

Committee on Sexual Exploitation of Children (CSEC)  
CHINS 3.5 Workgroup  
Report to Children's Commission

**I. Question Presented**

Under Ind. Code § 31-34-1-3.5, a child is a child in need of services if, before the child becomes eighteen (18) years of age, the child is a victim of human or sexual trafficking under the laws of the State of Indiana or another jurisdiction, and 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. A child is considered a victim of human or sexual trafficking regardless of whether the child consented to the alleged conduct giving rise to the petition. Proposed legislation would have eliminated the requirement that children admit or deny an allegation arising under Section 3.5. The proposed legislation would have amended I.C. §31-34-10-7 to read as follows:

“If a petition alleges that the child is a child in need of services under I.C. 31-34-1-6 ~~or I.C. 31-34-1-3.5~~, the juvenile court shall determine whether the child admits or denies the allegations. A failure to respond constitutes a denial.”

As it stands, the effective statute requires the child to admit or deny the allegation. The Commission on Improving the Status of Children requested the Committee on the Sexual Exploitation of Children (CSEC) (“Committee”) to research the issue of whether the requirement for a child to admit or deny the allegation under Section 3.5 should remain as is, or should be removed as proposed in the amendment.

The Committee created a working group made up of members of the CSEC who expressed an interest in working on the question, or whose expertise was believed to be helpful to the research question presented. The Indiana Department of Child Services, the Indiana Public Defender Council, the Indiana Protection for Abused and Trafficked Humans (IPATH), Indiana Office of Court Services, Indiana State Police, and social service agencies such as Restored, Inc. and Child Advocates, Inc. were represented.

**II. Issues Identified**

As previously noted, the primary issue presented for research was whether or not the statute should continue to require a child to admit or deny that he or she is a victim of human or sexual trafficking. The allegation is unique due to the child's role in the actions that led to the assessment. On its face, the CHINS 3.5 allegation treats the child as a victim. Statutorily, a child is a victim of human or sexual trafficking if the child is recruited, harbored, transported, or engaged in

- (1) forced labor;
- (2) involuntary servitude;
- (3) prostitution;

- (4) juvenile prostitution, as defined in IC 35-31.5-2-178.5;
- (5) child exploitation, as defined in IC 35-42-4-4(b);
- (6) marriage, unless authorized by a court under IC 31-11-1-6;
- (7) trafficking for the purpose of prostitution, juvenile prostitution, or participation in sexual conduct as defined in IC 35-42-4-4(a)(4); or
- (8) human trafficking as defined in IC 35-42-3.5-0.5.

I.C.. § 31-9-2-133.1. A child can qualify as a victim of HT/ST if the child “engages in” activities listed above which can be charged as criminal offenses. A child charged with a delinquent act, one that would be an offense if committed by an adult, is statutorily entitled to counsel under I.C. § 31-32-4-1. However, there is currently no corresponding statute explicitly requiring the appointment of counsel to a child in a CHINS case. To require a child to admit or deny an allegation that she or he is a victim of human trafficking would, in some circumstances, require the child to admit or deny that she or he has committed a crime, thereby triggering the child’s right to counsel. The child’s right to counsel emerged as the determining factor in answering the question presented by the Commission.

### **III. Process**

Once presented with the research question, the Committee determined that more data was required to assist in reaching a conclusion. The Committee requested DCS to provide data as to how many cases were filed as a CHINS 3.5 in order to determine the breadth of the issue. In the period of January 1, 2017 through the end of 2018, the initial data report from the CASA/GAL office revealed that twenty two (22) cases were filed as a CHINS 3.5. After the initial report, the Committee requested the following additional data to determine the following questions relevant to the research:

- how many children admitted or denied the allegation;
- how was the petition adjudicated;
- whether the children were detained;
- when was counsel (before or after adjudication);
- whether counsel was present at the detention hearing;
- if the children were determined to be CHINS 3.5 but a separate filing was not made,
- if so, were those children appointed counsel after the 3.5 determination?

Lisa Manning researched laws of other states regarding whether child victims of HT/ST are required to admit or deny the allegation. Indiana GAL/CASA was consulted to provide its best practices position on cases in which the CASA is advised to request appointment of counsel for the child. At the workgroup meetings, anecdotal evidence and best practices were also discussed.

### **IV. Data/Data Issues**

With respect to the number of cases in which CHINS 3.5 was alleged, a thorough review of DCS records between July 1, 2016 and April 11, 2019 revealed twenty (20) cases in which CHINS 3.5 was alleged in the Petition. Of that 20, 15 were cases in which 3.5 was adjudicated.

