



Administrative Policies and Procedures: 1.16

Subject:	Internal Affairs Investigations
Authority:	TCA 8-30-316 (c), 10-7-504 (a) (8), 37-5-105(3), 37-5-106, 37-5-511; Rules of the Tennessee Bureau of Investigation, Chapter 1395-1-1.07
Standards:	ACA: 4-JCF-3C-16, 4-JCF-3D-01, 4-JCF-3D-04, 4-JCF-3D-07, 4-JCF-6C-05; DCS Practice Standards: 3-501, 7-200A, 8-203B, 9-202, 9-303; Council on Accreditation (COA): RPM 2
Application:	To All Department of Children's Services Employees, Foster Parents and Contract Provider Agencies.

Policy Statement:

All investigative activities of the Internal Affairs (IA) Division, Office of Risk Management (RM) shall be limited to matters relating to the management and operation of DCS as authorized by the Commissioner of the Department of Children's Services (DCS) or designee. All practices and the information obtained shall be classified as **CONFIDENTIAL** according to T.C.A. 10-7-504 (a) (8) and shall be handled accordingly.

Purpose:

The purpose of this policy is to define the functions of the Internal Affairs Division.

A. Investigations and Investigative Inquiries	<ol style="list-style-type: none"> 1. REQUESTING AN INVESTIGATION: A citizen, employee, foster parent, provider, or child in DCS custody may request an IA investigation. Such a request may be submitted by any means of communication (in person, by telephone, letter, e-mail, etc.) to the IA Director or by contacting an IA Regional Supervisor (RS) for one of these IA grand regions: East, Upper Cumberland, Middle, and West Tennessee. Additionally, supervisors and managers may submit requests for investigations directly to the Director of RM or to the Director of IA. 2. AUTHORIZING AN INVESTIGATION: The RM Director or the IA Director, on behalf of the Commissioner, will determine when and if an investigative inquiry is appropriate. An investigative inquiry is a review of the facts associated with an event or a situation to determine whether a full-scale investigation is warranted, consultation or technical assistance is needed, or referral to responsible managers for administrative action is appropriate. Only the IA Director, the RM Director or the Commissioner can authorize, deny, or terminate an IA investigation. The IA Director will brief the RM Director and the Commissioner regarding requests for and status of IA investigations. 3. Listed below are <u>some</u> allegations that may initiate an IA investigation: <ul style="list-style-type: none"> ◆ Arrest of Employee; ◆ Breach of Confidentiality;
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- ◆ Destruction of State Property;
- ◆ Excessive Force;
- ◆ Failure to report for duty;
- ◆ Failure to report knowledge of someone abusing or neglecting a child;
- ◆ Failure to report knowledge of any other matter a state employee has a duty to report;
- ◆ Falsification of an Official Document;
- ◆ Fraud/Embezzlement;
- ◆ Harassment;
- ◆ Loss of State Property;
- ◆ Medication Errors;
- ◆ Misuse of Position/Authority;
- ◆ Misuse of State Property;
- ◆ Negligence/Incompetence;
- ◆ Physical Assault;
- ◆ Threats;
- ◆ Possession/Distribution of Contraband;
- ◆ Rape;
- ◆ Runaways-Social Service and Juvenile Justice;
- ◆ Sexual Assault;
- ◆ Sexual Misconduct;
- ◆ Allegations of malfeasance, misfeasance, nonfeasance and violations of rules, policies and procedures concerning the management and operation of the department;
- ◆ Alleged discrimination based on one of the ten (10) protected classes of Title VII of the Civil Rights Act of 1964;
- ◆ Alleged discrimination in providing a service under Title VI of the Civil Rights Act of 1964; and,
- ◆ Allegations of non-discriminatory wrongdoings discovered during investigations of Title VI and Title VII complaints.

Note: Additional allegations (not included in the previous list) may also require an IA investigation.

