

32 (D) **the department of child services ombudsman**  
33 **established by IC 4-13-19-3.**

34 **Sec. 2. For purposes of this chapter, "department" refers to the**  
35 **department of child services.**

36 **Sec. 3. For purposes of this chapter, "near fatality" means an**  
37 **act that, as certified by a physician, places a child in serious or**  
38 **critical condition.**

39 **Sec. 4. (a) Notwithstanding IC 31-33-18, the department shall**  
40 **promptly provide information to the public regarding a case of**  
41 **child abuse or neglect that has resulted in a fatality or near fatality.**

42 (b) **The department shall provide preliminary information as**



- 1 follows:  
2 (1) In the case of a child fatality, the department's disclosure  
3 must include the following:  
4 (A) The deceased child's name, age, and gender.  
5 (B) The county or general location of the residence for the  
6 child who has died.  
7 (C) The fact that a child suffered a fatality as the result of  
8 abuse or neglect.  
9 (D) The name, age, and general location of the alleged  
10 perpetrator's residence, unless the disclosure would violate  
11 the privacy of a victim.  
12 (E) Whether there have been reports or any current or  
13 past cases of abuse or neglect involving the child or the  
14 alleged perpetrator.  
15 (F) Actions taken by the department in response to the  
16 fatality.  
17 (G) A detailed synopsis of earlier reports or cases of abuse  
18 or neglect involving the child or the alleged perpetrator  
19 and of the actions taken or determinations made by the  
20 department in response to the earlier reports or cases.  
21 (2) In the case of a child's near fatality, the department's  
22 disclosure must include the following:  
23 (A) The child's age and gender.  
24 (B) The county or general location of the residence for the  
25 child who has suffered a near fatality.  
26 (C) The fact that a child suffered a near fatality as the  
27 result of abuse or neglect.  
28 (D) The name, age, and general location of the alleged  
29 perpetrator's residence, unless the disclosure would violate  
30 the privacy of a victim.  
31 (E) Whether there have been reports or any current or  
32 past cases of abuse or neglect involving the child or the  
33 alleged perpetrator.  
34 (F) Actions taken by the department in response to the  
35 near fatality.  
36 (G) A detailed synopsis of earlier reports or cases of abuse  
37 or neglect involving the child or the alleged perpetrator  
38 and of the actions taken or determinations made by the  
39 department in response to the earlier reports or cases.  
40 (c) If additional information is requested by a person under this  
41 chapter:  
42 (1) before releasing additional information, the department



1 shall notify the county attorney;

2 (2) the county attorney shall promptly notify the department  
3 if the county attorney believes the release would cause a  
4 specific, material harm to a criminal investigation or  
5 prosecution; and

6 (3) after consulting with the county attorney, the department  
7 shall produce to the requestor as much additional information  
8 as possible about a case under this chapter.

9 (d) If a person believes that:

10 (1) a county attorney has failed to demonstrate that the  
11 release of particular information would cause a specific,  
12 material harm to a criminal investigation or prosecution; and

13 (2) the department has wrongfully withheld additional  
14 information;

15 the person may bring a cause of action requesting the court to  
16 review the information in camera to determine if disclosure should  
17 be ordered.

18 **Sec. 5. Not later than ninety (90) days after the date on which**  
19 **the department's report for a case involving a fatality or a near**  
20 **fatality is completed, the department shall provide to the public a**  
21 **summary report that includes the following:**

22 (1) Any actions taken by the department in response to the  
23 case, including changes in policies or practices that have been  
24 made to address any issues raised in the review of the case.

25 (2) Information prescribed in section 6 or 7 of this chapter.

26 **Sec. 6. If the summary report involves a child who was residing**  
27 **in the child's home at the time of the child's fatality or near**  
28 **fatality, the summary report must contain the following:**

29 (1) Whether the department was providing services to the  
30 child, a member of the child's family, or the alleged  
31 perpetrator at the time of the child fatality or near fatality. If  
32 services were provided, the date on which the last contact  
33 occurred between the entity providing services and the person  
34 receiving the services before the fatality or near fatality.

35 (2) Whether the child, a member of the child's family, or the  
36 alleged perpetrator was the subject of a department report at  
37 the time of the child fatality or near fatality.

38 (3) Whether there was an open child in need of services case  
39 for the child or a member of the child's family at the time of  
40 the child fatality or near fatality.

41 (4) All:

42 (A) involvement of:





- 1                   (i) the child's parent, guardian, or custodian; and
- 2                   (ii) the alleged perpetrator;
- 3           in a situation for which a department report, whether
- 4           substantiated or unsubstantiated, was made within the
- 5           preceding five (5) years of the child fatality or near
- 6           fatality; and
- 7           (B) services provided to the child or the child's family
- 8           within the preceding five (5) years of the child fatality or
- 9           near fatality.
- 10          (5) Any investigation by the department for a report
- 11          concerning the child, a member of the child's family, or the
- 12          alleged perpetrator since the child fatality or near fatality.
- 13          (6) Any services provided to:
- 14                (A) the child since the child's near fatality; or
- 15                (B) the child's family since the child fatality or near
- 16                fatality.
- 17          Sec. 7. If the summary report involves a child who was in an
- 18          out-of-home placement at the time of the child's fatality or near
- 19          fatality, the summary report must contain the following:
- 20                (1) The name of the licensee for the out-of-home placement.
- 21                (2) The licensing history of the out-of-home placement.
- 22                (3) A summary of all violations by the licensee.
- 23                (4) Any other actions by the licensee, or an employee of the
- 24                licensee, that constitute a substantial failure to protect and
- 25                promote the health, safety, and welfare of a child.

