

# Children's Law Center of Indiana



## Highlights of 2016 Legislative Changes to CHINS, Termination of Parent-Child Relationship, and Power of Attorney Law<sup>1</sup>

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Legislation effective July 1, 2016 makes changes in Child in Need of Services, Termination of Parental Rights, and power of attorney law. The full text of the legislation may be found in each cited Enrolled Act at [www.in.gov/legislative](http://www.in.gov/legislative). This article includes only highlights of changes to Child in Need of Services, termination of parental rights, and guardianship law for family law attorneys and child service professionals. Please consult the full text of SEA 357, SEA 131, SEA 305, SEA 26, HEA 1064, HEA 1183, and HEA 1271 for additional changes.

- 1. Anyone convicted of a crime of child abuse must be listed on a public, searchable, internet child abuse registry.** IC 5-2-22-2 requires the division of state court administration to establish and maintain a child abuse registry by July 1, 2017. The convictions which must be included are neglect of a dependent, child selling, a sex offense committed against a child, and battery of a child. IC 5-22-2-3 states that the registry must contain the following about the convicted person: name, age, city of residence, description of the crime, and any other identifying information, including a photograph if available. IC 5-22-2-4 requires the registry to be updated every thirty days and to be published online in a searchable format with public access. See SEA 357.
- 2. Records held by a local DCS office, DCS, or the DCS ombudsman, are confidential if there is an ongoing police investigation of the near fatality of a child.** IC 31-33-18-1.5 (CHINS) explains that a “near fatality” requires a physician’s certification that the child’s injury is life threatening, meaning it is categorized as “serious” or “critical” in the child patient’s hospital records. If a police investigation into a “near fatality” is ongoing, IC 31-33-18-1.5(e) was amended, stating that the redacted record is confidential and may not be disclosed. SEA 131 also urges the Indiana General Assembly to assign the topics of medical records confidentiality and

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disclosure in cases of child abuse or neglect to an appropriate interim study committee.

3. **The CHINS definition statutes were amended, adding children who are victims of or living with perpetrators or adults who are awaiting trial for additional sex crimes. The added crimes are: vicarious sexual gratification, child solicitation, sexual battery, patronizing a prostitute, promoting prostitution, and human or sexual trafficking or equivalent laws in another jurisdiction. *Note that these amendments to the CHINS definition statutes require that reports of child abuse or neglect must be made in additional situations, since the reporting statutes require reports to be made about children whose situations are within the legal definitions of Children in Need of Services.*** IC 31-9-2-133.1 defines “victim of human or sexual trafficking” as a child recruited, harbored, transported, or engaged in forced labor, involuntary servitude, prostitution, child exploitation, marriage unless authorized by court order, or trafficking for the purpose of prostitution or sexual conduct. IC 31-34-1-3 (CHINS sexual abuse definition) was amended to include children who are victims of crimes defined in IC 35-42-4-5 [vicarious sexual gratification], IC 35-42-4-6 [child solicitation], IC 35-42-4-8 [sexual battery], IC 35-4-3 [patronizing a prostitute], and IC 35-45-4-4 [promoting prostitution]. Subsection (c), added to IC 31-34-1-3 (CHINS sexual abuse definition) creates a new CHINS category for children who live in the same household as an adult who has either been convicted of or been charged with and is awaiting trial for a human or sexual trafficking offense or an equivalent law in another jurisdiction. A new statute, IC 31-34-1-3.5, allows the court to adjudicate the child a CHINS if child is the victim of a human or sexual trafficking offense, regardless if whether the child consented. IC 31-34-12-4.5 was amended to provide that there is a rebuttable presumption that a child is a CHINS if the child lives in the same household as an adult who was convicted of or charged with a sex offense against a child which is listed in the CHINS categories of IC 31-34-1-3 and IC 31-34-1-3.5. Note that the amended language of IC 31-34-12-4.5 implies that the sex offense may be against another child, not the child who is alleged to be a CHINS. IC 31-34-21-5.6 was amended to allow the juvenile court to find that reasonable efforts toward reunification are not required by the Department of Child Services (DCS) if a parent, guardian, or custodian of the child has been convicted of felony promotion of human trafficking, promotion of human trafficking of a minor, sexual trafficking of a minor, or human trafficking If charges for a sex crime listed in the CHINS definition statutes (IC 31-34-1-3 and IC 31-34-1-3.5) are pending against a parent, guardian, or custodian of the child, amendments to IC 31-34-21-5.6(c) allow the court to suspend DCS reasonable reunification efforts pending disposition of the criminal charge. See SEA 26 and SEA 305.
4. **The court may place a CHINS or delinquent child in institutional care out of state if such placement is in the child’s best interest and does not create an undue hardship.** IC 31-34-20-1 (CHINS disposition options) was amended to permit the juvenile court to place a child in institutional care outside Indiana if such placement is in the child’s best interest and does not cause undue hardship. IC 31-37-

