

# CHAPTER ONE

## PARTIES AND PARTICIPANTS

### TABLE OF CONTENTS

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<b>I. PARTIES.....</b>	<b>1</b>
A. CHILD .....	1
B. PARENT .....	1
1. Putative Father.....	1
2. Alleged Father .....	1
3. Man Presumed to be the Biological Father .....	1
4. DCS Action to Establish Paternity .....	2
C. GUARDIAN .....	2
1. Persons Prohibited from Serving as Guardian.....	2
D. CUSTODIAN .....	4
1. General Definition .....	4
2. Specific Definition for Child in Need of Services Cases .....	4
3. Persons Prohibited from Serving as Custodian .....	5
4. <i>De Facto</i> Custodian.....	6
E. DEPARTMENT OF CHILD SERVICES (DCS) .....	6
1. DCS Represents the Interests of the State .....	6
2. Duty to Assist Courts .....	6
3. Caseworker .....	7
F. GUARDIAN AD LITEM (“GAL”) OR COURT APPOINTED SPECIAL ADVOCATE (“CASA”).....	7
1. Definitions.....	7
2. Appointment of GAL/CASA.....	7
3. Persons Eligible for Appointment as GAL/CASA .....	8
4. Appointment of Child’s Attorney as GAL/CASA .....	8
5. GAL/CASA May Be Represented by an Attorney.....	8
6. Representation of Best Interests of Child .....	8
7. GAL/CASA Access to Reports .....	8
8. GAL/CASA as Officers of the Court .....	9
9. GAL/CASA Term of Appointment .....	9
10. GAL/CASA Fees.....	9
11. GAL/CASA Civil Immunity .....	9
12. Joint or Multiple-County GAL/CASA Services.....	9
13. Contract to Provide GAL/CASA Services .....	9
G. PROSECUTING ATTORNEY .....	10
<b>II. PARTICIPANTS.....</b>	<b>10</b>
A. JUDGES, MAGISTRATES, AND REFEREES.....	10
1. Judge.....	10
2. Magistrate.....	10
3. Referees.....	10

B.	COMMUNITY CHILD PROTECTION TEAM .....	11
1.	Child Protection Team Must Exist in Each County .....	11
2.	Membership of Child Protection Team .....	11
3.	Team Coordinator .....	12
4.	Child Protection Team Meetings.....	12
5.	Duties of the Child Protection Team.....	13
6.	Confidentiality of Child Protection Team Matters .....	13
C.	VOLUNTARY PREVENTATIVE PROGRAM FOR AT-RISK CHILDREN .....	13
1.	Establishment of Voluntary Preventative Program .....	13
2.	At-Risk Child Defined.....	13
3.	Appointment of Early Intervention Advocate .....	14
4.	Who May Request Assistance .....	14
5.	Program Duties.....	14
6.	Parent, Guardian, or Custodian Must Consent to Participation.....	15
7.	Confidentiality.....	15
8.	Immunity from Liability.....	15

# CHAPTER ONE

## PARTIES AND PARTICIPANTS

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### I. PARTIES

The: (1) child; (2) child's parents guardian, or custodian; (3) department; and (4) guardian ad litem or court appointed special advocate; are parties to the proceedings described in the juvenile law and have all rights of parties under the Indiana Rules of Trial Procedure. Ind. Code § 31-34-9-7.

#### A. CHILD

Pursuant to Ind. Code § 31-9-2-13(d), except as otherwise provided in this section, "child," for purposes of the juvenile law and Ind. Code § 31-27 means:

- (1) A person who is less than eighteen (18) years of age; or
- (2) A person: (A) who is eighteen (18), nineteen (19), or twenty (20) years of age; and (B) who ... (ii) has been adjudicated a child in need of services before the child's eighteen birthday...

#### B. PARENT

"Parent," for purposes of the juvenile law, means a biological or adoptive parent. Unless otherwise specified, the term includes both parents, regardless of their marital status. Ind. Code § 31-9-2-88(a). "Parent" for purposes of Ind. Code § 31-34-1, Ind. Code § 31-34-8, Ind. Code § 31-34-16, Ind. Code § 31-34-19, Ind. Code § 31-34-20, and Ind. Code § 31-35-2, includes an alleged father. Ind. Code § 31-9-2-88(b).

##### 1. Putative Father

Pursuant to Ind. Code § 31-9-2-100, putative father, for purposes of Ind. Code § 31-35-1, means a male of any age who is alleged to be or claims that he may be a child's father but who:

- (1) Is not presumed to be the child's father under Ind. Code § 31-14-7-1(1) or Ind. Code § 31-14-7-1(2); and
- (2) Has not established paternity of the child:
  - (A) In a court proceeding; or
  - (B) By executing a paternity affidavit under Ind. Code § 16-37-2-2.1;before the filing of an adoption petition.

##### 2. Alleged Father

"Alleged father," for purposes of Ind. Code § 31-14, means any man claiming to be or charged with being a child's biological father. Ind. Code § 31-9-2-9.

