



CHINS Primer¹ **(Updated August 2007)**

I. Defining and Reporting Child Abuse and Neglect

Indiana law requires that an individual who has “reason to believe” that a child is a “victim of child abuse or neglect” shall make a report concerning child abuse or neglect. IC 31-33-5-1. “Reason to believe” is defined at IC 31-9-2-101 as “evidence that, if presented to individuals of similar background and training, would cause the individuals to believe that a child was abused or neglected.” “Victim of child abuse or neglect” is defined at IC 31-9-2-133. “Victim of child abuse or neglect” refers to a child in need of services as described in IC 31-34-1-1 through IC 31-34-1-5; IC 31-34-1-10; or IC 31-34-1-11. The term does not include a child who is alleged to be a victim of a sexual offense under IC 35-42-4-3 (child molesting) unless the alleged offense involves the fondling or touching of the buttocks, genitals, or female breasts. The most commonly used child in need of services definitions are:

IC 31-34-1-1:

Inability, refusal, or neglect of parent, guardian, or custodian to supply child with necessary food, clothing, shelter, medical care, education, or supervision

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

- (1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; 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.

IC 31-34-1-2:

Act or omission of parent, guardian, or custodian seriously endangering child's physical or mental health

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

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- (1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; 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) Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered.

IC 31-34-1-3

Victim of sex offense

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

- (1) the child is the victim of a sex offense under:
 - (A) IC 35-42-4-1;
 - (B) IC 35-42-4-2;
 - (C) IC 35-42-4-3;
 - (D) IC 35-42-4-4;
 - (E) IC 35-42-4-7;
 - (F) IC 35-42-4-9;
 - (G) IC 35-45-4-1;
 - (H) IC 35-45-4-2; or
 - (I) IC 35-46-1-3; or
 - (J) the law of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (I); 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 a child in need of services if, before the child becomes eighteen (18) years of age:

- (1) the child lives in the same household as another child who is the victim of a sex offense under:
 - (A) IC 35-42-4-1;
 - (B) IC 35-42-4-2;
 - (C) IC 35-42-4-3;
 - (D) IC 35-42-4-4;
 - (E) IC 35-42-4-7;
 - (F) IC 35-42-4-9;
 - (G) IC 35-45-4-1;
 - (H) IC 35-45-4-2;
 - (I) IC 35-46-1-3; or
 - (J) the law of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (I);

- (2) the child lives in the same household as the adult who committed the sex offense under subdivision (1) and the sex offense resulted in a conviction or a judgment under IC 31-34-11-2;
- (3) 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; and
- (4) a caseworker assigned to provide services to the child:
 - (A) places the child in a program of informal adjustment or other family or rehabilitative services based upon the existence of the circumstances described in subdivisions (1) and (2) and the assigned caseworker subsequently determines further intervention is necessary; or
 - (B) determines that a program of informal adjustment or other family or rehabilitative services is inappropriate.

IC 31-34-1-10

Child born with fetal alcohol syndrome or with controlled substance or legend drug in child's body

Except as provided in sections 12 and 13 of this chapter, a child is a child in need of services if:

- (1) the child is born with:
 - (A) fetal alcohol syndrome; or
 - (B) any amount, including a trace amount, of a controlled substance or a legend drug in the child's body; and
- (2) the child needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving; or
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

IC 31-34-1-11

Risks or injuries arising from use of alcohol, controlled substance, or legend drug by child's mother during pregnancy

Except as provided in sections 12 and 13 of this chapter, a child is a child in need of services if:

- (1) the child:
 - (A) has an injury;
 - (B) has abnormal physical or psychological development; or
 - (C) is at a substantial risk of a life threatening condition; that arises or is substantially aggravated because the child's mother used alcohol, a controlled substance, or a legend drug during pregnancy; and
- (2) the child needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving; or
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

IC 31-32-11-1 abrogates the privileged communication for reporting child abuse/neglect between: (1) husband and wife; (2) a health care provider (defined at IC 31-9-2-52) and patient; (3) certified social worker and client; (4) certified clinical social worker and client; (5) certified marriage and family therapist and client; and (6) school counselor or school psychologist and student. IC 35-37-6-8 states that the victim counselor – victim privilege does not relieve a victim counselor of any duty to report suspected abuse or neglect.