4. **NOTIFICATIONS:** The assigned IA Investigator will contact the appropriate Regional Administrator (RA), Youth Development Center Superintendent (YDCS), or senior management official to advise that individual an investigation has been initiated, unless such notification would jeopardize the integrity of the

	<p>investigation.</p> <p>5. ACCESS: IA Investigators will be granted access to any records, documents and/or personnel deemed necessary by the Investigator to be pertinent to the successful completion of the authorized investigation. The region, facility, or agency will provide a private location to conduct interviews and/or review documentation. All aspects of the investigation must be treated as CONFIDENTIAL.</p> <p>6. INTERVIEWS: Any DCS employee who willfully refuses or fails to appear before the investigator may forfeit his/her position and may not be eligible for appointment to any position in the state service (TCA 8-30-316 (c)). Every effort will be made to conduct interviews in a private location that will protect the integrity of the investigation and interviewee. Recording of interviews will be at the discretion of the investigator. Every effort will be made to schedule interviews at a time and place that is reasonable and practical to the efficient completion of the investigation. Each individual scheduled for an interview must report to the designated place in a timely manner. Immediately after the interview, unless the investigator provides the interviewee different instructions, the interviewee will submit a written statement in regards to the individual's knowledge or actions as they relate to the investigation.</p> <p>7. CRIMINAL ACTIONS: IA Investigators will coordinate with their RS, IA Director, and appropriate jurisdictional authorities whenever any criminal activities are uncovered during an administrative investigation.</p>
<p>B. Results of Investigations and Reports</p>	<p>1. The Regional Administrator (RA), Youth Development Center Superintendent (YDCS), or senior management representative will be orally apprised of the status of the investigation before the investigator leaves the facility, unless such notification would adversely affect the integrity of the investigation.</p> <p>2. Investigative reports, attachments, case notes, etc., are classified as CONFIDENTIAL documents and will not be open to inspection by members of the public. A DCS employee, however, will be allowed to inspect such investigative records/reports if the records/reports form the basis of an adverse action against the employee (TCA 10-7-504 (a) (8)). The employee must submit a written request for inspection to the IA Director. After the IA Director informs the RS of the need for a record's inspection, the RS will contact the employee and set up a time and place for the review. IA investigators will not provide copies of records/reports to other individuals without first coordinating with either the IA Director or the RM Director in addition to DCS legal. Such coordination will be obtained via e-mail, and a copy of the e-mail will be placed in the case file.</p> <p>3. Investigators will make every effort to complete investigations within thirty (30) calendar days after the Commissioner, the RM Director, or the IA Director grants authorization to conduct an investigation.</p> <p>4. Completed investigative reports will be routed through the RM Director to the Commissioner/Deputy Commissioner. Additional copies may be provided to the RA, YDCs, Community Residential Center Director, or responsible Central Office Staff for contract agencies and providers. Reproduction of these CONFIDENTIAL reports must be specifically authorized in writing or e-mail by</p>

	<p>the RM Director or the IA Director.</p> <ol style="list-style-type: none"> 5. Investigative reports will contain no recommendations for disciplinary action or administrative sanctions. 6. IA is to be informed before any employee disciplinary action occurs during an on-going investigation of that employee, whether or not that action is related to the specific allegations under investigation. Additionally, if management agrees to accept a resignation from an employee who is under an active IA investigation, the resignation must indicate the employee is ineligible for re-hire within DCS. 7. Investigative reports will reflect one of these case closure classifications for each allegation investigated: <ul style="list-style-type: none"> ◆ UNSUBSTANTIATED: The evidence does not meet the burden of proof (preponderance of the evidence) to either support or refute the allegation. ◆ SUBSTANTIATED: The evidence supports and meets the burden of proof that the allegation occurred.
<p>C. Duties and Responsibilities</p>	<ol style="list-style-type: none"> 1. IA Investigators will conduct investigations in an objective and impartial manner to ensure the integrity of the employee, investigation, IA and DCS is protected. 2. Investigators have an obligation to investigate or review all allegations regarding violations of rules, policies, or procedures surrounding the operation and management of DCS. This obligation to investigate includes not only the specific allegation, but any and all violations uncovered throughout the investigative process. 3. DCS employees are required to be truthful, cooperative and follow the directives of IA Investigators.
<p>D. Evidence</p>	<p>Investigators may determine it necessary to take possession of documents, property, or other items associated with an IA investigation. Investigators will provide a receipt to the person(s) from whom the evidence was obtained. Investigators should consult with the IA Director and/or DCS Legal anytime there is a question about the legality of obtaining evidence.</p>
<p>E. Judicial and Administrative Hearings</p>	<p>Investigators will present testimony and/or records at judicial hearings or other administrative hearings as required. The submission of IA case files will be coordinated with DCS Legal. The RM Director, the IA Director, and the RS will be notified of all subpoenas for records and/or compulsory investigator attendance at hearings.</p>
<p>F. Search and Seizure</p>	<p>Searches and seizure of items on State property as part of an IA investigation may not require the person's consent. Before conducting these searches, the investigator must coordinate with the IA Director or the RM Director and may consult with DCS Legal and involve local law enforcement as necessary and appropriate.</p>

