

# LEGAL OVERVIEW OF SUBSTANCE ABUSE AND CHILD WELFARE

 childadvocates

YOUR VOICE. THEIR FUTURE.

- \*This presentation is not legal advice
- The goal of the presentation is to provide a quick overview of substance abuse and child welfare



- Child welfare workers report that most children in child welfare, and the overwhelming majority of children placed in out-of-home care, have a parent with an alcohol or other substance use disorder.
- Parental alcohol or other drug use as a contributing factor for reason for removal increased from 18% to over 35% in the last 16 years.

What is DCS? The Department of Child Services – a State Agency created in 2005 by Governor Mitch Daniels (was previously under FSSA as the Office of Family and Children)

## 3 Big Parts of DCS

- Hotline (1-800-800-5556)
- CPS/investigating/assessment
- Ongoing/permanency/case management

- **CAPTA: Child Abuse Prevention and Treatment Act**
- It's why hospitals, docs, etc have to report
  - Requires States to have child abuse and neglect reporting laws
  - Requires the investigation of reports of abuse and neglect
    - Must have notice and appeal process
  - Provides a GAL/best interest representative in every child welfare case
  - Makes child welfare records confidential

## \* **ASFA: Adoption and Safe Families Act**

\* the goal of ASFA was to prevent children from growing up in the foster care system. Strict timelines put on cases

- In Indiana these are the relevant timelines in child welfare cases....

**Removal** - if a child is removed from parents, a hearing must be conducted within 48 hours

**Adjudication** – 60 days or 120 if all parties agree

**Disposition** – 30 days after adjudication

**Permanency** – every 12 months or earlier

**Termination of Parental Rights** – mandatory filing if removed for 15 of the last 22 months. The trial must conclude 180 days after filing.

The timelines are written with the child's welfare and need for permanency in mind. They do not always jive with the time parents need for recovery.

- IC 31-34-8-1 – a lesser form of DCS intervention. Essentially, an act of abuse or neglect has occurred, but DCS feels coercive intervention is not necessary.
- Children can safely remain in home
- Family and DCS enter into a contract
- Court approves
- DCS agrees to offer services and family agrees to participate.
- DCS monitors
- 6 months

- What does CHINS stand for?

## CHILD IN NEED OF SERVICES

- Isn't it really the PARENT who is in need of services?





- **A Few Relevant CHINS (child in need of services) Statutes**

Parental substance abuse alone does not cause a child to be a CHINS – to have a child welfare case. One of the following statutes must be applicable to the child...

- \*IC 31-34-1-1 – Neglect – “the inability, refusal, or neglect of a parent, guardian or custodian to supply the child with the necessary food, clothing, shelter, medical care, education, or supervision.
- \*IC 31-34-1-10 The child is born with fetal alcohol syndrome, neonatal abstinence syndrome or with any amount of controlled substance, a legend drug 1 or a metabolite of a controlled substance or legend drug in the child’s body, including the child’s blood, urine, umbilical cord tissue, meconium.

- **\*IC § 31-34-1-11** - The child has an injury, abnormal physical or psychological development, symptoms of neonatal intoxication or withdrawal or experiences risks or injuries from the mother's use of alcohol, controlled substance or legend drug during pregnancy
- The term "**legend drug**" is defined at IC 31-9-2-76 as having the meaning set forth in IC 16-18-2-199. The term "**controlled substance**" is defined at IC 31-9-2-24 as having the meaning set forth in IC 35-48-1. Generally, it is considered that the term "controlled substance" includes illegal street drugs,
- And for all of the statues "**COERCIVE INTERVENTION**" of the court is required to keep the child safe.
- What does Coercive Intervention mean?
- Example: Coercive Intervention not needed? Vs. needed?

- IC 31-34-1-12 and 13 are the exceptions statutes
- a child is not a CHINS if the mother had a valid prescription for the controlled substance or legend drug that was detected in the child's body at birth, or the mother had a valid prescription for the controlled substance or legend drug that she consumed during pregnancy which caused damage or endangerment to the child's development. The mother must show that she made a good faith attempt to use the drug according to prescription instructions.