IC 31-32-11-1 also abrogates the privileges for testifying in any judicial proceeding resulting from a report of a child who may be a victim of child abuse or neglect or relating to the subject matter of the report.

IC 31-33-5-4 states that a person who has a duty to report shall immediately make an oral report to the department of child services (hereinafter DCS) or local law enforcement agency. IC 31-33-2-3 states that DCS is the primary public agency responsible for receiving, investigating or arranging for investigation, and coordinating the investigation of all reports. IC 31-33-7-1 requires the DCS to arrange for receipt, on a twenty-four (24) hour, seven (7) day per week basis, of all reports of suspected abuse or neglect. DCS shall cause to be inserted in each local telephone directory in the county the telephone number of the “child abuse hotline”. IC 31-33-7-3. The Statewide number is 1-800-800-5556.

IC 31-33-6-1 states that a person, other than a person accused of child abuse or neglect, who makes or causes to be made a report of child abuse or neglect or who participates in any judicial proceeding or other proceeding resulting from such report or relating to the subject matter of the report is immune from any civil or criminal liability that might otherwise be imposed because of such actions. IC 31-33-6-3 provides that a person who reports that a child may be a victim of child abuse or neglect or who assists in any requirement of article 33 is presumed to have acted in good faith. Immunity does not attach for a person who has acted maliciously or in bad faith. IC 31-33-6-2.

Knowing failure to report child abuse or neglect is a class B misdemeanor. IC 31-33-22-1. Knowing, intentional false reporting is a Class A misdemeanor, but the offense is a Class D felony if the person has a previous unrelated conviction for knowing, intentional false reporting. IC 31-33-22-3 (a). See Fisher v. State, 548 N.E. 2d 1177 (Ind. Ct. App. 1990), in which the Court of Appeals affirmed the defendant’s conviction for failure to report but reversed his criminal neglect of a dependent conviction. IC 31-33-22-5 provides that a person who is accused of committing child abuse or neglect is entitled to access to a report relevant to an alleged false accusation if the court finds that the report was unsubstantiated and was intentionally communicated to the department or law enforcement by a person who knew the report was false. See also Kinder v. Doe, 540 N.E. 2d 111 (Ind. Ct. App. 1989) (identity of reporter can be obtained in civil suit for malicious reporting, if plaintiff makes preliminary presentation of evidence to rebut presumption of reporter’s good faith). IC 31-33-22-3 (b) allows actual and punitive damages and an award of attorney’s fees by the fact-finder in civil proceedings for knowing, intentional false reporting.

II. Investigation of Child Abuse and Neglect

IC 31-33-7-4 requires that DCS prepare a written report within forty-eight (48) hours of the receipt of the oral report of suspected child abuse or neglect. The report, which is made on state form 310, must include the following, if known: (1) child's name, address, sex, age and the nature of child's injuries and neglect; (2) names and addresses of the child's parents, guardian, custodian and care-giver; (3) name of the alleged perpetrator; (4) the source of the report; (5) information about the abuse or neglect of the child's siblings; (6) person making the report and how the reporter may be reached; (7) actions taken by the reporter. The 310 report shall immediately be made available to the prosecuting attorney and law enforcement. IC 31-33-7-5. Law enforcement and DCS shall communicate and share information and may investigate jointly. IC 31-33-7-7; IC 31-33-8-2.