<p>G. Absconder Recovery Program (ARP)</p>	<p>IA will manage the Absconder Recovery Program. For IA, regional, and provider responsibilities, refer to DCS Policy <u>31.2, Responsibilities Regarding Runaways, Absconders and Escapees.</u></p>
<p>H. Fingerprinting</p>	<ol style="list-style-type: none"> 1. The regional DCS office or contract agency will ensure DCS Form CS-0668 Authorization for Release of Information to DCS, is properly completed prior to fingerprint submission. The completed form will be retained at the work site and will be attached to fingerprint analysis provided by IA. 2. For the complete process of fingerprint analysis, refer to the <u>Protocol for Fingerprint Process and Analysis.</u>
<p>I. Tennessee Information Enforcement System</p>	<ol style="list-style-type: none"> 1. IA will maintain a connection with the NCIC to conduct Purpose Code X III Name Based Criminal Background Checks under exigent circumstances through the Tennessee Information Enforcement System (TIES) of TBI. 2. IA will ensure compliance with all requirements of the TIES program to include the appointment of a Terminal Agency Coordinator (TAC), an alternate TAC, and a sufficient number of certified operators to provide TIES access to the department on a twenty-four-hour, seven-day-a-week basis. 3. The TAC or alternate TAC will ensure compliance with the Federal Bureau of Investigation and TBI Criminal Justice Information System Security Policies.
<p>J. Name Based Criminal Background Checks (Code X)</p>	<ol style="list-style-type: none"> 1. IA will conduct <i>Purpose Code X III Name Based Background Checks (Code X)</i> through NCIC for prospective care providers under exigent circumstances. 2. RA's or designees may authorize personnel to request <i>Code X Background Checks</i> by submitting the Authorized Code X Request Log (ACXRL) with signatures of employees authorized to IA. Individuals on the log must acknowledge they have received, read, and understand a copy of the <i>TBI Release Of Information</i> regarding confidentiality of <i>Code X</i> information. 3. Only personnel who have read and acknowledge understanding of the JMRM and who are listed on the region's ACXRL will request <i>Code X Background Checks</i> for the emergency placement of children that cannot wait for the results through the routine fingerprint system. 4. If the child is placed in the home of the individual(s) for whom the <i>Code X</i> was conducted, those adults must be fingerprinted within fifteen (15) calendar days of the request. If the child is not placed in the home, fingerprint submissions are not required. The requestor of the <i>Code X</i> is responsible to provide IA with written information regarding the status of the fingerprinting of those adults and/or the status of the placement within fifteen (15) days of the request.

<p>Forms:</p>	<p><u>CS-0668 Authorization for Release of Information to DCS</u> <i>All other official forms used for IA purposes will not be placed on forms web page.</i></p>
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Collateral documents:	<p><u>DCS Policy 31.2. Responsibilities Regarding Runaways, Absconders, and Escapees</u></p> <p><u>DCS Policy 4.20. Workplace Harassment</u></p> <p><u>TBI Release Of Information</u></p> <p><u>Protocol for Fingerprint Process and Analysis</u></p>
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Glossary:	
Malfeasance:	The performance by a public official of an act that is legally unjustified, harmful, or contrary to law; wrongdoing of an act in violation of public trust; misconduct.
Misfeasance:	A wrong, actual or alleged, arising from or consisting of affirmative action; the wrongful performance of a normally lawful act; the wrongful and injurious exercise of lawful authority; improper and unlawful execution of an act that in itself is lawful and proper.
Nonfeasance:	The omission of some act that ought to have been performed; failure to perform an act that is either an official duty or a legal requirement; failure to act when under an obligation to do so; refusal (without sufficient excuse) to do that which it is a legal duty to do.
Exigent Circumstances:	In regards to this policy would mean an <u>emergency situation</u> where a name-based background check is required to safely place a child outside of his/her home.
Purpose Code X III Name-based background check through the National Crime Information Center:	This is a name-based search of the criminal records located in NCIC and <u>must meet exigent circumstances</u> . If the child is placed in the home, the subject of the background check must be fingerprinted within fifteen (15) calendar days of the background search.