

Children's Law Center of Indiana



Reporting Child Abuse and Neglect, and the Department of Child Services (DCS) Assessment¹ (Includes statutory changes effective July 1, 2017)

By Derelle Watson-Duvall, J.D.
and Kaley Smith, Intern
Kids' Voice of Indiana
The Derelle Watson-Duvall Children's
Law Center of Indiana
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The Department of Child Services (DCS) may receive a child abuse or neglect report, conduct an assessment, and take other action concerning the children for whom whom you serving as a Guardian ad Litem in a dissolution, paternity, or guardianship case. The purpose of this paper is to increase a volunteer's understanding of Indiana law on reporting child abuse and neglect, and how DCS functions.

I. Reporting Child Abuse or Neglect

A. What must be reported?

Indiana law requires an individual who has "reason to believe" that a child is a "victim of child abuse or neglect" to make a report. IC 31-33-5-1. "Victim of child abuse or neglect" is defined at IC 31-9-2-133. The definition of "victim of child abuse or neglect", amended effective July 1, 2012, refers to a child in need of services [CHINS] 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, *regardless of whether the child needs care, treatment, rehabilitation, or the coercive*

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intervention of a court. (Amended language italicized). 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:
 - (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 offense; living in same household as offender

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 an offense under:
 - (A) IC 35-42-4-1 [rape];
 - (B) IC 35-42-4-2 (before its repeal) [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 35-42-4-5 [vicarious sexual gratification; fondling in the presence of a minor];
 - (F) IC 35-42-4-6 [child solicitation];
 - (G) IC 35-42-4-7 [child seduction];

- (H) IC 35-42-4-8 [sexual battery];
 - (I) IC 35-42-4-9 [sexual misconduct with a minor];
 - (J) IC 35-45-4-1 [public indecency; indecent exposure];
 - (K) IC 35-45-4-2 [prostitution];
 - (L) IC 35-45-4-3 [making unlawful proposition];
 - (M) IC 35-45-4-4 [promoting prostitution];
 - (N) IC 35-46-1-3 [incest]; or
 - (O) the law of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (N); 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, the child:
- (1) lives in the same household as an adult who:
 - (A) committed an offense described in subsection (a)(1) against a child and the offense resulted in a conviction or a judgment under IC 31-34-11-2; or
 - (B) has been charged with an offense described in subsection (a)(1) against a child and is awaiting trial; and
 - (2) 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.
- (c) 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 an offense described in subsection (a)(1);
 - (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; and
 - (3) 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 on the existence of circumstances described in subdivisions (1) and (2), and the caseworker subsequently determines further intervention is necessary; or
 - (B) determines that a program of informal adjustment or other family or rehabilitative services is inappropriate.
- (d) 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 an adult who:
 - (A) committed a human or sexual trafficking offense under IC 35-42-3.5-1 or the law of another jurisdiction, including federal law, that resulted in a conviction or a judgment under IC 31-34-11-2; or

- (B) has been charged with a human or sexual trafficking offense under IC 35-42-3.5-1 or the law of another jurisdiction, including federal law, and is awaiting trial; 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 31-34-1-3.5: Victim of human sexual trafficking offense

Sec 3.5. (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) human or sexual trafficking (as defined in IC 31-9-2-133.1); or
 - (B) a human or sexual trafficking offense under the law of another jurisdiction, including federal law, that is substantially equivalent to the act described in clause (A); 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 considered a victim of human or sexual trafficking regardless of whether the child consented to the conduct described in subsection (a)(1).

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) neonatal abstinence syndrome, or
 - (C) any amount, including a trace amount, of a controlled substance, a legend drug, or a metabolite of a controlled substance or legend drug in the child's body, including the child's blood, urine, umbilical cord tissue, or meconium; 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 31-9-2-88(b) includes an alleged father in the definition of "parent" for the purposes of the CHINS statutes, including the statutes regarding the reporting of child abuse or neglect.

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 or intends to have direct contact, on a regular and continuing basis, with a child for whom the individual provides care and supervision; (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 foster home, residential child care facility, child care center, child care home, child care ministry, home, center or facility of a child care provider, or a school; (5) a child caregiver as defined by IC 31-9-2-16.4.