IC 31-33-8-6 provides that DCS shall promptly make a thorough investigation. The primary purpose of the investigation is to protect the child. IC 31-33-8-1 states that the investigation shall be initiated immediately, but not later than twenty-four (24) hours after receipt of the report if abuse is alleged. If DCS has reason to believe that the child is in imminent danger of serious bodily harm, an immediate onsite investigation shall be initiated. Neglect investigations shall be initiated within a reasonably prompt time, but not later than five (5) days. According to IC 31-33-8-7 the investigation must include the following, to the extent that is reasonably possible: (1) the nature, extent and cause of the known or suspected abuse or neglect; (2) the identity of the alleged perpetrator; (3) the names and conditions of other children in the home; (4) an evaluation of the parent, guardian, custodian or other person responsible for the child's care; (5) the home environment and the relationship of the child to the parent, guardian, custodian or other persons responsible for the child's care. The investigation may include a home visit, an interview with the child, and a physical, psychological or psychiatric examination of any child in the home. When feasible, all allegations should be investigated together. The assistance of the juvenile court, upon good cause shown, may be sought by DCS to obtain admission by the caseworker to the child's home or school or a medical or physical examination or treatment of the child. IC 31-32-12-1 et seq. DCS or law enforcement can request a court order to remove the child from the home prior to the completion of the investigation pursuant to IC 31-33-8-8 and IC 31-32-13-1 et seq.

After the investigation is completed, DCS shall classify reports as substantiated, unsubstantiated, or indicated. IC 31-33-8-12. A written report of the investigation is required pursuant to IC 31-33-8-8 (b). This report is made on state form 311. IC 31-33-18-4 requires DCS to give verbal and written information to each parent, guardian or custodian of the child that reports relating to the abuse/neglect investigation are available upon request. Parents may be required to sign a written release form and pay reasonable copying costs as the only prerequisites to obtaining a copy of the DCS report.

“Substantiated” is defined at IC 31-9-2-123 and “means a determination regarding the status of a report made under IC 31-33 whenever facts obtained during an investigation of the report provide a preponderance of evidence that child abuse or neglect has occurred.” “Unsubstantiated” is defined at IC 31-9-2-132 and “means a determination regarding the status of a report made under IC 31-33 whenever facts obtained during an investigation of the report provide credible evidence that child abuse or neglect has not occurred.”

“Indicated” is defined at IC 31-9-2-58.5 and “means facts obtained during an investigation of suspected child abuse or neglect that (1) provide: (A) significant indications that a child may be at risk for abuse or neglect; or (B) evidence that abuse or neglect previously occurred; and (2) cannot be classified as substantiated or unsubstantiated.”

III. Actions Based on Investigation

DCS can take two different actions based on its investigation: (1) pursuing informal adjustment program; or (2) filing a CHINS petition, which invokes the jurisdiction of juvenile court. Prior to the July 1, 2007 DCS also could voluntarily provide services or use a voluntary services referral agreement.

Prior to the repeal of IC 31-33-12, effective July 1, 2007, IC 31-33-12-1 provided that based on its investigation, DCS should offer to the family or any child believed to be suffering from child abuse or neglect appropriate family and/or rehabilitative services. DCS was required by IC 31-33-12-3 to coordinate, provide or arrange for, and monitor the voluntary services. IC 31-33-12-2 stated that, before offering services, the department should explain to the family that it had no legal authority to compel the family to receive social services. DCS could inform the family of its authority to petition the juvenile court for a CHINS proceeding.

Prior to the repeal of IC 31-33-13, effective July 1, 2007, s procedure for dealing with child abuse and neglect that was more formal than the voluntary provision of services discussed above, but less formal than the informal adjustment program discussed below, was referred to as the voluntary services referral agreement (SRA). It required no judicial involvement. IC 31-33-13-1 through 5 provided that a person accused of child abuse or neglect could enter into a voluntary services referral agreement with the DCS, if the caseworker determined the following: (1) the report of abuse or neglect was substantiated; (2) court involvement was not needed; and (3) voluntary participation was recommended for not more than six (6) months. Under the terms of the agreement, the accused person should successfully participate in, and complete, the family or rehabilitative services recommended by the caseworker. The agreement did not require the consent of the child or the approval of the court. Prior to entering into the agreement, the accused person must have been advised orally and in writing that DCS would enter the child abuse or neglect report into the child abuse registry if the requirements of the agreement were not substantially met. IC 31-33-13-4. The statute also provided that DCS should give the agreement to any court that subsequently approved an informal adjustment or presided over a CHINS proceeding regarding the child or family involved in the voluntary SRA. IC 31-33-13-5.