- IC § 31-33-11-1 DCS has the option to direct the hospital to hold the child as a victim of child abuse or neglect during the investigation (prior to obtaining court order)
- The reporting statute IC § 31-33-5-1 an individual who has reason to believe that a child is a victim of child abuse or neglect *shall* make a report
- IC § 31-33-5-2.5 is the specific statute which applies to reporting by hospital staff

Many many cases with facts like these examples:

**Baker v. County Office of Family & Children**, 810 N.E.2d 1035, 1037 (Ind. 2004) (Mother used cocaine as late as days before prematurely delivering a baby, and the baby was hospitalized, placed in an emergency shelter, and eventually in foster care); **In Re I.A.**, 903 N.E.2d 146, 148 (Ind. Ct. App. 2009) (Mother used cocaine during entire nine months of pregnancy; infant was born with numerous medical problems about which Mother failed to educate herself); **In Re E.E.**, 853 N.E.2d 1037, 1039 (Ind. Ct. App. 2006) one or more of Mother's children were born with fetal alcohol syndrome or a trace amount of controlled substance; Mother also used drugs while children were in her care and custody;

### **In Re J.L., 919 N.E. 2d 561 (Ind. Ct. App. 2009)**

The Court of Appeals affirmed the CHINS finding. Maternal grandmother and mother smoked marijuana two or three times a week, in the family home, after the child was asleep. Mother admitted to using heroin three months prior to the DCS interview. Mother admitted to using marijuana for many years and had used both marijuana and heroin after the CHINS petition was filed. Mother was under the influence while in the residence with the 13 month old child.

### **IN Re the TPR of A.B. (2012 not published)**

Child tested positive for drugs at birth. Mom tested positive too and mother and father admitted to using drugs together while mother was pregnant. Parents took baby home from hospital. In June 2010 (when baby was 1 month old), parents engaged in DV between parents while mother was holding baby. Father was heavily intoxicated and mom was heavily medicated. Home deplorable.

In May 2011 a TPR petition was filed. The Court of Appeals found DCS had met its burden and proved that the conditions resulting in removal would not be remedied. Parents had chronic substance abuse behaviors, lots of opportunity for substance abuse treatment and never completed it. Doing better at time of trial, but history shows he won't complete the current program.



## **KTK v. Ind DCS, 989 N.E. 2d 1225 (Ind. 2013)**

Supreme Court case. Trial court terminated mom's rights to 3 kids. The CHINS was filed when mom was using drugs and passed out in her car with her infant son. In January 2010 mom was incarcerated in theft charges and not released until July. She was arrested 2 weeks later for public intox and incarcerated until Nov 2010. Mother continued to use drugs and did not participate in services.

Supreme Court found that DCS did meet its burden. The court issued several findings including findings citing the long history of substance abuse, criminal involvement, and lack of efforts towards sobriety.



- In A.D.S. v. Indiana Dept. of Child Services, 987 N.E.2d 1150 (Ind. Ct. App. 2013) The Court noted the following detailed findings regarding Mother's long struggle with substance abuse and her failure to complete rehabilitation services: (1) she had a long history of cocaine abuse, starting at age eighteen or twenty; (2) she had undergone inpatient treatments twice but relapsed both times; (3) her past cocaine usage and instability resulted in her rights being terminated to two other children and her voluntary relinquishment of her rights to a third child; (4) she testified to last using cocaine five months before the termination trial; (5) she self-referred to a drug treatment program, but due to "inconsistent urine screens and court ordered swabs, concerns of a substituted urine sample, and the lax procedures" at the program, she was referred to an additional substance abuse assessment at a different agency which she failed to complete. The court terminated mother's rights to her two children.

- **In Matter of K.S., 78 N.E. 3d 740 (Ind. Ct. App 2017)**

Court of Appeals reversed the CHINS finding. The CHINS was filed for a baby b/c mother used marijuana and lacked stable housing. Mother admitted to using marijuana 2 months before the child's birth, but no evidence was presented about how mothers use seriously impaired or endangered the child. DCS did not present evidence that the baby tested positive. DCS presented no evidence of lack of stable housing.

### **Matter of N.C., 72 NE 3d 519 (Ind. Ct.App. 2017)**

Court of Appeals reversed the CHINS finding. The CHINS was filed for the child and his half siblings b/c mother was using methamphetamine. Father filed a petition to modify custody and the DR court granted the petition before the CHINs FF. No proof that coercive intervention was needed once father remedied the situation.