B. Who must report?

The individual who has “reason to believe”, defined at IC 31-9-2-101, that the child is a “victim of child abuse or neglect” must report. “Reason to believe” means “evidence that, if presented to individuals of similar background and training would cause the individuals to believe that a child was abused or neglected.” 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 or 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; (2) to prevent a client from committing a crime...; 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.

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 DCS or local law enforcement agency. IC 31-25-2-7 states, inter alia, 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) day 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. 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).

II. The Department of Child Services Assessment

A. What is the scope and timing of the assessment?

IC 31-33-7-4 requires that DCS shall make a written report of a child who may be a victim of abuse or neglect within forty-eight (48) hours after receipt of the oral report. The

report, which is made on state form 310, must include the following, if known: (1) the child's name, address, sex, age and the nature of child's injuries and neglect; (2) the names and addresses of the child's parents, guardian, custodian and care-giver; (3) the name of the alleged perpetrator; (4) the source of the report; (5) information about the abuse or neglect of the child's siblings; (6) the person making the report and how the reporter may be reached; (7) actions taken by the reporter. The 310 report shall immediately be made available to the prosecuting attorney and law enforcement, and the coroner in a case involving a child's death. IC 31-33-7-5. Law enforcement and DCS shall communicate and share information and may investigate jointly. IC 31-33-7-7; IC 31-33-8-2.

IC 31-33-8-6 provides that DCS shall promptly make an appropriately thorough assessment of every report received, and the primary purpose of the assessment is to protect the child. IC 31-9-2-9.6 defines assessment as an initial and ongoing investigation or evaluation in which there is a review and determination of the safety issues that affect a child; an identification of the underlying causes of the safety issues; a determination whether child abuse, neglect, or maltreatment occurred; and a determination of the needs of a child's family in order for the child to either remain in the home safely, be returned to the home safely, or be placed in an alternative living arrangement. IC 31-33-8-1 provides the timelines for DCS to initiate an assessment. IC 31-33-8-1(c) states that the DCS assessment of a child abuse report shall be initiated immediately, but not later than twenty-four (24) hours after receipt of the report if abuse is alleged. IC 31-33-8-1(b) states that if DCS has reason to believe that the child is in imminent danger of serious bodily harm, an immediate onsite assessment shall be initiated within one hour of the receipt of the report. IC 31-33-8-1(d) states that if child neglect is alleged, the assessment shall be initiated within a reasonably prompt time, but not later than five days. If the report alleges that a child lives with a parent, guardian, or custodian who is married to or lives with a person who has either been convicted of neglect of a dependent under IC 35-46-1-4 or a battery offense under IC 35-42-4 or is required to register as a sex or violent offender under IC 11-8-8, then DCS shall initiate an assessment within a reasonably prompt time, but not later than five (5) days after DCS receives the report, with the primary consideration being the well-being of the child who is the subject of the report. IC 31-33-8-1(e).

According to IC 31-33-8-7, the assessment must include the following, to the extent that is reasonably possible: (1) the nature, extent and cause of the known or suspected abuse or neglect; (2) the identity of the alleged perpetrator; (3) the names and conditions of other children in the home; (4) an evaluation of the parent, guardian, custodian or other person responsible for the child's care; (5) the home environment and the relationship of the child to the parent, guardian, custodian or other persons responsible for the child's care. The assessment may include a home visit, an interview with the child, and a physical, psychological or psychiatric examination of any child in the home. When feasible, all allegations should be investigated together. The assistance of the juvenile court may be sought by DCS to obtain an interview with the child if the custodial parent, guardian, or custodian refuses to allow an interview. IC 31-33-8-7(d) and (e). DCS or law enforcement can request a court order to remove the child from the home prior to the completion of the assessment pursuant to IC 31-33-8-8 and IC 31-32-13-1 et seq.

B. What do the assessment results mean?

After the assessment is completed, DCS shall classify reports as substantiated or unsubstantiated. IC 31-33-8-12. A written report of the assessment is required pursuant to IC 31-33-8-8(b). This report is made on state form 311. IC 31-33-18-4(a) requires DCS to give verbal and written information to each parent, guardian, or custodian of the child that the report relating to the abuse or neglect assessment is available upon request. Parents may be required to sign a written release form and pay reasonable copying costs, but these are the only prerequisites to obtaining a copy of the DCS report. IC 31-33-18-4(b).