IC 31-34-8-1 through 9 currently provide for an informal adjustment, which is a signed agreement between DCS and the child, and the child’s parent, guardian or custodian or attorney regarding court ordered services in which the parent, guardian or custodian will participate to remedy substantiated child abuse or neglect. The informal adjustment must be approved by the juvenile court. The informal adjustment may not exceed six months unless the juvenile court orders the agreement extended for an additional six months.

IC 31-34-8-6. An informal adjustment may include service participation and compliance with certain rules regarding how a child may be disciplined or cared for or who may have access to the child. Informal adjustment does not involve placing the child in the custody or wardship of the county. If DCS determines that the informal adjustment is not protecting the child, DCS may request authorization from the court to file a CHINS petition pursuant to IC 31-34-9-1.

Currently also, DCS may file a petition for compliance with informal adjustment provisions and a parent, guardian or custodian who fails to comply may be found in contempt pursuant to IC 31-34-8-3. DCS must file a report with the court indicating the extent of compliance five months after the court approves the informal adjustment. IC 31-34-8-7 (a). If the informal adjustment is extended, a second report is required within eleven months of the court approval. IC 31-34-8-7 (b).

IV. CHINS Petition

The intake officer (caseworker or probation officer) who has reason to believe that a child is a Child in Need of Services (hereinafter CHINS) shall make a preliminary inquiry to determine whether the interests of the child require further action. IC 31-34-7-1. The intake officer shall send a copy of the preliminary inquiry, with recommendations regarding whether a CHINS petition should be filed, to the prosecuting attorney or DCS attorney. IC 31-34-7-2. The DCS attorney or prosecuting attorney shall decide whether to request juvenile court authorization to file a CHINS petition. IC 31-34-7-3; IC 31-34-9-1. The juvenile court shall consider the preliminary inquiry and authorize the filing of a CHINS petition if the court finds probable cause to believe that the child is a CHINS. IC 31-34-9-2. The CHINS petition must be verified, contain a citation to the applicable CHINS definition, contain a concise statement of the facts upon which the allegations are based, include the child's name, birth date, and address and the parent, guardian or custodian's names and addresses, and be signed by the DCS attorney or the prosecutor. IC 31-34-9-3. If the person who files the petition requests that the petition be dismissed, the person must include the reasons for requesting the dismissal, and the court may set a hearing on the motion to dismiss. IC 31-34-9-8. CHINS proceedings are civil proceedings. IC 31-32-1-3.

Parties to the CHINS proceeding include the child, the parents, guardian, or custodian, DCS, and the guardian ad litem or court appointed special advocate (CASA). IC 31-34-9-7. Parent includes an alleged father. IC 31-9-2-88. A foster parent may petition to intervene, and the court may grant the petition to intervene if the court determines that intervention is in the child's best interests. IC 31-34-21-4.5. Arguably a relative or other person could petition for permissive intervention pursuant to Ind. Trial Rule 24(B). In CHINS proceedings, a parent, guardian, or custodian is entitled to cross-examine witnesses, obtain witnesses or tangible evidence by compulsory process, and to introduce evidence. IC 31-32-2-3. A child has the same rights unless the child is excluded from the hearing. IC 31-32-2-1. Neither a child nor a parent has a right to counsel in a CHINS proceeding, but the court may appoint counsel. IC 31-32-4-2; IC 31-32-4-3. If the parent, guardian, or custodian is indigent, counsel may, but is not required to be, appointed.

IC 34-10-1-1; IC 31-10-1-2.

