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CHAPTER NINETEEN

DUAL STATUS ISSUES

I. DUAL STATUS CHILD

A. DUAL STATUS CHILD DEFINITIONS

Pursuant to Ind. Code 31-41-1-2, dual status child means the following:

1. Child Alleged to Be or Currently Adjudicated CHINS and Delinquent Child

A child who is alleged to be or is presently adjudicated to be child in need of services under Ind. Code 31-34-10 [CHINS Initial Hearing] or Ind. Code 31-34-11 [CHINS Factfinding Hearing] and is alleged to be or is presently adjudicated to be a delinquent child under Ind. Code 31-37-12 [JD Initial Hearing] or Ind. Code 31-37-13 [JD Factfinding Hearing]. Ind. Code 31-41-1-2(1).

2. Child Presently in CHINS Informal Adjustment and Adjudicated Delinquent Child

A child who is presently named in an informal adjustment under Ind. Code 31-34-8 [CHINS Informal Adjustment] and who is adjudicated a delinquent child under Ind. Code 31-37-12 [JD Initial Hearing] or Ind. Code 31-37-13 [JD Factfinding Hearing]. Ind. Code 31-41-1-2(2).

3. Child Presently in Juvenile Delinquency Informal Adjustment and Adjudicated CHINS

A child who is presently named in an informal adjustment under Ind. Code 31-37-9 [JD Informal Adjustment] and who is adjudicated to be a child in need of services under Ind. Code 31-34-10 [CHINS Initial Hearing] or Ind. Code 31-34-11 [CHINS Factfinding Hearing]. Ind. Code 31-41-1-2(3).

4. Child Previously CHINS or CHINS Informal Adjustment and Currently Alleged To Be Delinquent Child

A child who:

- (a) has been previously adjudicated to be a child in need of services under Ind. Code 31-34-10 [CHINS Initial Hearing] or Ind. Code 31-34-11 [CHINS Factfinding Hearing]; or
- (b) was a participant in a program of informal adjustment under Ind. Code 31-34-8 [CHINS Informal Adjustment]

and who was under a wardship that had been terminated or was in a program of informal adjustment that had concluded before the current delinquency petition. Ind. Code 31-41-1-2(4).

5. Child Previously Delinquent Child and Current CHINS

A child who was:

- (a) previously adjudicated to be a delinquent child under Ind. Code 31-37-12 [JD Initial Hearing] or Ind. Code 31-37-13 [JD Factfinding Hearing] that was closed; and
- (b) a participant in a program of informal adjustment under Ind. Code 31-37-9 [JD Informal Adjustment] which was concluded prior to a child in need of services proceeding. Ind. Code 31-41-1-2(5).

6. Child in DOC and Parents Not Located or Unwilling to Take Custody

A child:

- (a) who is eligible for release from commitment of the department of correction;
- (b) whose parent, guardian, or custodian:
 - (i) cannot be located; or
 - (ii) is unwilling to take custody of the child; and
- (c) for whom the department of correction is requesting a modification of the dispositional decree under Ind. Code 31-30-2-4. Ind. Code 31-41-1-2(6).

The Indiana Dual Status Resource Guide (Section 1), from the Office of Court Services, explains the reason it is important to identify dual status youth as follows:

Any experienced juvenile court judge, case manager or probation officer can cite instances when the line between abuse and neglect (dependency cases) and juvenile delinquency cases becomes blurred. This population is frequently referred to as “crossover youth” or “dual status” to reflect their crossing from one system into the other creating dual system involvement. In Indiana these youth are referred to as “dual status”. Focus on this vulnerable population has shown youth who have contact with both systems are more likely to suffer a host of problems – higher recidivism, higher rates of academic failure, mental health problems, and substance abuse. We now know that in certain circumstances a child and the family require a special level of focus and collaborative efforts of both systems. Over the years, caseworkers and probation officers have attempted, with limited anecdotal success, to bridge the gap. Most of the time, however, those efforts were blockaded by entrenched silo mentality. Although, case managers and probation officers serve different functions they have the shared goal of improving the lives of children and families. By working together to address identified needs and support the youth and families, both agencies can maximize the benefit of system involvement.