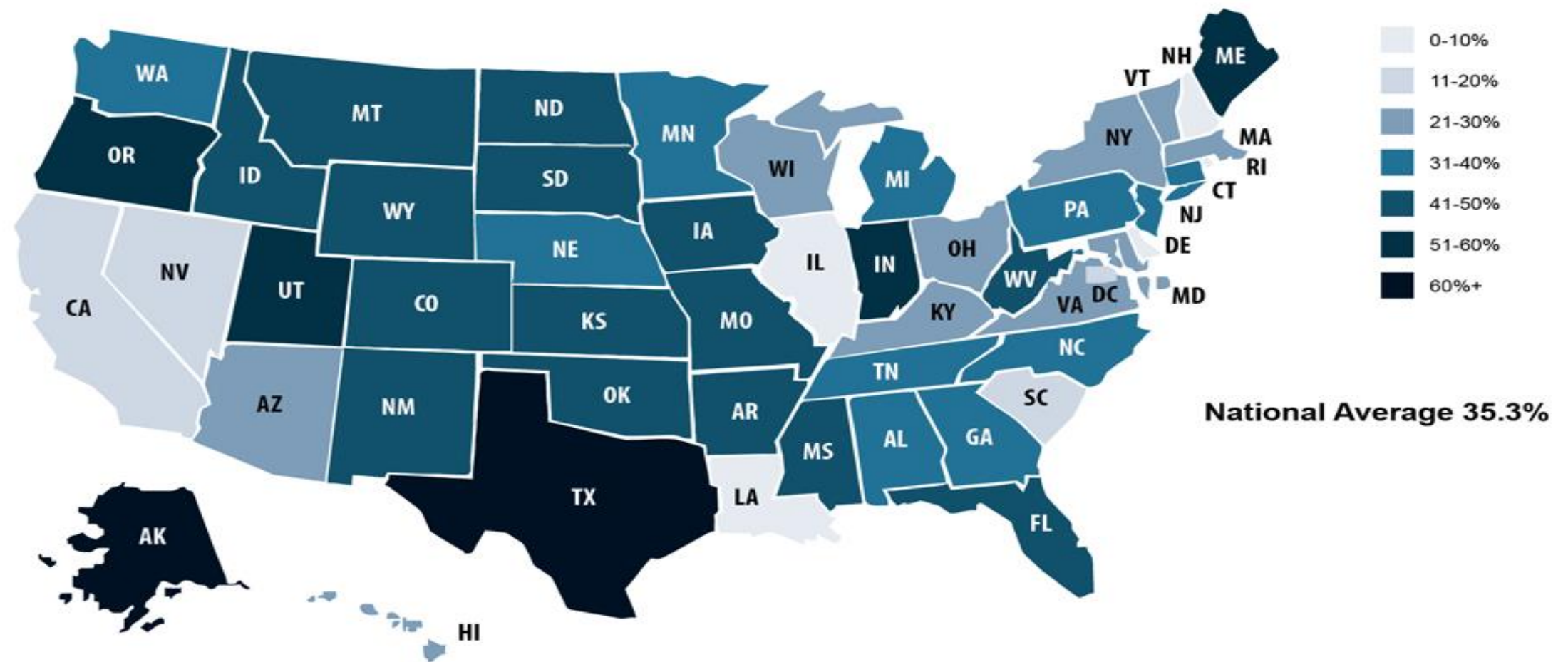
- For a CHINS case, DCS must prove that the child needs ***care, treatment, or rehabilitation*** that the child is not receiving and is unlikely to be given or accepted without the ***coercive intervention*** of the court.
  
- Care, Treatment and Rehabilitation look like:
  - Placement of the child
  - Therapeutic services for parents
  - Help locating safe housing
  - Help with budgets
  - Help finding employment
  - Parenting classes
  - Drug screens
  - \* substance abuse evaluations
  - \*inpatient treatment
  - \*family therapy
  - \*individual therapy
  - \*referrals to inpatient treatment
  - \*mental health assessments
  - \*supervised parenting time

- <https://ncsacw.samhsa.gov/>
- **About National Center on Substance Abuse and Child Welfare**
- Mission -To improve family recovery, safety and stability by advancing practices and collaboration among agencies, organizations and courts working with families affected by substance use and co-occurring mental health disorders and child abuse or neglect.
- Goals:
  - Develop a substance abuse- and trauma-informed system of care for families involved in the child welfare and court systems.
  - Children, parents and families are engaged in timely, appropriate and effective services that improve their well-being. Staff across multiple systems develop competency to address family strengths and needs and implement best practices and cross-system collaboration.