V. Protective Custody and Detention Hearing

A child may be taken into temporary protective custody by law enforcement with a court order prior to the filing of a CHINS petition. IC 31-34-2-1. A child may be taken into temporary protective custody by law enforcement, a probation officer, or a caseworker if there is probable cause to believe the child is a CHINS, it appears that the child's physical or mental condition will be seriously impaired or endangered without immediate protective custody, there is not a reasonable opportunity to obtain a court order, and consideration for the child's safety precludes the use of family services to prevent removal. IC 31-34-2-3. A person who takes a child into custody without a court order shall make written documentation regarding five specific criteria. IC 31-34-2-6. Custodial parents, guardians or custodians shall receive timely notice when a child has been taken into temporary protective custody. IC 31-34-3-1 through 4. The juvenile court may designate a place where children taken into temporary protective custody without a court order shall be taken. IC 31-34-4-3; IC 31-34-4-4. The court shall consider placing the child with a suitable and willing blood relative, adoptive relative, de facto custodian, or stepparent, before placing the child in any other out-of-home placement, but relatives who are not licensed foster parents must have a home study and criminal history check before placement. IC 31-34-4-2; IC 31-9-2-22.5.

The juvenile court must hold a detention (protective custody) hearing on a child who is taken into custody, with or without a court order. Although the term "detention" is used in CHINS law, a CHINS may not be held in a secure facility such as a juvenile detention center. IC 31-34-6-1. The detention hearing must be held not later than 48 hours, excluding Saturdays, Sundays, and legal holidays, after the child is taken into custody. IC 31-34-5-1. The court may order that the child continue to be detained if the court makes written findings that there is probable cause to believe the child is a CHINS and that: (1) detention is necessary to protect the child; (2) the child is unlikely to appear for further proceedings; (3) the child has a reasonable basis for requesting that he not be released; (4) the parent, guardian, or custodian cannot be located or is unable or unwilling to take custody; or (5) consideration for the child's safety precludes the use of family services. IC 31-34-5-3.

VI. Initial Hearing

The juvenile court shall hold an initial hearing, for which a summons and a copy of the CHINS petition shall be issued to the child, the child's parent, guardian, or custodian, and any other necessary person. IC 31-34-10-2. A CASA or guardian ad litem shall be appointed for every child alleged to be a CHINS. IC 31-34-10-3. IC 31-32-3-1 through 10 govern the guardian ad litem's appointment, representation, fee, and immunity. The parent, guardian or custodian (and the child when required) shall be informed of the nature of the CHINS allegations, the dispositional alternatives, the effect of adjudication, and given the opportunity to admit or deny the allegations of the CHINS petition. IC 31-34-10-4 through 7. If the parent, guardian, or custodian admits the allegations of the CHINS

petition, the court shall schedule a dispositional hearing not more than 30 days after the court finds the child to be a CHINS. IC 31-34-10-8; IC 31-34-19-1. If the parent, guardian, custodian, or child (if the child is alleged to be a substantial danger to his own health or that or another pursuant to IC 31-34-1-6) denies the allegations of the CHINS petition, a factfinding hearing must be held. IC 31-34-11-1.

VII. Factfinding Hearing

The DCS must prove the allegations of the CHINS petition by the preponderance of the evidence. IC 31-32-1-3. The factfinding hearing must be held within 60 days of the filing of the CHINS petition, but the time may be extended by agreement of the parties for an additional 60 days. IC 31-34-11-1. Indiana law provides for two rebuttable presumptions that a child is a CHINS. IC 31-34-12-4.5 establishes a rebuttable presumption if the child lives in the same household with a child sexual abuse victim and a convicted or CHINS adjudicated sexual abuse adult perpetrator. IC 31-34-12-4 establishes a rebuttable presumption if: (1) a child has been injured; (2) the parent, guardian, or custodian had care, custody, and control or legal responsibility for the care, custody, and control of the child; and (3) the injury would not ordinarily be sustained except for the act or omission of the parent, guardian, or custodian. Evidence that prior or subsequent acts or omission by a parent, guardian, or custodian injured a child are admissible to show intent, guilty knowledge, absence of mistake or accident, identification, existence of common scheme or plan or likelihood of responsibility for the child's injury or condition. IC 31-34-12-5. IC 31-34-13-1 through 4 establish statutory requirements for admitting evidence of a child's statement or videotape if the child is less than fourteen years of age or between fourteen and eighteen years of age with a substantial developmental disability. IC 31-34-14-1 through 7 establish requirements for a child to testify via closed circuit television if the child is less than fourteen years of age or between fourteen and eighteen years of age with a substantial developmental disability.