<https://www.in.gov/courts/iocs/files/Dual-Status-Resource-Notebook.pdf>

B. DUAL STATUS TERMS

While not included in Indiana code, the following terms are frequently used when discussing dual status youth. Additional information can be found in the *Guidebook for Juvenile Justice and Child Welfare System Coordination and Integration*, J. Wiig, J. Tuell, and J. Heldman; Robert F. Kennedy Children Action Corps, Third Edition, 2013.

1. Dually Identified Youth

Youth who are currently involved with the juvenile justice system and have history in the child welfare system but not current involvement (or vice versa).

2. Dually Involved Youth

Youth who have concurrent involvement (diversionary, formal or a combination of the two) with both the child welfare and juvenile justice systems.

3. Dually Adjudicated Youth

Youth who are concurrently adjudicated in both the child welfare and juvenile justice systems (i.e., both dependent and delinquent).

II. DUAL STATUS IDENTIFICATION

A. DUAL STATUS SCREENING TOOL

Pursuant to Ind. Code 31-41-1-3, a dual status screening tool means a factual review of a child's status and history conducted by the case manager under Ind. Code 31-34 [CHINS] or the probation officer under Ind. Code 31-37 [JD] to determine whether a child meets the criteria for being a dual status child as defined by Ind. Code 31-41-1-2.

B. IDENTIFICATION IN CHINS CASES

1. Preliminary Screening and Determination

a. Intake officer completes dual status screening tool

Pursuant to Ind. Code 31-34-7-1(2), if the intake officer completing the preliminary inquiry has reason to believe the child is a child in need of services, the intake officer shall complete the dual status screening tool on the child, as described in Ind. Code 31-41-1-3.

b. Intake officer makes recommendations for dual status assessment

Pursuant to Ind. Code 31-34-7-2, the intake officer shall send to the attorney for the department a copy of the preliminary inquiry. The intake officer shall recommend whether to:

- (1) File a petition;
- (2) File a petition and recommend that the child be referred for an assessment by a dual status assessment team as described in Ind. Code 31-41-1-5;
- (3) Informally adjust the case;
- (4) Informally adjust the case and recommend that the child be referred for an assessment by the dual status assessment team as described in Ind. Code 31-41-1-5;
- (5) Refer the child to another agency; or
- (6) Dismiss the case.

c. Court determines if child is referred for dual status assessment

(1) Determination when authorizing filing of petition

Pursuant to Ind. Code 31-34-9-2, the juvenile court shall do the following:

- (i) Consider the preliminary inquiry and the evidence of probable cause that is contained in the report of the preliminary inquiry or an affidavit of probable cause.
- (ii) Authorize the filing of a petition if the court finds probable cause to believe that the child is a child in need of services.
- (iii) Determine if a child should be referred for an assessment by a dual status assessment team as described in Ind. Code 31-41-1-5.

(2) Determination at initial hearing

Pursuant to Ind. Code 31-34-10-2(e), at the initial hearing the juvenile court shall determine if a child should be referred for an assessment by a dual status assessment team as described in Ind. Code 31-41-1-5. In making its determination the court shall consider the length of time since the delinquency act or the incident of abuse or neglect.

(3) Additional initial hearing if referral is made

Pursuant to Ind. Code 31-34-10-2(f), the court may schedule an additional initial hearing on the child in need of services petition if necessary to comply with the procedures and requirements of this chapter with respect to any person to whom a summons has been issued under Ind. Code 31-34-10-2, including if the court refers a child to be assessed by a dual status assessment team.

(a) Exception for extraordinary circumstances

Pursuant to Ind. Code 31-34-10-2(f), an additional initial hearing shall be conducted if the court refers a child to be assessed by a dual status assessment team unless the court has:

- (a) Granted an extension of time due to extraordinary circumstances; and
- (b) Stated the extraordinary circumstances in a written court order.

(b) Timing of additional initial hearing

Pursuant to Ind. Code 31-34-10-2(g), except for cases in which a child has been referred for an assessment by a dual status assessment team, an additional initial hearing on the child in need of services petition shall be held not more than thirty calendar days after the date of the first initial hearing on the child in need of services petition unless the court has:

- (a) Granted an extension of time due to extraordinary circumstances; and
- (b) Stated the extraordinary circumstances in a written court order.