##### 3. Man Presumed to be the Biological Father

###### a. Presumptive Father

Pursuant to Ind. Code § 31-14-7-1, a man is presumed to be a child's biological father if:

- (1) The: (A) man and the child's biological mother are or have been married to each other; and (B) child is born during the marriage or not later than three hundred

(300) days after the marriage is terminated by death, annulment, or dissolution;

- (2) The: (A) man and the child's biological mother attempted to marry each other by a marriage solemnized in apparent compliance with the law, even though the marriage is void or is voidable and (B) child is born during attempted marriage or not later than three hundred (300) days after the attempted marriage is terminated by death, annulment, or dissolution; or
- (3) The man undergoes a genetic test that indicates with at least a ninety-nine percent (99%) probability that the man is the child's biological father.

**b. Rebuttable Presumption of Fatherhood**

If there is not a presumed biological father under Ind. Code § 31-14-7-1, there is a rebuttable presumption that a man is the child's biological father if, with the consent of the child's mother, the man: (1) receives the child into the man's home; and (2) openly holds the child out as the man's biological child. Ind. Code § 31-14-7-2(a).

**c. Fatherhood Established by Paternity Affidavit**

A man is a child's legal father if the man executed a paternity affidavit in accordance with Ind. Code § 16-37-2-2.1 and the paternity affidavit has not been rescinded or set aside under Ind. Code § 16-37-2-2.1. Ind. Code § 31-14-7-3.

**4. DCS Action to Establish Paternity**

Pursuant to Ind. Code § 31-34-15-6:

- (a) This section applies whenever a child who was born out of wedlock is:
  - (1) Or is alleged to be a child in need of services; and
  - (2) Under the supervision of the department or a local office as a result of a court ordered out-of-home placement.
- (b) The department or the local office may refer a child's case to the local prosecuting attorney's office for the filing of a paternity action if the:
  - (1) Identity of the alleged father is known; and
  - (2) Department or the local office reasonably believes that establishing the paternity of the child would be beneficial to the child.

The local prosecuting attorney's office shall file a paternity action regarding each case that is referred under this subsection.

**C. GUARDIAN**

For purposes of the juvenile law, "guardian" means a person appointed by a court to have the care and custody of a child or the child's estate, or both. Ind. Code § 31-9-2-49(b).

N.H. v. Marion County Dept. of Child Servs., 866 N.E.2d 314, 317 (Ind. Ct. App. 2007) (The guardian was a proper party to the CHINS proceeding, and termination of a guardianship required notice and proper procedure.).

**1. Persons Prohibited from Serving as Guardian**

Pursuant to Ind. Code § 31-30-1-2.5, a juvenile court may not appoint a person to serve as a guardian or custodian of a child if the person is:

- (1) A sexually violent predator (as described in Ind. Code § 35-38-1-7.5);

- (2) A person who was at least eighteen (18) years of age at the time of the offense and who committed child molesting (Ind. Code § 35-42-4-3) or sexual misconduct with a minor (Ind. Code § 35-42-4-9) against a child less than sixteen (16) years of age: (A) By using or threatening the use of deadly force; (B) While armed with a deadly weapon; or (C) That resulted in serious bodily injury; or
- (3) Was less than eighteen (18) years of age at the time of the offense but was tried and convicted as an adult of:
  - (A) An offense described in:
    - (i) Ind. Code § 35-42-4-1 [Rape];
    - (ii) Ind. Code § 35-42-4-2 [Criminal Deviate Conduct] (before its repeal);
    - (iii) Ind. Code § 35-42-4-3 [Child Molesting] as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 1, Level 2, or Level 3 felony (for crimes committed after June 30, 2014);
    - (iv) Ind. Code § 35-42-4-5(a)(1) [Vicarious Sexual Gratification if a child involved in the offense is under the age of fourteen (14)];
    - (v) Ind. Code § 35-42-4-5(a)(2); [Vicarious Sexual Gratification if: (A) the offense is committed using or threatening the use of deadly force or while armed with a deadly weapon; or (B) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in Ind. Code § 16-42-19-2(1)) or a controlled substance (as defined in Ind. Code § 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge];
    - (vi) Ind. Code § 35-42-4-5(a)(3) [Vicarious Sexual Gratification if it results in serious bodily injury];
    - (vii) Ind. Code § 35-42-4-5(b)(1) [Vicarious Sexual Gratification if a person knowingly or intentionally directs, aids, induces, or causes a person under the age of sixteen (16) to engage in sexual intercourse with another child who is under sixteen (16) years of age] as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 2, Level 3, or Level 4 felony (for crimes committed after June 30, 2014);
    - (viii) Ind. Code § 35-42-4-5(b)(2) [Vicarious Sexual Gratification if a person knowingly or intentionally directs, aids, induces, or causes a person under the age of sixteen (16) to engage in sexual conduct with an animal other than a human being]; or
    - (ix) Ind. Code § 35-42-4-5(b)(3) [Vicarious Sexual Gratification if a person knowingly or intentionally directs, aids, induces, or causes a person under the age of sixteen (16) to engage in deviate sexual conduct with another person] as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 1, Level 2, or Level 3 felony (for crimes committed after June 30, 2014);
  - (B) An attempt or conspiracy to commit a crime listed in clause (A); or
  - (C) A crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) and (B).