Of the 15, the court appointed counsel to children prior to adjudication in 10 of the cases which actually specified whether counsel was appointed; in five (5) cases, the record did not specify whether the court appointed counsel. Of the 10 in which counsel was appointed prior to adjudication, six (6) children denied, one (1) admitted, and three (3) cases did not specify whether the child admitted or denied. Of those three youth, one (1) was adjudicated a CHINS 1, 3, and 3.5, and the other two were adjudicated a CHINS 1 and 3.5. The youth that was adjudicated only as a CHINS 3.5 at fact finding initially denied the allegations.

With respect to the number of cases in which counsel was appointed, the state GAL/CASA files revealed twenty one (21) cases in which CHINS 3.5 was alleged.<sup>1</sup> Of the 21 cases in which the petition alleged a CHINS 3.5, the court appointed counsel in only eleven (11) cases. All but one of those cases were venued in Marion County. Six (6) of the eleven (11) involved children who were also adjudicated as juvenile delinquents with placement in juvenile detention, but only one was identified as participating in dual status services. This information answered the basic questions presented above, but the analysis of the data posed a number of concerns.

Gathering the underlying data to answer the questions generated by the Committee to begin the analysis was difficult. The storage and organization of the data is not conducive to measuring the incident rate of child HT/ST by the number of CHINS 3.5 petitions filed. There are no easily searched data fields in either the court or DCS databases which addressed the questions posed by the committee. Consequently, in order to answer the questions generated by the Committee, every CHINS case filed between July 1, 2016 and April 11, 2019 involving an allegation of HT/ST was individually reviewed for the criteria outlined above. The review also revealed that the use of Odyssey codes across courts is not uniform, and therefore is not the most reliable means of determining incident rates. The weaknesses in the organization of data, along with the real-life experience of the workgroup members, resulted in the conclusion that the number of filings of CHINS 3.5 petitions are not an accurate measure of the incident rate of child human trafficking in Indiana. The number of CHINS 3.5 alone should not determine whether Indiana statutorily requires a child to admit or deny a CHINS 3.5 allegation.

The workgroup looked to other jurisdictions for guidance. Twenty six (26) states have compulsory appointment of counsel for children in child human trafficking cases, with some variation with respect to the age of the child involved and whether the representation is a GAL or attorney. In eight (8) states, appointment of counsel is discretionary. In eleven states, there is no statute addressing the appointment of counsel in child human trafficking cases; in those states, a GAL/CASA is appointed, and the GAL could be an attorney GAL. A table referencing that legislation is attached as Exhibit A. The Indiana office of GAL/CASA recommends that counsel be requested for children alleged to be victims of human or sexual trafficking.

## **V. Additional considerations**

The Committee identified additional reasons that the number of filed and adjudicated CHINS 3.5 cases are not a reliable measure of the incident rate of child human and sexual trafficking, and thus should not be the sole factor in the Committee's analysis:

- The timeframes imposed by CHINS statutes do not lend themselves well to the length of time necessary to assess whether a child is a victim of HT. Many times, that determination is a result of multiple interviews with the child and the involvement of various law enforcement agencies over a time period that exceeds the two to four months required to bring a case to adjudication under the current statutory scheme.
- Looking at the rates of charged offenses for human trafficking is not necessarily more helpful. Again, the time to investigate the case, as well as prosecutorial discretion in charging an easier to prove case reduces the number of potential human trafficking cases that are actually charged.
- The evidence necessary to prove that a child is a victim of HT/ST is difficult to obtain and prove, particularly if the child does not cooperate or is not able to testify. Juvenile victims may see themselves as guilty of crimes, and may hide or otherwise evade detection. Many youth who are victims of HT/ST do not see themselves as victims. This is because many times, juvenile victims of HT may feel strong loyalty or even love for their exploiters so do not internalize their actions as harmful. In addition, many juvenile victims have developed coping strategies which make it difficult for them to process their experiences as victimization.
- A CHINS 3.5 might not be alleged when services would be in place regardless of whether a 3.5 or other basis is alleged.

Keeping in mind the concerns previously outlined regarding due process, the workgroup generated the following additional issues concerning the requirement to admit or deny, whether counsel is appointed or not:

- To require a child to admit or deny whether they are victim is not trauma-informed, and ignores the child's experience as a victim.
- A tension exists between law enforcement's need to utilize a child victim of HT/ST as a witness against other perpetrators and the child's right not to incriminate herself or himself, which is better protected by the appointment of counsel.
- Eliminating the admit/deny requirement may call into question the Petitioner's burden of proof on the petition.
- A child alleged to be a CHINS 3.5 and placed outside of his or her home by court order, who is contemporaneously under juvenile court jurisdiction as a delinquent child (alleged or adjudicated) could invoke the right to counsel under Criminal Rule 25.
- The request to admit or deny may be academic. Practically speaking, based on the data collected, an admission is unlikely in most cases.
- As a point in favor of retaining the admit/deny language, the requirement may be the only trigger for a court to be alerted to the need to appoint counsel.