2. Screening and Determination at Adjudication and Disposition

a. Court rescreens at adjudication

Pursuant to Ind. Code 31-34-11-2(a), if the court finds that a child is a child in need of services, the court shall:

- (1) Enter judgment accordingly;
- (2) Order a pre-dispositional report;
- (3) Schedule a dispositional hearing; and
- (4) Complete a dual status screening tool on the child, as described in Ind. Code 31-41-1-3.

b. Court may refer for dual status assessment prior to disposition

Pursuant to Ind. Code 31-34-11-2(b), if a court determines a child is a dual status child, the court may refer the child for an assessment by a dual status assessment team as described in Ind. Code 31-41-1-5.

C. IDENTIFICATION IN JUVENILE DELINQUENCY CASES

1. Preliminary Screening and Identification

a. Intake officer completes dual status screening tool

Pursuant to Ind. Code 31-37-8-1(b), if information is given to the intake officer indicating that the child is a delinquent child, the intake officer shall complete the dual status screening tool on the child, as described in Ind. Code 31-41-1-3.

b. Results of dual status screening tool included in preliminary inquiry

Pursuant to Ind. Code 31-37-8-2(5), whenever practicable, the preliminary inquiry should include the result for a dual status screening tool to determine whether the child is a dual status child as described in Ind. Code 31-41-1-2.

c. Court determines if child is referred for dual status assessment

Pursuant to Ind. Code 31-37-12-2(f), at the initial hearing, if the court refers the child for an assessment by a dual status assessment team, the court shall schedule an additional initial hearing on the petition if the court refers a child to be assessed by a dual status assessment team, unless the court:

- (1) Grants an extension of time due to extraordinary circumstances; and
- (2) States the extraordinary circumstances in a written court order.

2. Screening and Determination at Adjudication and Disposition

a. Court rescreens at adjudication

Pursuant to Ind. Code 31-37-13-2(a), if the court finds that a child is a delinquent, the court shall:

- (1) Enter judgment accordingly.
- (2) Order a pre-dispositional report.
- (3) Schedule a dispositional hearing.
- (4) Complete a dual status screening tool on the child, as described in Ind. Code 31-41-1-3, and determine whether the child is a dual status child, as described in Ind. Code 31-41-1-2.

b. Court may refer for dual status assessment prior to disposition

Pursuant to Ind. Code 31-37-13-2(b), if a child is determined to be a dual status child, the court may refer the child for an assessment by a dual status assessment team as described in Ind. Code 31-41.

III. DUAL STATUS ASSESSMENT

A. DEFINITION OF DUAL STATUS ASSESSEMENT

Pursuant to Ind. Code 31-41-1-4, a dual status assessment means a review by a dual status assessment team to assess a dual status child's:

- (1) Status;
- (2) Best Interests;
- (3) Need for services; and
- (4) Level of needs, strengths, and risks of the child.

B. DEFINITION OF DUAL STATUS ASSESSMENT TEAM

Pursuant to Ind. Code 31-41-1-5, a dual status assessment team means a committee assembled and convened by a juvenile court to recommend the proper legal course for a dual status child.

C. REFERRAL TO DUAL STATUS ASSESSMENT TEAM

Pursuant to Ind. Code 31-41-2-1 after a juvenile court has determined that a child is a dual status child, the juvenile court may refer the child to be assessed by a dual status assessment team after:

- (1) considering the reports provided pursuant to Ind. Code 31-34-7-2 or Ind. Code 31-37-8-5;
or
- (2) making a determination pursuant to Ind. Code 31-34-10-2(e) or Ind. Code 31-37-12-2(e).

All children who are identified as a dual status child under Ind. Code 31-41-1-2(1) through Ind. Code 31-41-2-2(3) or under Ind. Code 31-41-1-2(6) shall be referred to a dual status assessment team. Ind. Code 31-41-2-1.