## **D. CUSTODIAN**

### **1. General Definition**

For purposes of the juvenile law, a custodian means a person with whom a child resides. Ind. Code § 31-9-2-31(a).

### **2. Specific Definition for Child in Need of Services Cases**

Pursuant to Ind. Code § 31-9-2-31(b), a custodian for purposes of Ind. Code § 31-34-1, includes any person who is:

- (1) A license applicant or licensee of:
  - (A) A foster home or residential care facility that is required to be licensed or is licensed under Ind. Code § 31-27 [Regulation of Residential Child Care];
  - (B) A child care center that is required to be licensed or is licensed under Ind. Code § 12-17.2-4 [Regulation of Child Care Centers]; or
  - (C) A child care home that is required to be licensed or is licensed under Ind. Code § 12-17.2-5 [Regulation of Child Care Homes];
- (2) A person who is responsible for care, supervision, or welfare of children while providing services as an owner, operator, director, manager, supervisor, employee, or volunteer at:
  - (A) A home, center, or facility as described at Ind. Code § 31-9-2-31(b)(1);
  - (B) A child care ministry, as defined in Ind. Code § 12-7-2-28.8 [child care operated by a church or religion ministry that is a religious organization exempt from federal income taxation under Section 501 of the Internal Revenue Code], that is exempt from licensing requirements and is registered or required to be registered under Ind. Code § 12-17.2-6 [Regulation of Child Care Ministries];
  - (C) A home, center, or facility of a child care provider, as defined in Ind. Code § 12-7-2-149.1(5); [a person that provides child care and is directly paid for the provision of the child care under the federal Child Care and Development Fund voucher program administered under 45 CFR 98 and 45 CFR 99].
  - (D) A home, center, or facility that is the location of a program that provides child care, as defined in Ind. Code § 31-9-2-16.3, [a service that provides for the care, health, safety, and supervision of a child's social, emotional, and educational growth], to serve migrant children and that is exempt from licensing under Ind. Code § 12-17.2-2-8(6) [a program operated to serve migrant children that provides services for children from migrant worker families and is operated during a single period of less than 120 consecutive days during a calendar year], whether or not the program is certified as described in Ind. Code § 12-17.2-2-9 [program certification by the United States Department of Health and Human Services]; or
  - (E) A school, as defined in Ind. Code § 31-9-2-113.5;
- (3) A child caregiver, defined at Ind. Code § 31-9-2-16.4 [a person who provides, or is responsible for providing, care and supervision of a child (other than a child of whom the person is a parent, stepparent, grandparent, aunt, uncle, sibling, legal guardian, or custodian with whom the person resides) at a residential property that is not the child's place of residence if the person: (1) is not required to be licensed as an operation of a child care home or a foster care home; (2) provides care and supervision of a child while unattended by the child's parent, guardian, or custodian with whom the child resides; and (3) receives more than \$2,000.00 in annual compensation for providing care and supervision of a child or children];

- (4) A member of the household of the child's noncustodial parent; or
- (5) 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.

Sevion v. State, 620 N.E.2d 736, 739 (Ind. Ct. App. 1993) (Eighteen-year-old adult with whom seventeen-year-old juvenile lived was the "custodian" for purposes of juvenile interrogation procedures. The child trusted the adult and brought him to the police station. The adult "felt sufficiently secure in the role to accompany [the child] to the police station.").

### **3. Persons Prohibited from Serving as Custodian**

Pursuant to Ind. Code § 31-30-1-2.5, a juvenile court may not appoint a person to serve as a guardian or custodian of a child if the person is:

- (1) A sexually violent predator (as described in Ind. Code § 35-38-1-7.5) or
- (2) A person who was at least eighteen (18) years of age at the time of the offense and who committed child molesting (Ind. Code § 35-42-4-3) or sexual misconduct with a minor (Ind. Code § 35-42-4-9) against a child less than sixteen (16) years of age:
  - (A) By using or threatening the use of deadly force;
  - (B) While armed with a deadly weapon; or
  - (C) That resulted in serious bodily injury; or
- (3) Was less than eighteen (18) years of age at the time of the offense but was tried and convicted as an adult of:
  - (A) An offense described in:
    - (i) Ind. Code § 35-42-4-1 [Rape];
    - (ii) Ind. Code § 35-42-4-2 [Criminal Deviate Conduct] (before its repeal);
    - (iii) Ind. Code § 35-42-4-3 [Child Molesting] as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 1, Level 2, or Level 3 Felony (for crimes committed after June 30, 2014);
    - (iv) Ind. Code § 35-42-4-5(a)(1) [Vicarious Sexual Gratification if a child involved in the offense is under the age of fourteen (14)];
    - (v) Ind. Code § 35-42-4-5(a)(2) [Vicarious Sexual Gratification if: (A) the offense is committed using or threatening the use of deadly force or while armed with a deadly weapon; or (B) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in Ind. Code § 16-42-19-2(1)) or a controlled substance (as defined in Ind. Code § 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge];
    - (vi) Ind. Code § 35-42-4-5(a)(3) [Vicarious Sexual Gratification if it results in serious bodily injury];
    - (vii) Ind. Code § 35-42-4-5(b)(1) [Vicarious Sexual Gratification if a person knowingly or intentionally directs, aids, induces, or causes a person under the age of sixteen (16) to engage in sexual intercourse with another child who is under sixteen (16) years of age] as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 2, Level 3, or Level 4 felony (for crimes committed after June 30, 2014)];

- (viii) Ind. Code § 35-42-4-5(b)(2) [Vicarious Sexual Gratification if a person knowingly or intentionally directs, aids, induces, or causes a person under the age of sixteen (16) to engage in sexual conduct with an animal other than a human being]; or
- (ix) Ind. Code § 35-42-4-5(b)(3) [Vicarious Sexual Gratification if a person knowingly or intentionally directs, aids, induces, or causes a person under the age of sixteen (16) to engage in deviate sexual conduct with another person] as a Class A or Class B Felony (for crimes committed before July 1, 2014) or as a Level 1, Level 2, or Level 3 felony (for crimes committed after June 30, 2014)].
- (B) An attempt or conspiracy to commit a crime listed in clause (A); or
- (C) A crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) or (B).

#### **4. *De Facto* Custodian**

Pursuant to Ind. Code § 31-9-2-35.5, a *de facto* custodian means a person who has been the primary caregiver for, and financial support of, a child who has resided with the person for at least: (1) Six (6) months if the child is less than three (3) years of age; or (2) One (1) year if the child is at least three (3) years of age.

Any period after a child custody proceeding has commenced may not be included in determining whether the child has resided with the person for the required minimum period. The term does not include a person providing care for a child in a foster family home (as defined in Ind. Code 31-9-2-46.9).

### **E. DEPARTMENT OF CHILD SERVICES (DCS)**

Watson v. Dept. of Public Welfare of Harrison County, 165 N.E.2d 770, 773 (Ind. Ct. App. 1960) (The state is a proper party to a proceeding seeking to have a minor child adjudged neglected and made a ward of DCS.).

#### **1. DCS Represents the Interests of the State**

The attorney for the department: (1) may request the juvenile court to authorize the filing of a petition alleging that a child is a child in need of services; and (2) if DCS initiates the proceedings, shall represent the interests of the State at this proceeding and at all subsequent proceedings on the petition. Ind. Code § 31-34-9-1(a).

**Note:** Ind. Code § 31-34-9-1 now provides the prosecuting attorney may file a CHINS petition. If the prosecutor files the petition, the prosecutor “shall represent the interests of the state at this proceeding and at all subsequent proceedings on the petition, unless the prosecuting attorney and the department agree that the department shall represent the interests of the state at this proceeding and at all subsequent proceedings on the petition.” Ind. Code. § 31-34-9-1(b)(2).

#### **2. Duty to Assist Courts**

The department shall assist the juvenile court or the court having criminal jurisdiction during all stages of the proceedings in accordance with the purposes of Ind. Code § 31-33. Ind. Code § 31-33-14-2.



### **3. Caseworker**

“Caseworker,” for purposes of the juvenile law, means an employee of the department of child services who is classified as a family case manager. Ind. Code § 31-9-2-11.

## **F. GUARDIAN AD LITEM (“GAL”) OR COURT APPOINTED SPECIAL ADVOCATE (“CASA”)**

### **1. Definitions**

#### **a. GAL Definition**

Pursuant to Ind. Code § 31-9-2-50(b), for purposes of Ind. Code § 31-32-3-10.5, Ind. Code § 31-33, Ind. Code § 31-34, Ind. Code § 31-35, and Ind. Code § 31-37, a guardian ad litem means an attorney, a volunteer, or an employee of a county program designated under Ind. Code § 33-24-6-4 who:

- (1) Is appointed by a court to represent and protect the best interests of a child; and
- (2) Is appointed by a court to provide the child with services requested by the court, including: (A) Researching; (B) Examining; (C) Advocating; (D) Facilitating; and (E) Monitoring; the child’s situation; and
- (3) Has completed training appropriate for the person’s role, including training in: (A) The identification and treatment of child abuse and neglect; and (B) Early childhood, child, and adolescent development; as required by 42 U.S.C. § 5106a(b)(2)(B)(xiii).

A guardian ad litem who is not an attorney must complete the same court approved training program that is required for a court appointed special advocate under Ind. Code § 31-9-2-28.

