

Children's Law Center of Indiana



How to File a Report of Child Abuse or Neglect with the Department of Child Services¹

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A. What must be reported?

Indiana law requires that an individual who has “reason to believe” that a child is a “victim of child abuse or neglect” shall make a report. IC 31-33-5-1. “Victim of child abuse or neglect” is defined at IC 31-9-2-133. “Victim of child abuse or neglect” refers to a child in need of services as described in IC 31-34-1-1 through IC 31-34-1-5; IC 31-34-1-10; or IC 31-34-1-11. The term does not include a child who is alleged to be a victim of a sexual offense under IC 35-42-4-3 (child molesting) unless the alleged offense involves the fondling or touching of the buttocks, genitals, or female breasts. The applicable child in need of services definitions are:

IC 31-34-1-1: Inability, refusal, or neglect of parent, guardian, or custodian to supply child with necessary food, clothing, shelter, medical care, education, or supervision

Sec. 1. A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment, or rehabilitation that:

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- (A) the child is not receiving; and
- (B) is unlikely to be provided or accepted without the coercive intervention of the court.

IC 31-34-1-2: Act or omission of parent, guardian, or custodian seriously endangering child's physical or mental health

Sec. 2. (a) A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

(b) Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered.

IC 31-34-1-3: Victim of sex offense

Sec. 3. (a) A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child is the victim of a sex offense under:

(A) IC 35-42-4-1 [rape];

(B) IC 35-42-4-2 [criminal deviate conduct];

(C) IC 35-42-4-3 [child molesting];

(D) IC 35-42-4-4 [child exploitation; possession of child pornography];

(E) IC 35-42-4-7 [child seduction];

(F) IC 35-42-4-9 [sexual misconduct with a minor];

(G) IC 35-45-4-1 [public indecency; indecent exposure];

(H) IC 35-45-4-2 [prostitution];

(I) IC 35-46-1-3 [incest]; or

(J) the law of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (I); and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

(b) A child is a child in need of services if, before the child becomes eighteen (18) years of age:

(1) the child lives in the same household as another child who is the victim of a sex offense under:

(A) IC 35-42-4-1 [rape];

(B) IC 35-42-4-2 [criminal deviate conduct];

(C) IC 35-42-4-3 [child molesting];

(D) IC 35-42-4-4 [child exploitation; possession of child pornography];

(E) IC 35-42-4-7 [child seduction];

(F) IC 35-42-4-9 [sexual misconduct with a minor];

(G) IC 35-45-4-1 [public indecency; indecent exposure];

(H) IC 35-45-4-2 [prostitution];

(I) IC 35-46-1-3 [incest]; or

(J) the law of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (I);

(2) the child lives in the same household as the adult who committed the sex offense under subdivision (1) and the sex offense resulted in a conviction or a judgment under IC 31-34-11-2;

(3) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court; and

(4) a caseworker assigned to provide services to the child:

(A) places the child in a program of informal adjustment or other family or rehabilitative services based upon the existence of the circumstances described in subdivisions (1) and (2) and the assigned caseworker subsequently determines further intervention is necessary; or

(B) determines that a program of informal adjustment or other family or rehabilitative services is inappropriate.

IC 31-34-1-4: Parent, guardian, or custodian allowing child's participation in obscene performance

Sec. 4. A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child's parent, guardian, or custodian allows the child to participate in an obscene performance (as defined by IC 35-49-2-2 or IC 35-49-3-2); and
- (2) the child needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

IC 31-34-1-5: Parent, guardian, or custodian allowing child to commit sex offense

Sec. 5. A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child's parent, guardian, or custodian allows the child to commit a sex offense prohibited by IC 35-45-4 [public indecency, indecent exposure, public nudity, prostitution, patronizing or promoting prostitution, voyeurism]; and
- (2) the child needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

IC 31-34-1-10: Child born with fetal alcohol syndrome or with controlled substance or legend drug in child's body

Sec. 10. Except as provided in sections 12 and 13 of this chapter, a child is a child in need of services if:

- (1) the child is born with:
 - (A) fetal alcohol syndrome; or
 - (B) any amount, including a trace amount, of a controlled substance or a legend drug in the child's body; and
- (2) the child needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving; or
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

IC 31-34-1-11: Risks or injuries arising from use of alcohol, controlled substance, or legend drug by child's mother during pregnancy

Sec. 11. Except as provided in sections 12 and 13 of this chapter, a child is a child in need of services if:

- (1) the child:

- (A) has an injury;
- (B) has abnormal physical or psychological development; or
- (C) is at a substantial risk of a life threatening condition;

that arises or is substantially aggravated because the child's mother used alcohol, a controlled substance, or a legend drug during pregnancy; and

(2) the child needs care, treatment, or rehabilitation that:

- (A) the child is not receiving; or
- (B) is unlikely to be provided or accepted without the coercive intervention of the court.