PRACTICE POINTER: Ind. Code 31-41-2-1 was amended in 2021 and now provides that children who are found to be dual status for certain statutory reasons must be referred to a dual status assessment team, while the juvenile court has discretion as to whether to refer other dual status children. If a client is determined by the court to be dual status, ensure that the record is clear as to which statutory provision is the basis for that finding. If the client is dual status under Ind. Code 31-41-1-2(1) through Ind. Code 31-41-2-2(3) or under Ind. Code 31-41-1-2(6), he or she is entitled to be referred to a dual status assessment team.

D. MEMBERS OF DUAL STATUS ASSESSMENT TEAM

1. Mandatory Members

Pursuant to Ind. Code 31-41-2-2(a) the dual status assessment team shall include:

- (1) If the child has a department of child services case manager, the case manager.
- (2) If the child does not have a department of child services case manager, a representative of the department of child services appointed by the local department of child services director.
- (3) If the child has a probation officer, that probation officer.
- (4) If the child does not have a probation officer, a probation officer appointed by the court.
- (5) A meeting facilitator, who may be a member of the dual status assessment team described in subdivisions (1) through (4) or may be a person appointed by the juvenile court.

2. Discretionary Members

Pursuant to Ind. Code 31-41-2-2(b) the dual status assessment team may include:

- (1) The child if the juvenile court deems the child is age appropriate;
- (2) The child's public defender or attorney;
- (3) The child's parent, guardian, or custodian;
- (4) The child's parent's attorney;
- (5) A prosecuting attorney;
- (6) The attorney for the department;
- (7) A court appointed special advocate or a guardian ad litem;
- (8) A representative from the department of correction;
- (9) A school representative;
- (10) An educator;
- (11) A therapist;
- (12) The child's foster parent;
- (13) A service provider appointed by the team or the juvenile court.

E. DUAL STATUS ASSESSMENT TEAM MEETINGS

1. Convening of Meeting

Pursuant to Ind. Code 31-41-2-3(b) the dual status assessment team shall be convened by the facilitator described in Ind. Code 31-41-2-2(a)(5).

2. Meeting within 10 Days of Order

Pursuant to Ind. Code 31-41-2-3(a) the dual status assessment team shall meet within ten (10) days of the date ordered by the juvenile court.

3. Protection for Statements Made in Meeting

Pursuant to Ind. Code 31-41-2-4 all statements communicated in a dual status assessment team meeting are:

- (1) Not admissible as evidence against the child in any judicial proceeding; and
- (2) Not discoverable in any litigation.

4. Consideration of Juvenile Allegations

Pursuant to Ind. Code 31-41-2-3(c) the dual status assessment team shall consider:

- (1) Any allegations of abuse or neglect suffered by the child; and
- (2) Any allegation that the child is a delinquent child under ind. Code 31-37-1-1 or Ind. Code 31-37-2-1.

5. Consideration of Child's Best Interest and Well Being

Pursuant to Ind. Code 31-41-2-5 the dual status assessment team shall consider the child's best interests and well-being, including:

- (1) The child's mental health, including any diagnosis;
- (2) The child's school records, including attendance and achievement level;
- (3) The child's statements;
- (4) The statements of the child's parent, guardian, or custodian;
- (5) The impact of the child's behavior on any victim;
- (6) The safety of the community;
- (7) The child's needs, strengths, and risks;
- (8) The need for a parent participation plan;
- (9) The efficacy and availability of services and community providers;
- (10) Whether appropriate supervision of the child can be achieved by the dismissal of delinquency adjudication in deference to a child in need of services adjudication;
- (11) Whether appropriate supervision of the child can be achieved by combining a delinquency adjudication or informal adjustment with a child in need of services petition;
- (12) The child's placement needs;

- (12) Restorative justice practices that may be appropriate;
- (14) Whether a child in need of services petition or informal adjustment should be filed or dismissed;
- (15) Whether a delinquency petition or informal adjustment should be filed or dismissed;
- (16) The availability of coordinated services regardless of whether the child is adjudicated to be a child in need of services or a delinquent child;
- (17) Whether the team recommends the exercise of dual adjudication and the lead agency to provide supervision of the child; and
- (18) Any other information considered appropriate by the team.