#### **b. CASA Definition**

Pursuant to Ind. Code § 31-9-2-28(b), for purposes of Ind. Code § 31-32-3-10.5, Ind. Code § 31-33, Ind. Code § 31-34, Ind. Code § 31-35, and Ind. Code § 31-37, a court appointed special advocate means a community volunteer who:

- (1) Has completed a training program approved by the court that includes training in: (A) the identification and treatment of child abuse and neglect; and (B) early childhood, child and adolescent development; as required by 42 U.S.C. § 5106a(b)(2)(B)(xiii);
- (2) Has been appointed by a court to represent and protect the best interests of a child; and
- (3) May research, examine, advocate, facilitate, and monitor a child’s situation.

### **2. Appointment of GAL/CASA**

The juvenile court may appoint a guardian ad litem or a court appointed special advocate, or both, for the child at any time. Ind. Code § 31-32-3-1(a).

In every judicial proceeding under Ind. Code § 31-33, the court may appoint for the child a guardian ad litem or a court appointed special advocate, or both, under Ind. Code § 31-32-3. Ind. Code § 31-33-15-1.

Gibbs v. Potter, 77 N.E. 942, 943 (Ind. 1906) (“Courts of justice as an incident of their jurisdiction have inherent power to appoint guardians *ad litem* to protect the interests of minor defendants in actions pending before them.”).

K.S. v. State, 849 N.E.2d 538, 543 (Ind. 2006) (“A juvenile court is well within its discretion when it decides not to appoint a guardian ad litem to a juvenile whose mother does not have a conflict of interest....and counsel was eligible to be appointed guardian ad litem in the event the court chose to appoint one.”).

In re B.W., 17 N.E.3d 299, 311 (Ind. Ct. App. 2014) (Because DCS failed to present clear and convincing evidence that Mother is currently unable to provide a safe home for her two children or that guardianships are in the children's best interest, the trial court abused its discretion in appointing guardians for the children).

### **3. Persons Eligible for Appointment as GAL/CASA**

A court may not appoint a party to the proceedings, an employee of a party to the proceedings, or a representative of a party to the proceedings as the: (1) guardian ad litem; (2) court appointed special advocate; (3) guardian ad litem program; or (4) court appointed special advocate program; for a child involved in the proceedings. Ind. Code § 31-32-3-2.

### **4. Appointment of Child’s Attorney as GAL/CASA**

A guardian ad litem or court appointed special advocate need not be an attorney, but the attorney representing the child may be appointed the child’s guardian ad litem or court appointed special advocate. Ind. Code § 31-32-3-3.

**PRACTICE POINTER:** It is best practice that an attorney not represent the child and act as the GAL/CASA for the child. If the attorney is representing the child and is appointed as the GAL/CASA for the child, the attorney assumes two (2) different roles. As the attorney representing the child, the attorney represents the child/client’s stated interests and informed recommendations to the court. The GAL/CASA steps into the role of advising the court concerning the child’s best interests, which may be different than the child’s stated interests. This may result in two (2) different recommendations to the court. The client’s stated interests and recommendations should not ethically be ignored.

### **5. GAL/CASA May Be Represented by an Attorney**

The guardian ad litem or the court appointed special advocate may be represented by an attorney. Ind. Code § 31-32-3-4.

#### **a. Court appointment of attorney for GAL/CASA**

Pursuant to Ind. Code § 31-32-3-5, if necessary, to protect the child’s interests, the court may appoint an attorney to represent the guardian ad litem or court appointed special advocate. The court may only appoint one (1) attorney under this section.

### **6. Representation of Best Interests of Child**

A guardian ad litem or court appointed special advocate shall represent and protect the best interests of the child. Ind. Code § 31-32-3-6.

### **7. GAL/CASA Access to Reports**

Pursuant to Ind. Code § 31-33-15-2, the guardian ad litem or the court appointed special advocate, or both, shall be given access under Ind. Code § 31-39 to: (1) All reports relevant to the case; and (2) Any reports of examinations of the child’s parents or other person responsible for the child’s welfare.

## **8. GAL/CASA as Officers of the Court**

The guardian ad litem or court appointed special advocate, or both, shall be considered officers of the court for the purposes of representing the child's interests. Ind. Code § 31-32-3-7.

## **9. GAL/CASA Term of Appointment**

A guardian ad litem or court appointed special advocate serves until the juvenile court enters an order for discharge under Ind. Code § 31-34-21-11 or Ind. Code § 31-37-20-7. Ind. Code § 31-32-3-8(a).

## **10. GAL/CASA Fees**

If any fees arise, payment shall be made under Ind. Code § 31-40. Ind. Code § 31-32-3-9; Ind. Code § 31-33-15-3.

