



COMMISSION ON IMPROVING THE STATUS OF CHILDREN IN INDIANA

Final Report on Study Requested by HEA 1270

October 18, 2018



Commission on Improving *the* Status of Children in Indiana

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I. DIRECTIVE

H.E.A. 1270-2018 tasked the Commission on Improving the Status of Children to: “study the topic of what specific authority a law enforcement officer has in order to take custody of or detain a child in certain situations where the officer believes a child may be a victim of human trafficking and who is potentially a child in need of services.” The Commission assigned this study to its Commercially Sexually Exploited Children (CSEC) subcommittee under the Juvenile Justice and Cross-System Youth Task Force.

II. SUMMARY OF WORK TO DATE

June 29, 2018. The CSEC subcommittee held its regular quarterly meeting, at which the committee discussed the directive.

August 10, 2018. The CSEC subcommittee held a special meeting to discuss this directive further.

September 28, 2018. The CSEC subcommittee held its regular quarterly meeting and approved the contents of this report.

October 5, 2018. The CSEC findings and recommendations were presented to the Juvenile Justice and Cross-System Youth Task Force.

October 17, 2018. The findings and recommendations were presented to the Commission on Improving the Status of Children. The Commission voted unanimously to adopt the report and endorse its findings and recommendations.

In preparing this report, the CSEC subcommittee collaborated with the following partners: Department of Child Services; Indiana Trafficking Victim Assistance Program; Indiana Public Defender Council; the Office of the Indiana Attorney General; Indiana Department of Education; Clark County Probation; Allen County Probation; Restored, Inc.; Federal Bureau of Investigation; Indiana State Police; and the Indiana Sheriffs’ Association.

III. BACKGROUND

1. Legislation

Child victims of human trafficking are children in need of services under Indiana Code 31-34-1-3.5.

Indiana Code 31-34-1-3.5 provides as follows:

- (a) A child is a child in need of services if, before the child becomes eighteen (18) years of age:
 - (1) the child is a 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).

A law enforcement officer has legal authority to take custody of a potential child in need of services under I.C. 31-34-2-3.

I.C. 31-34-2-3 provides as follows:

- (a) If a law enforcement officer's action under Section 2 (I.C. 31-34-2-2) of this chapter will not adequately protect the safety of the child, the child may be taken into custody by a law enforcement officer, probation officer, or caseworker acting with probable cause to believe the child is a child in need of services if:
 - (1) it appears that the child's physical or mental condition will be seriously impaired or seriously endangered if the child is not immediately taken into custody.

(2) there is not a reasonable opportunity to obtain an order of the court; and

(3) consideration for the safety of the child precludes the immediate use of family services to prevent removal of the child.

(b) A probation officer or caseworker may take a child into custody only if the circumstances make it impracticable to obtain assistance from a law enforcement officer.

(c) If a person takes a child into custody under this section, the person shall make written documentation not more than twenty-four (24) hours after the child is taken into custody as provided in section 6 (I.C. 31-34-2-6) of this chapter.

2. Case Law

The Indiana Court of Appeals has held I.C. 31-34-2-3 is reasonable and constitutional.

See In re Jordan, 616 N.E.2d 388 (Ind. Ct. App. 1993) (I.C. 31-34-2-3 and the detention hearing statute provide an appropriate and adequate balance between the need and right on the part of a child to be protected from harm, and the parent's right to have the custody and care of the child remain in him or her).

When I.C. 31-34-2-3 has been challenged under § 1983 in federal court, summary judgment for law enforcement and DCS caseworkers has been upheld.

See Siliven v. Ind. Dep't. of Child Services, 635 F.3d 921 (7th Cir. 2011) (the fundamental right to familial relations must be balanced with the government's interest in protecting children from abuse or neglect. To maintain the appropriate balance, federal court requires that caseworkers have evidence to support a reasonable suspicion of past or imminent abuse before they may take a child into custody).

Justice v. Justice, 303 F. Supp. 3d 923 (S.D. Ind. 2018) (summary judgment affirmed where trial court had probable cause to find abuse or

neglect and the detention was justified by exigent circumstances under I.C. 31-34-2-3).

Based on the above-cited statutes and case law, sufficient legal authority exists for law enforcement to take custody of a suspected juvenile trafficking victim to ensure the child's safety if the child's physical or mental condition will be seriously impaired or seriously endangered.

3. Law Enforcement Summary

Federal partners:

The recovery of Indiana juvenile trafficking victims across state lines presents complicated recovery situations. Law enforcement (typically FBI) are contacted and arrange to meet law enforcement from the other jurisdiction at a state line. DCS is only able to initially respond to a child who is recovered out-of-state if the child is a ward of the DCS. State law enforcement is, unfortunately, typically not prepared to respond immediately to a child recovered out of state. It can be difficult to get local law enforcement to respond to these situations because of lack of training and knowledge. Sometimes, the child is detained on delinquency charges. Interstate Compact for Juveniles issues may arise, and the runaway statutes can help address those issues, but the matter must be studied further.

There is no one defined place to take children who are believed to be victims of trafficking.

State partners:

All officers agreed that there is no written policy for officers who encounter children believed to be victims of human trafficking.