- Goals of National Center on Substance Abuse and Child Welfare Continued: Organizations' policies and procedures support collaborative practice, information sharing and coordination, timeliness of services, program and cost efficiencies, joint accountability and shared outcomes

STATISTICS.....

# Parental Alcohol or Other Drug Use as a Contributing Factor for Reason for Removal by State, 2016

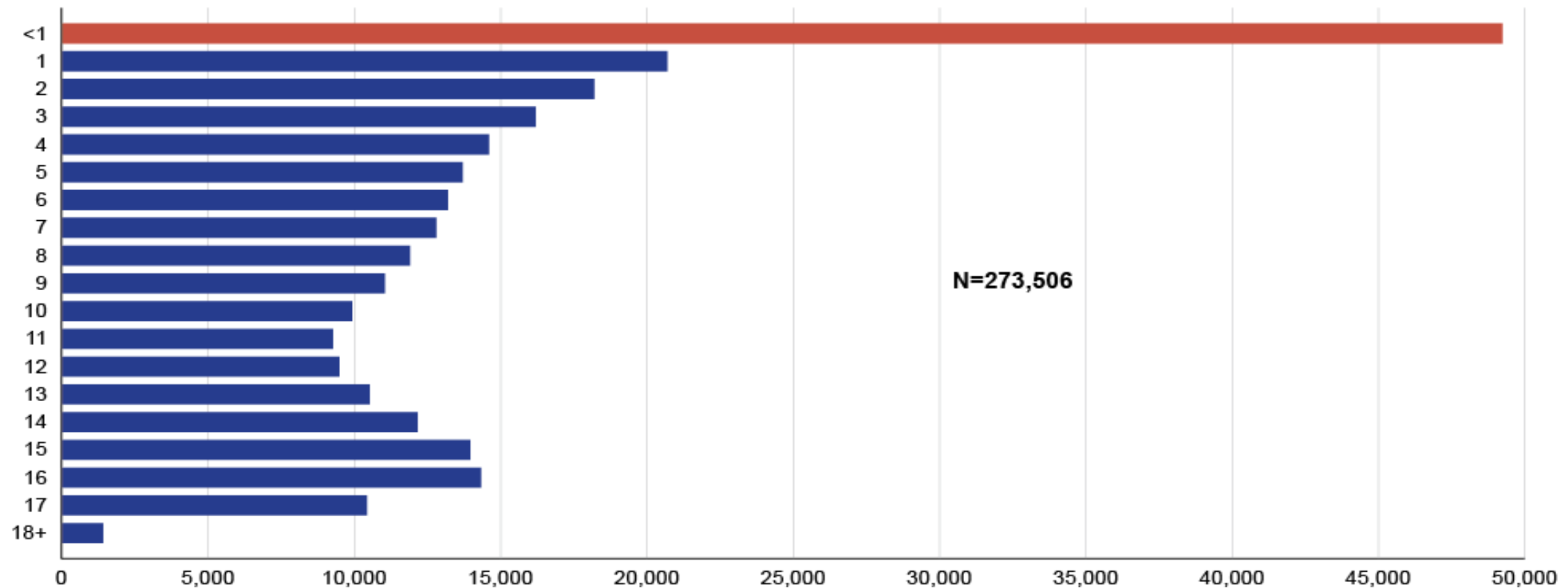


Note: Estimates based on all children in out-of-home care at some point during Fiscal Year

Source: AFCARS Data, 2016



## Number of Children Who Entered Foster Care, by Age at Removal in the United States, 2016



Note: Estimates based on all children in out-of-home care at some point during Fiscal Year

Source: AFCARS Data, 2016



- <https://www.childwelfare.gov/pubPDFs/parentalsubabuse.pdf>
- Innovative Ideas such as:
  - Focus on collaborative systems
  - Family Drug treatment courts
  - Cross training of professionals
  - Engaging substance abuse professionals
  - Cross system information sharing
  - Joint planning to limit families feeling overwhelmed by systems
  - Safety planning
  - Wraparound services

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