State ex rel. Keating v. Bingham, 121 N.E.2d 727, 730 (Ind. 1954) ("The court may hear evidence to assist it in determining the amount of compensation to be paid [to a guardian ad litem], since the services are rendered at the instance of the court, or it may summarily fix the amount of compensation upon the knowledge of the judge as to the work done by such guardian without the aid of outside evidence.").

## **11. GAL/CASA Civil Immunity**

Pursuant to Ind. Code § 31-32-3-10, except for gross misconduct, if:

- (1) A guardian ad litem;
- (2) A court appointed special advocate;
- (3) An employee of a county guardian ad litem or court appointed special advocate program;
- (4) A volunteer for a county guardian ad litem or court appointed special advocate program;
- (5) An early intervention advocate; or
- (6) An employee of or volunteer for an early intervention advocate or staff member of a preventative program established by the court under Ind. Code 31-32-3-11;

performs the person's duties in good faith, the person is immune from any civil liability that may occur as a result of that person's performance during the time that the person is acting within the scope of the person's duties.

## **12. Joint or Multiple-County GAL/CASA Services**

Juvenile courts situated in adjacent counties may establish joint or multiple county guardian ad litem or court appointed special advocate services to carry out Ind. Code § 31-34 and Ind. Code § 31-37. Ind. Code § 31-31-7-1.

## **13. Contract to Provide GAL/CASA Services**

A juvenile court may contract to provide guardian ad litem or court appointed special advocate services for purposes of carrying out Ind. Code § 31-34 or Ind. Code § 31-37. Ind. Code § 31-31-7-2.

## **G. PROSECUTING ATTORNEY**

Pursuant to Ind. Code § 31-34-9-1(b), a prosecuting attorney:

- (1) May request the juvenile court to authorize the filing of a petition alleging that a child is a child in need of services under Ind. Code § 31-34-1; and
- (2) Shall represent the interests of the State at this proceeding and at all subsequent proceedings in the petition, unless the prosecuting attorney and the department agree that the department shall represent the interests of the state at this proceeding and at all subsequent proceedings on the petition.

If a prosecuting attorney is representing the interests of the State at a subsequent proceeding after a petition is filed under this section, all deadlines and procedures concerning children in need of services under Ind. Code § 31-34 apply to the prosecuting attorney to the same extent as they apply to the department. Ind. Code § 31-34-9-1(c).

## **II. PARTICIPANTS**

### **A. JUDGES, MAGISTRATES, AND REFEREES**

#### **1. Judge**

A judge refers to the judge of the juvenile court. Ind. Code § 31-9-2-68.

#### **2. Magistrate**

##### **a. Appointment**

In counties with a population of at least 50,000, after June 30, 2014, the judge of the juvenile court may appoint not more than one (1) full-time magistrates under Ind. Code § 33-23-5. Ind. Code § 31-31-3-1; Ind. Code § 31-31-3-2(a). The judge of the juvenile court may appoint more than one (1) full-time magistrate only if the appointment of an additional magistrate is expressly authorized by the general assembly. Ind. Code § 31-31-3-2(b). If the judge of the juvenile court appointed one (1) or more full-time magistrates under this section before July 1, 2014, the judge may continue to appoint or reappoint a full-time magistrate to each of those positions after June 30, 2014. Ind. Code § 31-31-3-2(c).

##### **b. Qualifications**

A magistrate must be admitted to the practice of law in Indiana. Ind. Code § 33-23-5-2.

##### **c. Restrictions on the practice of law**

A magistrate may not engage in the practice of law while holding the office of magistrate. Ind. Code § 33-23-5-3.

##### **d. Powers of magistrate**

Pursuant to Ind. Code § 33-23-5-8 , except for the power of mandate a magistrate has the same powers as a judge.

##### **e. Service as a judge *pro tempore* or special judge**

A magistrate may serve as a judge *pro tempore* or as a special judge of the court. Ind. Code § 33-23-5-6.

##### **f. No judicial mandate**

A magistrate does not have the power of judicial mandate. Ind. Code § 33-23-5-8.

#### **3. Referees**

**a. Appointment**

The judge of the juvenile court may appoint one (1) or more part-time juvenile court referees. Ind. Code § 31-31-3-3; Ind. Code § 31-31-4-2.

**b. Qualifications**

A person appointed as a part-time juvenile court referee...must be admitted to the practice of law in Indiana. Ind. Code § 31-31-3-4; Ind. Code § 31-31-4-3.

**c. Duties**

Pursuant to Ind. Code § 31-31-3-6 and Ind. Code § 31-31-4-5, a part-time juvenile court referee: (1) Shall perform duties assigned by the court; (2) Shall submit findings and recommendations in writing to the juvenile court, which shall enter such order as it considers proper; and (3) May administer oaths in the performance of duties assigned by the juvenile court.

**B. COMMUNITY CHILD PROTECTION TEAM**

**1. Child Protection Team Must Exist in Each County**

A community child protection team is established in each county. Ind. Code § 31-33-3-1(a).