PRACTICE POINTER: The Indian Child Welfare Act, 25 U.S.C.A. § 1901 *et seq.*, provides heightened protections for Native American children involved in proceedings during which they might be removed from their family homes. The Indiana Department of Child Services has a written policy explaining its administration of ICWA. The policy is found at <https://www.in.gov/dcs/files/2.12.pdf>. If your client is an “Indian Child” as defined in ICWA, you should ensure that this is known to the court and the dual status assessment team. During any dual status assessment team meeting, the policy concerns behind ICWA (as described in 25 U.S.C.A. §§ 1901(3)-(5) and 1902) may be relevant.

F. DUTIES OF DUAL STATUS ASSESSMENT TEAM

Pursuant to Ind. Code 31-41-2-6, after a dual status assessment team has met to assess the child, the team shall prepare a written report and provide recommendations as follows:

1. Prepare Written Report

Pursuant to Ind. Code 31-41-2-6(1), the team shall designate a member to prepare a written report for the juvenile court.

2. Provide Recommendations

a. Recommendations on how the court should proceed

Pursuant to Ind. Code 31-41-2-6(2)(A)-(C) the dual status assessment team shall provide recommendations regarding:

- (1) Whether the court should proceed with an additional initial hearing regarding the petition alleging the child is in need of services and dismiss a pending delinquency petition or informal adjustment at the conclusion of a child in need of services adjudication.
- (2) Whether the court should proceed with an additional initial hearing regarding a petition alleging that the child is a delinquent child under Ind. Code 31-37-1 and dismiss a pending child in need of services petition or informal adjustment upon conclusion of the delinquency adjudication.
- (3) Whether the court should proceed with an additional initial hearing and adjudication or informal adjustment concerning a child in need of services petition and a delinquency petition under Ind. Code 31-37-1.

b. Recommendation of lead agency

Pursuant to Ind. Code 31-41-2-6(2)(D) the dual status assessment team shall provide recommendations regarding what agency should be the lead agency in the child's supervision.

If the probation department of the juvenile court is designated as the lead agency under Ind. Code 31-41-3, any recommendations made by the dual status assessment team under Ind. Code 31-41-2-6(2) must be consistent with the funding provisions of Ind. Code 31-37. Ind. Code 31-41-2-6.

c. Recommendation relevant to child's best interest

Pursuant to Ind. Code 31-41-2-6(2)(E) the dual status assessment team shall provide recommendations regarding any other matters relevant to the child's best interests including any services to be included in a dispositional decree.

IV. DETERMINATION OF LEAD AGENCY

A. COURT TO DETERMINE LEAD AGENCY

Pursuant to Ind. Code 31-41-3-1(a) If a child has been adjudicated to be a

- (1) Child in need of services under Ind. Code 31-34; and
- (2) Delinquent child under Ind. Code 31-37;

unless the court adopts a contrary recommendation by a dual status assessment team, the court making the later adjudication may determine if the department of child services or the probation department of the juvenile court shall be the lead agency that will supervise the dual status child.

B. FACTORS FOR COURT TO CONSIDER IN DETERMINING LEAD AGENCY

Pursuant to Ind. Code 31-41-3-1(b), in making a determination under subsection (a), the court shall consider:

- (1) The child's social and family situation;
- (2) The child's experiences with the department of child services;
- (3) The child's prior adjudications of delinquency;
- (4) The recommendations of the dual status assessment team; and
- (5) The needs, strengths, and risks of the child.

C. COURT MAY ORDER DCS AND PROBATION TO WORK TOGETHER

Pursuant to Ind. Code 31-41-3-1(c) the court may require the department of child services and the probation department of the juvenile court to work together in the supervision of a dual status child and for the purposes of filing a modification under Ind. Code 31-34-23 [CHINS] or Ind. Code 31-37-22 [JD].

D. FUNDING CONSIDERATION IN RECOMMENDATION

Pursuant to Ind. Code 31-41-3-1(c) if the probation department of the juvenile court is designated as the lead agency under this chapter, any recommendations made by the probation department under this subsection must be consistent with the funding provisions of Ind. Code 31-37.

E. SERVICES AVAILABLE TO DUAL STATUS CHILD

Pursuant to Ind. Code 31-41-3-1(d) a court may order any service for a dual status child under this chapter that is available:

- (1) To a child in need of services under Ind. Code 31-34; or
- (2) To a delinquent child under Ind. Code 31-37.