

Children's Law Center of Indiana



Highlights of 2018 Legislative Changes to Child Abuse/Neglect Reporting Law, CHINS Law, and Adoption Law¹

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Legislation effective July 1, 2018 makes changes in child abuse/neglect reporting law, Child in Need of Services law, and adoption law. The full text of the legislation may be found in each cited Enrolled Act at iga.in.gov. This article includes only highlights of the statutory amendments and newly enacted statutes. Please consult the full text of SEA 431, SEA 381, HEA 1270, SEA 135, SEA 233, SEA 184, SEA 402, SEA 428, and HEA 1091 for the complete text of the new legislation.

1. **Except for medical malpractice actions, health care providers who provide professional intervention resulting from a child abuse or neglect report are immune from any civil or criminal liability even if DCS does not substantiate child abuse or neglect.** IC 31-33-6-1 was amended by SEA 431. IC 31-33-6-1(a)(4) provides that a person who participates or assists with a DCS or law enforcement investigation resulting from a child abuse or neglect report, including by transferring photographs, x-rays, or medical examination records is immune from civil or criminal liability. IC 31-33-6-1(a)(5) provides immunity for health care providers who provide care or treatment, participate in a case review, provide advice or consultation concerning the child, disclose the child's medical records and other health information in accordance with federal or state law, provide information to a child fatality review team, recommend judicial action concerning the child, and testify in any judicial proceeding or other proceeding. IC 31-33-6-2, which currently provides that immunity for reporting child abuse or neglect does not attach for a person who has acted maliciously or in bad faith, was amended to state that immunity does not attach for a person *who has acted with gross negligence or willful and wanton misconduct*. The italicized language reflects the amendment to IC 31-33-6-2.

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2. **The CHINS physical abuse definition, IC 31-34-1-2, was amended, adding that child victims of serious offenses and children who are living with adults who have committed or been charged with and are awaiting trial for serious offenses against another child who also lives in the household are Children in Need of Services.** SEA 381 amended IC 31-34-1-2(b), adding child victims of the following offenses to the CHINS physical abuse definition: (1) assisting suicide [IC 35-42-1-2.5]; (2) battery [IC 35-42-2-1]; (3) domestic battery [IC 35-42-2-1.3]; (4) aggravated battery [IC 35-42-2-1.5]; (5) strangulation [IC 35-42-2-9]; (6) neglect of a dependent; child selling [IC 35-46-1-4]; (7) murder [IC 35-42-1-1]; (8) causing suicide [IC 35-42-1-1]; (9) voluntary manslaughter [IC 35-42-1-3]; (10) involuntary manslaughter [IC 35-42-1-4]; or (11) reckless homicide [IC 35-42-1-5]. A child victim of an attempt or a conspiracy to commit one of the listed offenses also is included in the CHINS definition. IC 31-34-1-2(c), a new subsection, provides that a non-victim child who lives in the same household as an adult who committed one of the offenses against another child victim who also lives in the same household meets the definition of a Child in Need of Services. An adult who is found to have committed one of the listed offenses may have been criminally convicted of the offense or found to be an offender by a CHINS adjudication under IC 31-34-11-2 [CHINS factfinding statute]. To be adjudicated a CHINS under IC 31-34-1-2(b) or (c), the child must also 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. A rebuttable presumption statute, IC 31-34-12-4.5(a), was amended, adding that there is a rebuttable presumption that a child is a CHINS if DCS establishes that the child lives in the same household as an adult who committed or has been charged with and is awaiting trial for an offense described in IC 31-34-1-2. IC 31-34-12-4.5(b) was amended, adding that the following may not be used as grounds to rebut the presumption under IC 31-34-12-4.5(a): (1) the child victim of an offense described in IC 31-34-1-2 is not genetically related to an adult who committed the act but the child presumed to be a CHINS is genetically related to the adult who committed the act; or (2) the child victim of an offense described in IC 31-34-1-2 differs in age from the child who is presumed to be a CHINS under IC 31-34-12-4.5.