**2. Membership of Child Protection Team**

Pursuant to Ind. Code § 31-33-3-1(a), the community child protection team is a countywide, multidisciplinary child protection team. The team must include the following thirteen (13) members who reside in, or provide services to residents of, the county in which the team is to be formed:

- (1) The director of the local office that provides child welfare services in the county or the local office director's designee.
- (2) Two (2) designees of the juvenile court judge.
- (3) The county prosecuting attorney or the prosecuting attorney's designee.
- (4) The county sheriff or the sheriff's designee.
- (5) Either: (A) The president of the county executive in a county not containing a consolidated city or the president's designee; or (B) The executive of a consolidated city in a county containing a consolidated city or the executive's designee.
- (6) A director of a court appointed special advocate or guardian ad litem program or the director's designee in the county in which the team is to be formed.
- (7) Either: (A) A public school superintendent or the superintendent's designee; or (B) A director of a local special education cooperative or the director's designee.
- (8) Two (2) persons, each of whom is a physician or nurse, with experience in pediatrics or family practice.
- (9) Two (2) residents of the county.
- (10) The chief law enforcement officer of the largest law enforcement agency in the county (other than the sheriff) or the chief law enforcement officer's designee.

**a. Appointment of Members**

The director of the local office serving the county shall appoint, subject to the approval of the director of the department, the superintendent or director of the local special

education cooperative (Ind. Code § 31-33-3-1(a)(7), the physician or the nurse (Ind. Code § 31-33-3-1(a)(8), and the residents of the county (Ind. Code § 31-33-3-1(a)(9). Ind. Code § 31-33-3-1(b).

### **3. Team Coordinator**

#### **a. Election of Team Coordinator**

The team shall elect a team coordinator from the team's membership. Ind. Code § 31-33-3-2.

#### **b. Duties of Team Coordinator**

Pursuant to Ind. Code § 31-33-3-3, the team coordinator shall supply the community child protection team with the following: (1) Copies of reports of child abuse or neglect under Ind. Code § 31-33-7-1. (2) Any other information or reports that the coordinator considers essential to the team's deliberations.

### **4. Child Protection Team Meetings**

#### **a. Frequency of Team Meetings**

Pursuant to Ind. Code § 31-33-3-4(a), the community child protection team shall meet: (1) At least one (1) time each month; or (2) At the times that the team's services are needed by the department.

#### **b. Team Meetings Called by the Majority of Members**

Meetings of the team shall be called by the majority vote of the members of the team. Ind. Code § 31-33-3-4(b).

**c. Team Meeting Agenda**

The team coordinator or at least two (2) other members of the team may determine the agenda. Ind. Code § 31-33-3-4(c).

**d. Team Meetings Open to the Public**

Notwithstanding Ind. Code § 5-14-1.5, meetings of the team are open only to persons authorized to receive information under this article. Ind. Code § 31-33-3-4(d).

**5. Duties of the Child Protection Team**

**a. Recommendations to DCS**

The community child protection team may recommend to the department that a petition be filed in the juvenile court on behalf of the subject child if the team believes this would best serve the interests of the child. Ind. Code § 31-33-3-5.

**b. Review Abuse and Neglect Cases and Complaints**

Pursuant to Ind. Code § 31-33-3-6, the community protection team may receive and review: (1) Any case that the department has been involved in within the county where the team presides; and (2) Complaints regarding child abuse and neglect cases that are brought to the team by a person or an agency.

**c. Periodic Reports**

The community child protection team shall prepare a periodic report regarding the child abuse and neglect reports and complaints that the team reviews under Ind. Code § 31-33-3. Ind. Code § 31-33-3-7(a).

**d. Contents of Periodic Reports**

Pursuant to Ind. Code § 31-33-3-7(b), the periodic report may include the following:

- (1) The number of complaints under Ind. Code § 31-33-3-6 that the team receives and reviews each month.
- (2) A description of the child abuse and neglect reports that the team reviews each month, including the following information: (A) The scope and manner of the interviewing process during the child abuse or neglect assessment; (B) The timeliness of the assessment; (C) The number of children removed from the home; (D) The types of services offered; (E) The number of child abuse and neglect cases filed with a court; and (F) The reasons that certain child abuse and neglect cases are not filed with a court.

**6. Confidentiality of Child Protection Team Matters**

The members of the community child protection team are bound by all applicable laws regarding the confidentiality of matters reviewed by the team. Ind. Code § 31-33-3-8.

**C. VOLUNTARY PREVENTATIVE PROGRAM FOR AT-RISK CHILDREN**

**1. Establishment of Voluntary Preventative Program**

A juvenile court may establish a voluntary preventative program for at-risk children. Ind. Code § 31-32-3-11(a).

**2. At-Risk Child Defined**

Pursuant to Ind. Code § 31-9-2-9.9, “at-risk child” or “at-risk children,” for purposes of Ind. Code § 31-32-3, means a child or children who: (1) Are at risk of becoming involved in a

juvenile proceeding; (2) Are at risk of being suspended or expelled from school; (3) Are at risk of dropping out of school; (4) Were previously children in need of services and who are in need of ongoing supervision and assistance; or (5) Have been victims of domestic violence.