19-3 (delinquency disposition options) was also amended, giving the court the same discretion in cases of juvenile delinquency. See SEA 305.

- 5. The probate or juvenile court may terminate the parent-child relationship between a child and a perpetrator parent who is shown by clear and convincing evidence to have caused the child’s conception through the commission of an “act of rape”, if termination of the perpetrator’s rights is in the child’s best interests.** Legislation added IC 31-35-3.5, a new chapter which allows a parent who conceived a child as a result of an “act of rape” to petition the court to terminate the parental rights of the alleged perpetrator parent. IC 31-9-2-0.9 defines “act of rape” to include the criminal definition of rape and the criminal definition of child molesting when there was force, the threat of force, serious bodily injury, or a drug was furnished to the victim without the victim’s knowledge. A criminal conviction of the perpetrator is not required. IC 31-35-3.5 gives the probate and juvenile courts concurrent jurisdiction to terminate the parent-child relationship upon a showing by clear and convincing evidence that termination is in the child’s best interests and that the perpetrator parent committed the “act of rape”, resulting in conception of the child. IC 31-35-3.5-8 states the court may appoint a guardian ad litem, court appointed special advocate, or both for the child who is the subject of the termination petition. IC 31-35-3.5-9 permits the court to issue an emergency custody order to remove the child from the alleged perpetrator’s custody. IC 31-35-3.5-10 states that the termination court must notify DCS that the termination petition has been filed. If DCS notifies the termination court that a CHINS petition has been filed, the termination court must stay the termination proceeding until the CHINS court issues a dispositional decree. The CHINS court must notify the termination court within ten days of the decree. See HEA 1064.
- 6. If DCS determines that allegations of abuse or neglect are unsubstantiated, DCS can provide information to a parent or guardian about community service programs that provide respite care, voluntary guardianship, or other support services for families in crisis.** A new statute, IC 31-33-8-15 (CHINS assessment), permits DCS to provide this information without assuming any liability or obligation. IC 31-33-8-15(b) does not permit DCS to use the provision of this information as the sole grounds to initiate or substantiate an assessment of child abuse or neglect. See HEA 1183.
- 7. A parent’s power of attorney so another person can care for the parent’s child does not make the parties subject to laws, rules, or regulations concerning licensing or regulation of foster family homes, child placing agencies, or child caring institutions.** IC 29-3-9-1 was amended, adding that a child who is the subject of a legal power of attorney is not considered to be in foster care and the parties are not subject to any foster care requirements or licensing regulations. IC 29-3-9-1(h) states that a foster family home may not provide overnight or continuous care and supervision for a child who is the subject of a power of attorney while providing care to a child placed in the home under a foster family home license, unless DCS upon request grants an exception. IC 29-3-9-1(i) permits an active-duty military member to

delegate a power of attorney for a child for longer than the time limit of twelve months, not to exceed more than thirty days longer than the term of active duty service. See HEA 1183.

- 8. If a parent who is the subject of a substantiated allegation of child abuse or neglect is an active-duty member of the military, DCS must notify the United States Department of Defense Family Advocacy Program (“Family Advocacy Program”) of the allegations and make its assessment report regarding the allegations available to the Family Advocacy Program. IC 31-33-8-7 (CHINS assessment) was amended to require DCS to notify the Family Advocacy Program of a substantiated DCS assessment if the child’s parent, guardian, or custodian is an active duty member of the military. IC 31-33-8-9 (CHINS assessment report) was amended to require DCS to make its report available to the Family Advocacy Program. IC 31-33-14-3 permits DCS to seek assistance from the Family Advocacy Program in determining and providing appropriate services for both the child and the family. See HEA 1271.**