IC 31-9-2-88 defines “parent” as a biological or adoptive parent. IC 31-9-2-49 defines “guardian” as a person appointed by a court to have the care and custody of a child or the child’s estate or both.” IC 31-9-2-31 defines “custodian” for purposes of IC 31-34-1 [the child in need of services definition] very broadly for child abuse and neglect reporting and assessment. In summary, the term “custodian” includes (1) a member of the household of the child’s noncustodial parent; (2) an individual who has direct contact, on a regular and continuing basis, with a child for whom care and supervision is provided; (3) a license applicant or licensed foster home, residential child care facility, child care center , or child care home; (4) a person who is responsible for care, supervision, or welfare of children at a child care ministry, home, center or facility of a child care provider, or a school; (5) a child caregiver as defined by IC 31-9-2-6.4.

“Reason to believe” is defined at IC 31-9-2-101 as “evidence that, if presented to individuals of similar background and training, would cause the individuals to believe that a child was abused or neglected.” Only serious impairment, endangerment, sexual victimization or maternal drug/alcohol use that resulted in fetal alcohol syndrome diagnosis, the presence of a controlled substance in the child’s body, substantial risk of a life threatening condition to the child or abnormal physical or psychological development of the child should be reported to DCS. Disagreements about parenting styles and disciplinary techniques should not be reported unless the statutory criteria have been met.

B. Who must report?

The individual who has “reason to believe” that the child is a “victim of child abuse or neglect” must report. IC 31-32-11-1 abrogates the privileged communication between husband and wife; a health care provider (defined at IC 31-9-2-52) and patient; licensed social worker and client; licensed clinical social worker and client; licensed marriage and family therapist and client; licensed mental health counselor and client; licensed addiction counselor and client; licensed clinical addiction counselor and client; and school counselor or school psychologist and student. The abrogation of the above listed privileges covers both reporting and testifying in any judicial proceeding resulting from a report of a child who may be a victim of child abuse or neglect. IC 35-37-6-8 states that the victim advocate - victim privilege does not relieve a victim advocate of any duty to report suspected abuse or neglect.

Attorneys and clergymen, who are required to maintain privileged information in specified situations, are not exempted from child abuse reporting requirements. Some attorneys believe that child abuse/neglect can be reported by an attorney because Ind. Professional Conduct Rule 1.6(b)(1) allows disclosure of privileged communications to the extent the lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm; ... or (6) to comply with other law or court order. Child abuse or neglect could be considered substantial bodily harm and reporting of child abuse or neglect as compliance with the law. An attorney could make a child abuse or neglect report without violating the Rules of Professional Conduct. See “Legal Ethics Committee of the Indiana State Bar Association, Informal Op. 2”, Vol. 40. No.11. Res Gestae, 13 (1997) (considerations in reporting a client for child abuse or neglect.). See also “When Must a Priest Report Under a Child Abuse Reporting Statute? Resolution to the Priest’s Conflicting Duties,” 21 Val. U. L. Rev 431 (1987).

C. To whom and when must the report be made?

IC 31-33-5-4 states that a person who has a duty to report shall immediately make an oral report to the Department of Child Services (DCS) or local law enforcement agency. IC 31-25-2-7 states that DCS is responsible for providing child protection services. IC 31-33-7-1 requires DCS to arrange for receipt, on a twenty-four (24) hour, seven (7) days per week basis, of all reports of suspected abuse or neglect. DCS shall cause to be inserted in each

local telephone directory in the county the telephone number of the “child abuse hotline.” IC 31-33-7-3. The Statewide child abuse and neglect hotline number is 1-800-800-5556.

D. What are the immunities and penalties associated with reporting?

IC 31-33-6-1 states that a person, other than a person accused of child abuse or neglect, who makes or causes to be made a report of child abuse or neglect or who participates in any judicial proceeding or other proceeding resulting from such report or relating to the subject matter of the report is immune from any civil or criminal liability that might otherwise be imposed because of such actions. IC 31-33-6-3 provides that a person who reports that a child may be a victim of child abuse or neglect or who assists in any requirement of article 33 is presumed to have acted in good faith. Immunity does not attach for a person who has acted maliciously or in bad faith. IC 31-33-6-2.

Knowing failure to report child abuse or neglect is a class B misdemeanor.

IC 31-33-22-1. See **Fisher v. State**, 548 N.E. 2d 1177 (Ind. Ct. App. 1990), in which the Court of Appeals affirmed the defendant’s conviction for failure to report, but reversed his criminal neglect of a dependent conviction. Knowing, intentional false reporting is a Class A misdemeanor, but the offense is a Class D felony if the person has a previous unrelated conviction for knowing intentional false reporting. IC 31-33-22-3(a). IC 31-33-22-3(b) allows for a court to order actual and punitive damages and an award of attorney’s fees by the fact-finder in civil proceedings for knowing, intentional false reporting. See **In Re V.C.**, 867 N.E.2d 167 (Ind. Ct. App. 2007) (Court affirmed order requiring mother, who coached child to report false sexual abuse allegations against father to therapist, knowing that therapist would be required to report allegations, to pay compensatory and punitive damages to father).

IC 31-33-22-5 provides that a person who is accused of committing child abuse or neglect is entitled to access to a report relevant to an alleged false accusation if the court finds that the report was unsubstantiated and was intentionally communicated to the department or law enforcement by a person who knew the report was false. See also **Kinder v. Doe**, 540 N.E. 2d 111 (Ind. Ct. App. 1989) (identity of reporter can be obtained in civil suit for malicious reporting, if plaintiff makes preliminary presentation of evidence to rebut presumption of reporter’s good faith).