## **VI. Conclusions**

The analysis of the available data regarding the incidence rate of CHINS 3.5 petition, the concerns regarding due process for youth alleged to be victims of human and sexual trafficking, and the anecdotal evidence supplied by the experience of workgroup members resulted in the following conclusions and recommendations:

1. The Commission should not look to the number of filed petitions alleging a CHINS 3.5 as the primary factor in determining whether a requirement to admit or deny should remain in the statute.
2. The number of children who are victims of human trafficking is likely to be higher than is measurable by CHINS 3.5 petitions filed or substantiations of such allegations.
3. Placing a child in the position of admitting or denying the allegation that she or he is a victim of human or sexual trafficking is not trauma-informed, ignores the status of the child as a victim of abuse, and is likely to violate the child's due process rights if counsel is not appointed.
4. The elimination of the requirement to admit or deny as proposed may result in a failure of the court to appoint counsel.

## **VII. Recommendations**

1. The workgroup therefore respectfully recommends that the requirement that a child admit or deny an allegation under Section 3.5 be stricken, but only so long as a corresponding provision is included to require the appointment of counsel for all children alleged to be a CHINS 3.5.
2. It should be explicitly stated that the removal of the requirement to admit or deny does not eliminate the petitioner's burden of proving the allegation.

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<sup>1</sup> The data sources revealed a discrepancy between DCS files and Indiana State GAL/CASA files.

| <u>Compulsory Appointment of Counsel</u>  | <u>Discretionary Appointment of Counsel</u> | <u>No Statutory Appointment of Counsel</u> |
|---|---|--|
| Alabama (Ala. Code 26-14-11)              | Alaska (AS 47.10.010)                       | Colorado (C.R.S.A. 19-3-203)               |
| Arizona (A.R.S. 8-221)                    | Illinois (ILCS 405/1-5)                     | District of Columbia (DC ST 16-2304)       |
| Arkansas (9-27-316)                       | Montana (MCA 41-3-425)                      | Hawaii (HRS 587A-16)                       |
| California (Cal. Welf. & Inst. Code 317)~ | Oregon (OR ST 419B.195)                     | Kansas (K.S.A. 38-2205)                    |
| Connecticut (CT ST 46b-129)               | South Carolina (SC ST 63-7-1620)            | Maine (22 M.R.S.A. 4005)                   |
| Florida (F.S.A. 39.01305)^                | South Dakota (SD ST 26-7A-31)               | Michigan (MI R SPEC P MCR 3.915)           |
| Georgia (GA. Code. Ann. 15-11-402)        | Texas (TX Fam. 107.021)                     | New Hampshire (NH ST 169C:10)              |
| Idaho (I.C. 16-1614)                      | Delaware (DE R FAM CT RCP Rule 207)         | North Carolina (NC ST 7B-601)              |
| Iowa (I.C.A. 232.89)                      |   | Rhode Island (RI ST 40-11-7.1)             |
| Kentucky (K.R.S. 620.100)                 |   | Tennessee (TN ST 37-1-149)                 |
| Louisiana (LSA-Ch.C Art. 607)             |   | Utah (UT ST 78A-6-902)                     |
| Maryland (MD CTS & JUD PRO 3-813)         |   |  |
| Massachusetts (MA ST 119 § 29)            |   |  |
| Minnesota (MN ST 260C.163)                |   |  |
| Mississippi (MS R YCP Rule 14)            |   |  |
| Missouri (MO R JUV P Rule 115.02)         |   |  |
| Nebraska (NE ST 43-272)                   |   |  |
| Nevada (N.R.S. 432B.420)                  |   |  |
| New Mexico (NM ST 32-A-4-10)              |   |  |
| North Dakota (ND ST 27-20-26)             |   |  |
| Ohio (OH ST 2151.352)                     |   |  |
| Oklahoma (OK ST T. 10A 1-4-102)           |   |  |
| Pennsylvania (42 Pa.C.S.A. 63371)         |   |  |
| Vermont (VT ST 33 § 5112)                 |   |  |
| Virginia (VA ST 16.1-266)                 |   |  |
| Washington (WA ST 13.32A.160)             |   |  |
| West Virginia (W. Va. Code 49-4-601)      |   |  |
| Wisconsin (W.S.A. 48.23)                  |   |  |
| Wyoming (W.S. 14-3-211)                   |   |  |