Officers are trained each year in the indicators of human and sex trafficking and recommended procedures when indicators are present. These officers found joint training sessions with DCS to be helpful.

Officers are trained to notify DCS if they believe a child is a victim of trafficking. They also partner with providers such as the Indiana Trafficking Victims Assistance Program (ITVAP) and Restored, Inc. to utilize resources, including Child Advocacy Centers (CACs) for forensic interviews. As a last resort, children may be taken to locked juvenile detention facilities to prevent them from returning to their trafficker. However, children who are not reported as runaways or facing criminal delinquency allegations may not be placed in secure detention pursuant to state and federal law.¹

Officers suggested that it would be helpful to have residential care in a different city/location from the juvenile victim's initial detention, so that victims would not be able to immediately return to their traffickers.

Officers are also trained to report to the DCS hotline and use their law enforcement telephone code to be placed at the top of the queue for immediate response. The Child Welfare Policy and Practice Group assessment of DCS recommends elimination of the mandatory one-hour response time, and that local offices have discretion to determine when an immediate response is required. Should that change take effect, this subcommittee recommends that DCS continue to immediately respond when a law enforcement officer reports that a child is in danger.

Often, the Family Case Managers responding to reports of a possible human trafficking victim have not been trained as forensic interviewers, do not know how to forensically interview a child, and will want to speak to potential perpetrators as part of their investigation without realizing

¹ Indiana Code 31-34-6-1 provides that a child alleged to be in need of services may not be held in a secure detention facility, a community based correctional facility for children, a juvenile detention facility, or a shelter care facility that houses persons charged with crimes. 42 U.S.C. § 11133 (a)(11)(B) prohibits juveniles who are not facing delinquency allegations from being placed in secure detention facilities or secure correctional facilities.

they are complicating the police investigation. More detailed training involving both law enforcement and DCS is recommended.

Need for Improvement: Officers indicated that there is a very real need for more training for all involved. Indiana is behind the curve on training, resources, and responses. Trafficking is everywhere, and training should be commensurate with the prevalence. DCS staff responding to urgent law enforcement calls should be forensically trained. State and local law enforcement officers should receive more training and should work together with DCS for a unified response.

Local law enforcement:

Local law enforcement officers encounter frequent obstacles in helping human trafficking victims. Traffickers are shrewd in their manipulation and control of children. Most child victims of human trafficking do not respect authority, will not self-identify as victims of human trafficking, and will return to their trafficker if given an opportunity.

Law enforcement officers reported frustration in removing children from their traffickers when there is inadequate shelter care available. Juvenile detention centers are not appropriate for human trafficking victims.

Some children are exploited by traffickers (who can be family members), and other children learn from past abuse to exploit themselves, for example by posting their own advertising online. Officers often have a difficult time discerning that these are victims and need services, as opposed to delinquents.

Local officers encounter human trafficking victims in all types of investigations, including routine traffic stops. Local law enforcement officers will benefit from training in the dynamics and identification of human trafficking. Collaborative training with DCS will improve

communication and will help establish a local protocol for identifying potential victims and connecting children with services.

4. Emergency Shelter Care

The committee discussed the need for emergency shelter care available throughout the state, and not just in human trafficking cases. Even DCS's hands are tied when there is no room for children in existing shelter care. A broader study is needed on this issue by the Juvenile Justice and Cross-System Youth Task Force.

5. Dual Status: Judge Dowling explained that many of these children come into the system with delinquency charges, when in fact they are victims of trafficking. The juvenile judges will benefit from training regarding use of the dual status protocol (I.C. 31-41-1-2) with these children.

The subcommittee should further study the portion of I.C. 31-34-10-7 that requires victims of human trafficking to identify themselves as children in need of services during the initial hearing. Judge Dowling explained that victims of human trafficking are unlikely to self-identify in court. This provision of the code needs further study.

IV. FINDINGS:

1. There is legal authority for an officer to take custody of a child believed to be a trafficking victim, based on an analysis of both state statutes and case law.

V. RECOMMENDATIONS:

1. There is a significant need for training of DCS case workers and law enforcement officers in human trafficking dynamics and the development of local protocols. DCS should be trained at all three levels: state, local, and hotline. Training is needed for all state and local law enforcement agencies in the detection of human trafficking victims and the recommended response.

Most importantly, at a local level, joint training sessions are needed with law enforcement officers and DCS to develop a collaborative response and local protocol when a juvenile victim of human trafficking is identified.

2. If the statutory one-hour response time for DCS is modified, ensure that when law enforcement contacts the DCS hotline to report a suspected victim of human trafficking, there will continue to be a mandatory immediate response by DCS.
3. A broader study on the allocation of resources to ensure access to emergency shelter care in all areas of the state should be completed by the Juvenile Justice and Cross-System Youth Task Force.
4. Further study the provision of I.C. 31-34-10-7 (and I.C. 31-34-10-6) that requires child victims of human trafficking to admit or deny the allegations in a CHINS petition.
5. Further study the potential legal and practice gaps in the ability to recover Indiana child trafficking victims found in other states and to return child trafficking victims from other states who are found in Indiana.