3. **The CHINS sexual abuse definition statute was amended to reflect amended criminal statutes on human and sexual trafficking.** HEA 1270 amended and added human and sexual trafficking crimes at IC 35-42-3.5-1 through IC 35-42-3.5-1.4. The elements of the offense of promotion of human labor trafficking are listed at IC 35-42-3.5-1. IC 35-42-3.5-1.1 establishes the elements of offense of promotion of human sexual trafficking. IC 35-42-3.5-1.2 establishes the elements of the offenses of promotion of child sexual trafficking and promotion of sexual trafficking of a younger child (a child who is less than sixteen years old). IC 35-42-3.5-1.3 establishes the elements of child sexual trafficking. IC 35-42-3.5-1.4 establishes the elements of the offense of human trafficking. Amendments to IC 31-34-1-3(d) [CHINS sexual abuse] added to this CHINS definition a child who lives in the same household as an adult who committed or has been charged with a trafficking offense. HEA 1270 also amended the reasonable efforts statute, IC 31-34-21-5.6, adding that the juvenile court may make a finding that reasonable reunification efforts are not

required when a parent has been convicted of promotion of human labor trafficking, promotion of human sexual trafficking, promotion of child sexual trafficking, promotion of sexual trafficking of a younger child, child sexual trafficking, or human trafficking.

4. **Volunteer based Guardian ad Litem and Court Appointed Special Advocate Programs, and program employees and volunteers, and contracted Guardians ad litem who receive funding through IC 33-24-6-4 [State Office of GAL/CASA in the Indiana Office of Court Services] are immune from civil liability because a child was placed on a waiting list for services.** SEA 135 provides immunity from civil liability for Guardian ad Litem/Court Appointed Special Advocate programs, Program employees and volunteers and contracted Guardians ad Litem based on the child's placement on a waiting list unless the placement of the child on the waiting list is the result of gross negligence or willful or wanton misconduct. SEA 135 also requires DCS to notify the school which the child attends within 72 hours after DCS takes the child into custody.
5. **Two statutes specifically discussed foster care.** SEA 233 states that DCS shall, in collaboration with current foster parents, child placing agencies, and others with expertise in foster care services, develop and periodically update a Foster Parents Bill of Rights, which shall be distributed to current and prospective foster parents and made available on the DCS website. SEA 184 increases the number of children who may be cared for in a foster home from five children to six children. Only four of the children may be less than six years old.
6. **Predispositional reports, dispositional review reports, and periodic case review reports shall be made available at least 48 hours before the hearing.** SEA 402 applies to reports filed by DCS, the child's Guardian ad Litem/Court Appointed Special Advocate, and others who are authorized to prepare and file reports for the hearing, which include the child's parents, guardian, or custodian.
7. **DCS shall provide information about violations of a dispositional court order, including positive results of a drug or alcohol screen.** SEA 428 added a new statute, IC 31-34-20-7, which provides that if DCS receives information which indicates that a parent, guardian, or custodian "may have violated" a dispositional order, including positive results of a drug or alcohol screen, DCS shall provide the information to the court to be made part of the court record in the CHINS proceeding.
8. **If requested, the juvenile court shall hold a hearing on changing the out-of-home placement of a Child in Need of Services who has resided in the same placement for at least one year.** SEA 128 amends IC 31-34-23-3 [the dispositional modification hearing statute] and requires DCS to file a motion requesting a change in placement when a child has resided in the same out-of-home placement for at least one year. DCS shall give notice of the motion to the persons affected. The notice must state that the person with whom the child is placed may file a written objection to the motion to change the out-of-home placement not later than fifteen days after receipt of the

notice. The juvenile court shall hold a hearing on the question if an objection is timely filed. DCS must show that the change in the out-of-home placement is in the child's best interests. If DCS determines that the out-of-home placement is placing the child's life or health in imminent danger, DCS shall either: (1) change the child's placement and file an emergency motion with the court; or (2) request the court to issue a temporary order for an emergency change in the child's residence.

9. **The licensed child placing agency or DCS local office shall inform foster parents and prospective adoptive parents about the agency supervision and the agency report which are required by IC 31-19-8-5 to complete the adoption.** HEA 1091 provides that, when the licensed child placing agency or the DCS local office that will conduct the home inspection and supervision required for the child's adoption has been determined, the agency or local office shall provide a document to the child's current foster parents and prospective adoptive parents. The document will contain the following information: (1) a description of the information that must be provided to the court in the report required under IC 31-19-8-5; and (2) contact information for individuals employed by the licensed child placing agency or local office in a supervisory capacity. The agency report must be explained to the foster parents and to the prospective adoptive parents, who will be requested to sign the document acknowledging that they have received the document and that its contents have been explained to them. The term "prospective adoptive parent" is defined at IC 31-9-2-99.2 and means "a person who has filed a petition for adoption of a child under IC 31-19-2-2."