“Substantiated” is defined at IC 31-9-2-123 and “means a determination regarding the status of a report [made under IC 31-33] whenever facts obtained during an assessment of the report provide a preponderance of evidence that child abuse or neglect has occurred.” “Unsubstantiated” is defined at IC 31-9-2-132 and “means a determination regarding the status of a report [made under IC 31-33] whenever facts obtained during an assessment of the report provide credible evidence that child abuse or neglect has not occurred.” Volunteers should note the following in assessing the relevance of the “substantiated” or “unsubstantiated” designation: (1) DCS is investigating the specific

allegations of the 310 report and is not evaluating best interests of the child;

(2) “unsubstantiated” reports are not the same as knowing, intentional false reports;

(3) DCS family case managers will not usually substantiate abuse unless the case manager personally sees the bruises or the child reveals details about abuse to the case manager or DCS forensic interviewer; (4) some children may be too scared or too shy to reveal full details of physical or sexual abuse or neglect to the DCS case manager or forensic interviewer; (5) “unsubstantiated” does not mean that an adult or a child is lying about his concerns.

C. Obtaining copies of the 311 report

IC 31-33-18-1(a) states that reports of child abuse or neglect, any other information obtained, reports written, or photographs taken concerning the reports which are in the possession of DCS are confidential. IC 31-33-18-2 lists the persons, agencies and institutions to whom the confidential reports shall be made available. These include, inter alia: (1) an individual named in the report who is alleged to be abused or neglected or the individual’s guardian ad litem or court appointed special advocate; (2) each parent, guardian, custodian, or other person responsible for the welfare of a child named in a report and an attorney for the parent, guardian, custodian or responsible person with protection for the identity of reporters and other appropriate individuals; and (3) a person about whom a report has been made, with protection for the identity of reporters and any other person if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of the person.

III. Department of Child Services Actions as a Result of Substantiated Child Abuse/Neglect

DCS may take action based on its assessment that child abuse or neglect is substantiated. DCS may refer the matter to law enforcement, initiate a safety plan, or refer the family to services. DCS may also implement a program of informal adjustment or file a CHINS petition.

A. What is a program of informal adjustment?

IC 31-34-8-1 through 3, IC 31-34-8-6, and IC 31-34-8-7 provide for a program of informal adjustment, which is a signed agreement between DCS, the child, and the child's parent, guardian, or custodian, or attorney regarding court ordered services in which the parent, guardian, or custodian will participate to remedy substantiated child abuse or neglect. The program of informal adjustment is submitted to the juvenile court for approval. The court may deny a program of informal adjustment or set a hearing regarding the informal adjustment. IC 31-34-8-1. The program of informal adjustment is considered approved if the court does not deny the informal adjustment program or set it for a hearing within ten days. IC 31-34-8-1(c). If the court sets a hearing and no action is taken to approve or deny the program of informal adjustment within thirty days of the submission of the informal adjustment program, the informal adjustment is considered approved. IC 31-34-8-1(d). IC 31-34-8-6 provides that the program of informal adjustment may not exceed six months, but may be extended for an additional three months by approval of the juvenile court. IC 31-40-1-3 states that a participant in an informal adjustment program is financially responsible for services provided by DCS.

An informal adjustment may include service participation and compliance with certain rules regarding how a child may be disciplined or cared for or who may have access to the child. Informal adjustment does not involve placing the child in the custody or wardship of DCS. If DCS determines that the informal adjustment is not protecting the child, or subsequent allegations of abuse or neglect are substantiated, DCS may request authorization from the court to file a CHINS petition pursuant to IC 31-34-9-1.

DCS may also file a petition for compliance with the informal adjustment provisions, and a parent, guardian, or custodian who fails to comply may be found in contempt pursuant to IC 31-34-8-3. DCS must file a report with the court indicating the extent of compliance five months after the informal adjustment is implemented. IC 31-34-8-7(a). If the informal adjustment is extended, a second report is required not later than eight months after the informal adjustment is implemented. IC 31-34-8-7(b).

B. What is a CHINS proceeding?

The CHINS petition filed by the attorney for DCS due to substantiated child abuse or neglect is discussed at IC 31-34-9-1. The CHINS proceeding may involve the removal of children from the custodial home and placement in foster care, approved relative care, with the noncustodial parent, or institutional placement.