### **3. Appointment of Early Intervention Advocate**

The juvenile court may appoint an early intervention advocate for a child who is participating in a preventative program for at-risk children that has been established by the court under Ind. Code § 31-32-3-11. Ind. Code § 31-32-3-1(b).

#### **a. Early Intervention Advocate Defined**

“Early intervention advocate” for purposes of Ind. Code § 31-32-3, means a volunteer or staff member of a preventative program who is appointed by the court as an officer of the court to assist, represent, and protect the interests of at-risk children. Ind. Code § 31-9-2-43.2.

#### **b. Criminal History Check Required**

Pursuant to Ind. Code § 31-32-3-11(b), a juvenile court that establishes a program under Ind. Code § 31-32-3-11(a) may, after conducting a criminal history check of every individual who is likely to have contact with a child, appoint staff and an early intervention advocate to implement, coordinate, and carry out the purposes of the program. The court may not appoint an individual under this subsection if the results of the criminal history check disclose that the individual has a record of: (1) A conviction for a felony; (2) A conviction for a misdemeanor relating to the health and safety of a child; or (3) A juvenile adjudication for an act that, if committed by an adult, would be a felony listed in Ind. Code § 31-27-4-13(a).

#### **c. Term of Appointment**

An early intervention advocate serves until the plan developed for an at-risk child under Ind. Code § 31-32-3-11 has been terminated. Ind. Code § 31-32-3-8(b).

### **4. Who May Request Assistance**

Any individual may request that a child receive assistance under a program established under Ind. Code § 31-32-3-11(a) if the individual believes a child may be an at-risk child. Ind. Code § 31-32-3-11(f).

### **5. Program Duties**

#### **a. Determine if Child Would Benefit From Program**

After receiving a request that a child receive assistance under a program described in Ind. Code § 31-32-3-11(a), or after receiving information that a child may be an at-risk child, program staff or an early intervention advocate shall determine whether the child would benefit from the program. Ind. Code § 31-32-3-11(g).

#### **b. Create, Implement, and Maintain Plan**

Pursuant to Ind. Code § 31-32-3-11(c), the program staff or an early intervention advocate appointed under Ind. Code § 31-32-3-11(b) may:

- (1) Receive information concerning an at-risk child from any person; and



- (2) Use the information received under subsection (1) to create, implement, and maintain an individualized plan for the at-risk child and the child's family if the child's parent, guardian, or custodian has consented to the participation of the child in the program. The individualized plan created under this subdivision may include a program of counseling, tutoring, or mentoring.

#### **6. Parent, Guardian, or Custodian Must Consent to Participation**

Pursuant to Ind. Code § 31-32-3-11(g), if the program staff or early intervention advocate determines that the child would benefit from the program, the staff or early intervention advocate shall inform the parent, guardian, or custodian of the determination and request that the parent, guardian, or custodian permit the child to participate in the program. The child (and the parent, guardian, or custodian) may participate in the program only with the consent of the parent, guardian, or custodian.

#### **7. Confidentiality**

##### **a. Disclosure**

Pursuant to Ind. Code § 31-32-3-11(d), all information received under the program by the program staff or an early intervention advocate: (1) Is confidential; and (2) May be disclosed only to the following: (A) Program staff or any early intervention advocate appointed to the program under Ind. Code § 31-32-3-11(b); (B) Any person or entity engaged by a person described in clause (A) in creating, implementing, and maintaining a plan for at-risk child and the child's family; or (C) The juvenile court.

##### **b. Privileged Communication Does Not Prevent Reporting**

Pursuant to Ind. Code § 31-32-3-11(e), the privileged communication between: (1) A husband and wife; (2) A healthcare provider and the healthcare provider's patient; (3) A juvenile client and a: (A) licensed social worker; (B) licensed clinical social worker; (C) licensed marriage and family therapist; (D) licensed mental health counselor; (E) licensed addiction counselor; or (F) licensed clinical addiction counselor; (4) A school counselor and a student; or (5) A school psychologist and a student; may not prevent an individual described in this subsection from reporting to, requesting assistance from, or cooperating with program staff or an early intervention advocate under this section.

##### **c. Generally, Information May Not Be Used Against Child**

Except as provided under Ind. Code § 31-33-5, no information received under the program by the program staff or an early intervention advocate may be used against the child in a criminal or civil proceeding. Ind. Code § 31-32-3-11(i).

#### **8. Immunity from Liability**

Pursuant to Ind. Code § 31-32-3-11(h), a person who: (1) Makes a good faith request under Ind. Code § 31-32-3-11(f); (2) In good faith provides information concerning a child to program staff or an early intervention advocate appointed under Ind. Code § 31-32-3-11(b); or (3) In good faith participates in a plan under this section; is immune from civil or criminal liability.

