

Children's Law Center of Indiana



Indiana Law Regarding Abused/Neglected Children¹ (Includes statutory changes effective July 1, 2009)

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This article is an overview of Indiana civil law on child abuse and neglect, including reporting requirements, the functions and duties of Department of Child Services (DCS), and the possible legal proceedings that may result from their investigation. The Indiana General Assembly is the source of the laws discussed, which are specific to Indiana. The civil designation for abused/neglected children in Indiana is "Children in Need of Services" or CHINS. A child is defined as a person under eighteen (18) years of age. The Juvenile Court can continue jurisdiction over a child who has been found by the Court to be a CHINS until the child's twenty-first (21st) birthday. The focus of civil CHINS litigation is to protect and care for the child, and to provide the child with needed treatment, which can include foster home placement, as well as medical, dental, and psychological care. Because CHINS proceedings are civil in nature, the parents cannot be sentenced to the Department of Correction or put on probation as a result of the CHINS proceeding, but they can be found in contempt of Court.

Indiana law defining CHINS includes (but is not limited to) children whose physical or mental condition is seriously impaired or endangered as a result of neglect, children who are seriously endangered due to injury by the act or omission of a parent,

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children who are victims of sex offenses, and children who are born with disorders attributable to the mother's consumption of alcohol or drugs during pregnancy. Although the CHINS definition does not specifically refer to mental or emotional abuse, it contemplates such condition by including children whose "mental health is seriously endangered." Indiana law does not prohibit reasonable corporal punishment, but the term "reasonable" is a key issue. In addition to the child's condition of endangerment or victimization, in order to be a CHINS, the child must need "care, treatment, or rehabilitation that the child is not receiving, and that is unlikely to be provided or accepted without the coercive intervention of the Court." The "coercive intervention" requirement insures that the state intervenes in the child's life only when the child needs help, and the parents are unable or unwilling to correct the problem on their own.

Indiana law requires any person who has reason to believe that a child is a victim of abuse or neglect to make an immediate oral report to DCS or to law enforcement. The law defines "reason to believe" as evidence that, if presented to individuals of similar background and training, would cause those individuals to believe that a child was abused or neglected. The law removes any legal privilege, which would prevent abuse/neglect reporting for "health care providers." The health care provider/patient relationship is not a reason for excluding evidence in any judicial proceeding resulting from the abuse/neglect report. A person who reports child abuse/neglect, or participates or testifies in any judicial proceeding resulting from a report of child abuse or neglect, is immune from any civil or criminal liability, which might be imposed, as long as he acts in good faith. A person who reports child abuse/neglect is presumed to be acting in good faith. There is no immunity for malicious or bad faith reporting. Failure to report child abuse/neglect is a crime. It is also a crime to knowingly and intentionally make a false report of abuse/neglect.

Indiana law requires DCS to arrange for the receipt of reports on a twenty-four (24) hour, seven (7) day-per-week basis. The telephone number for reporting child abuse in Marion County is (317) 968-4300. The statewide reporting number is 1-800-800-5556. Anonymous reports may be made. The identity of reporters of child abuse/neglect is to be kept confidential from the parents. The law provides that an assessment of the report shall be initiated as follows:

1. When the report alleges neglect, including that the child's parent lives with or is married to a registered sex or violent offender or a person who has been convicted of neglect or battery, the assessment shall be initiated within a reasonably prompt period, but not later than five (5) days.
2. When the report alleges abuse, the assessment shall be initiated immediately, but not later than twenty-four (24) hours.
3. If the child is in imminent danger of serious bodily harm, an on-site assessment shall be initiated immediately, but not later than one (1) hour after receiving the report.

DCS family case managers carry cell phones, so that they can be reached to initiate investigations immediately. Indiana law provides that DCS is the primary agency for investigating reports of child abuse/neglect, but, in 1993, the law was amended to require law enforcement to conduct its own "immediate, on-site investigations" when law enforcement has reason to believe that a criminal offense of child abuse or neglect has occurred.

When a report is received, the case is usually screened by a staff person to determine the priority of assigning the case, and whether there have been prior reports on the family. Often, the family case manager assigned to assess the reports will read the records of prior reports about the family to learn of other problems that have been found in the past and what previous services have been offered to the family. The assigned family case manager will review the report and, if possible, telephone the person who made the report to get additional information. The family case manager will usually begin the assessment by visiting the child at his home, at school, at day care, or at the hospital. If the family case manager is unable to obtain access to the child, the Juvenile Court may issue an order requiring the parents to cooperate with DCS. The family case manager will: assess the nature, extent, and cause of the suspected child abuse or neglect; attempt to determine the identity of the person allegedly responsible for the abuse or neglect; evaluate the parent, guardian, or caretaker of the child; evaluate the home environment of the child and the parent-child relationship; and determine the names and physical conditions of other children in the home.

If the preliminary assessment reveals that the child is in immediate danger, the family case manager has the legal ability to remove the child from an abusive or neglectful

situation. The criteria which the family case manager would use to remove the child from the care of the parents immediately without a Court order or without the help of law enforcement would be:

1. The family case manager has probable cause to believe that the child is a child in need of services.
2. It appears that the child's physical and/or mental condition will be seriously impaired or seriously endangered if the child is not immediately taken into custody.
3. Consideration for the safety of the child precludes the use of services for the family with the child in the home.
4. There is no reasonable opportunity to obtain an order of the Court.

DCS is required to classify all reports of child abuse or neglect as substantiated or unsubstantiated after the assessment is completed. "Substantiated" means a determination regarding the status of the report whenever facts obtained during an investigation of the report provide a preponderance of evidence that child abuse or neglect has occurred.

"Unsubstantiated" means a determination regarding the status of a report whenever facts obtained during an investigation of the report provide credible evidence that child abuse or neglect has not occurred. Unsubstantiated reports must be expunged (removed) from the DCS files. Substantiated reports are usually expunged when the child reaches the age of twenty-four (24) years.

Every substantiated child abuse assessment does not result in a CHINS legal proceeding. It is within the discretion of the attorney for DCS and the judge of the Juvenile Court to determine what CHINS cases may be filed. Their decision depends on not only whether the abuse or neglect has in fact occurred, but also whether the family is unlikely to provide the needed care, treatment, or rehabilitation for the child without the coercive intervention of the Court. If child abuse/neglect is substantiated, the family case manager may choose to remedy the problem through an informal adjustment program. Informal adjustment is a written contract between DCS, the child, and the parents. It prescribes certain behavioral changes that the family must make and requires participation in the needed services. The Juvenile Court judge must review and approve the informal adjustment. The informal adjustment program is overseen by the Court. DCS must file progress reports with the Court indicating compliance with the informal adjustment

program. The informal adjustment program may not exceed six (6) months, unless the Juvenile Court approves an extension of three (3) additional months.

Another option available to the family case manager is to work with the prosecutor toward criminal prosecution of the perpetrator of child abuse. Many times in criminal cases, a no-contact or restraining order is issued against the perpetrator of child abuse, so that it is safe for the child to remain at home if a responsible, supportive caretaker is present.

DCS reports are confidential, but Indiana law requires that family case managers provide feedback to certain professionals who have reported the abuse/neglect. Professionals and agencies entitled to receive feedback information are physicians, psychologists, dentists, hospitals, community mental health centers, and schools. The feedback information must be provided in writing thirty (30) days, and again ninety (90) days, after receipt of the abuse/neglect report. Feedback information should include the following:

1. Referrals made by DCS.
2. Any legal action, including criminal action, taken to protect the child.
3. A description of any casework plan that DCS has developed.
4. The family case manager's name and office telephone number.

Parents, attorneys for parents, and the child's CASA/GAL may also obtain copies of investigation reports.

DCS can also initiate a CHINS Petition in Juvenile Court. The CHINS case is initiated by the filing of a CHINS Petition in a Court with juvenile jurisdiction. The law requires DCS and the Juvenile Court to do the following in advance of the filing of the CHINS Petition:

1. DCS must complete a preliminary inquiry.
2. DCS must submit a written request to the Juvenile Court for authorization to file the CHINS Petition, along with a copy of the preliminary inquiry and/or an affidavit of probable cause.
3. The Juvenile Court must issue an order authorizing DCS to file the CHINS Petition. The Juvenile Court may also issue preliminary orders regarding the child pending further hearings on the Petition. Pending a hearing, the Juvenile Court may order medical, dental, or mental health treatment, hospitalization, or other needed care for the child. DCS may place the child with relatives, in a shelter care

facility, in a foster home, or in some other placement that would serve the child's needs, pending the detention and initial hearings.

DCS may seek an order to remove the alleged perpetrator from the home, or order the child to be placed in protective custody. If the child is placed in protective custody by court order or a family case manager, or if law enforcement has removed the child, the detention or protective custody hearing must take place within forty-eight (48) hours, excluding Saturdays, Sundays, and holidays. At the detention hearing, the Juvenile Court may order that the child be removed from the parents' home pending further proceedings if the Court finds that this is necessary to protect the child; or the child is unlikely to appear before the Court for further proceedings; or the child has a reasonable basis for requesting that he/she be continued in protective placement; or the parent, guardian, or custodian cannot be located or is unable or unwilling to assume custody of the child; or consideration for the safety of the child precludes the use of family services to prevent removal of the child. The CHINS Petition shall be filed before the detention hearing. If a detention hearing is held, an initial hearing shall be held at the same time.

At the initial hearing, the court must appoint a Guardian ad Litem (GAL) or Court Appointed Special Advocate (CASA) to represent and protect the child's best interests. The Court must advise the child (if he is of an age of understanding) and the child's parent, guardian, or custodian of the allegations of the CHINS Petition, and the possible disposition, parental participation, and financial responsibility orders. The child may be excluded from the hearing upon showing of good cause. The Court must determine whether the child's parent, guardian, or custodian admits or denies the allegations in the CHINS Petition. If there is an admission, then the Court will set a dispositional hearing. If the parents deny the allegations of the CHINS Petition, the Court will schedule a factfinding hearing or trial.

The factfinding hearing is a contested hearing in Juvenile Court before a judge, not a jury. It is a civil trial and the Indiana Civil Trial Rules apply. The public is generally excluded from the CHINS factfinding hearing. DCS is the "Petitioner" and the parent, guardian, or custodian of the child is the "Respondent." The Petitioner and Respondent are parties to the CHINS case, as well as the child and the CASA/GAL appointed for the child.

The parents, DCS, and CASA/GAL may all have attorneys to represent them. Low income parents may request a free court-appointed attorney in CHINS cases. DCS has the burden of proving that the allegations in the CHINS Petition are true by a preponderance of evidence. To meet the “preponderance of the evidence” standard, DCS must prove that it is “more likely than not” that the child is a Child in Need of Services, as alleged in the CHINS Petition. Statements from persons who do not testify at court are not usually considered by the court at the factfinding hearing. Indiana law does not allow for the use of depositions in place of witness testimony at the trial, unless all the parties agree, or the Court allows the deposition to be entered into evidence because the witness is unavailable.

If the child is found to be a CHINS, the Court will schedule a dispositional hearing, which must be completed within thirty (30) days. The purpose of a dispositional hearing is for the Court to determine what orders should be made with regard to the child’s placement, and rehabilitation of the parent(s) and child. The Juvenile Court judge will read the various predispositional reports prepared by the family case manager and the CASA/GAL prior to the disposition hearing. At the hearing, the Court may listen to testimony from the parties. Written reports prepared by experts may be considered by the Court at the dispositional hearing, even though they are technically hearsay. The Juvenile Court has several options at the dispositional hearing, including:

1. Order supervision of the child by DCS.
2. Order the child to receive outpatient treatment at a social service agency, medical or education facility, or from an individual practitioner.
3. Remove the child from the case of the parent and authorize DCS to place him/her in a foster home, shelter care facility, or some other needed therapeutic placement.
4. Award wardship of the child to DCS.
5. Partially or completely emancipate the child.
6. Order the child’s parent to complete services recommended by DCS and approved by the court.
7. Order a party to the case to refrain from contact with the child.
8. Order perpetrator of neglect or abuse not to return to the child’s residence.

The law requires a review of each CHINS case every six (6) months. At the placement review, the Court shall determine the following:

1. Whether the child's case plan and the services provided in the placement meet the special needs and best interests of the child.
2. Whether DCS has made reasonable efforts to provide family services.
3. A projected date for the child's return home, emancipation, placement for adoption, or placement with a legal guardian.

The Court can consider written reports of professionals and other experts at the placement review hearing, if the reports are provided to DCS before hearing and incorporated in the review report. The majority of abused/neglected children are returned to their families after treatment is completed. In some cases, however, DCS will pursue another permanent plan for the child, such as guardianship by relatives or adoption. Termination of the parent-child relationship proceedings may be required to free the child for adoption.