VIII. Dispositional Hearing

If the child is adjudicated a CHINS, the juvenile court shall hold a dispositional hearing within 30 days to consider the: (1) alternatives for care, treatment, rehabilitation, or placement; (2) the necessity for parental participation; (3) the parent's or guardian of the estate's financial responsibility. IC 31-34-19-1. The court shall consider the evidence of predispositional reports prepared by DCS, the CASA/GAL, and the parent, guardian or custodian and may incorporate a finding or conclusion from a predispositional report into its written findings. IC 31-34-19-10. A predispositional report that contains evidence of probative value may be considered even if hearsay information is included in the report. IC 31-34-19-2. Predispositional reports shall be made available within a reasonable time before the hearing to each attorney for the child, parent, guardian, or custodian and to the CASA/GAL. IC 31-34-18-6. The court may determine that a report should not be released to the child, parent, guardian, or custodian, in which case a summary may be provided. IC 31-34-18-6. Dispositional options for the child which the juvenile court may order include: (1) ordering the child to receive supervision from DCS or probation; (2) ordering outpatient treatment for the child; (3) removing the child from home and placing the child

in foster care, relative care, a shelter care facility or other placement; (4) awarding wardship to a person or shelter care facility. IC 31-34-20-1. Wardship is defined at IC 31-9-2-134.5 as responsibility for the temporary care and custody of a child by transferring parental rights and obligations to the person granted wardship. Unless there is a specific court order regarding a right or obligation in the order establishing wardship, the person granted wardship has the ability to make decisions regarding the: (1) physical custody of the child; (2) care and supervision of the child; (3) the child's visitation with parents, relatives, and others; and (4) medical care and treatment of the child. The court may also order the child partially or completely emancipated if the statutory criteria are met. IC 31-34-20-6. The court may make a referral to probate court for commitment proceedings under IC 12-26 or initiate a civil commitment proceeding to secure residential treatment if the child appears to be mentally ill. IC 31-34-19-3. At the dispositional hearing, the court may also order parental participation in services and treatment. IC 31-34-20-1. A formal petition for parental participation may be filed pursuant to IC 31-34-16-1 through 4, and parental participation may be ordered at the dispositional hearing or at a separate parental participation hearing. IC 31-34-20-3; IC 31-34-16-4.

IX. Post-Dispositional Proceedings

DCS shall file a report every three months after the dispositional decree is entered on the progress made in implementing the decree. IC 31-34-21-1. The court may schedule a hearing to consider modification of the dispositional decree on its own motion or that of a party at any time. IC 31-34-23-1. Reports shall be prepared by the GAL/CASA and the parent, guardian, or custodian for a modification hearing. IC 31-34-23-4. The predispositional report statutes regarding availability of reports and admissibility of hearsay of probative value also apply to modification reports. IC 31-34-23-4. A formal court hearing must take place every six months after the child is removed from his parent, guardian, or custodian or every six months after the dispositional decree, whichever comes first. IC 31-34-21-2. The hearing is called a periodic case review hearing. Foster parents, suitable relatives or persons whom DCS knows have had a significant or caretaking relationship with the child, and prospective adoptive parents in certain specific situations shall receive notice of the hearing ten days in advance of the hearing and have the right to be heard and to make recommendations, although they are not accorded party status. The parties to the case, including the GAL/CASA, shall also receive notice of the hearing. IC 31-34-21-4(d). The court shall determine the following at the periodic case review hearing: (1) whether the child's case plan, services, and placement meet the child's special needs and best interests; (2) whether DCS has made reasonable efforts to provide family services; and (3) a projected date for the child's return home, adoption placement, emancipation or guardianship. IC 31-34-21-5. The statute lists fifteen items which the court must consider at the periodic case review hearing, which include the parent's participation in services and visitation and the child's rehabilitation and recovery from injuries. IC 31-34-21-4(b).

X. Reasonable Efforts and Permanency Hearing

IC 31-34-21-5.5(b) requires the DCS to make reasonable efforts to prevent or eliminate the need to remove a child from his home or to make it possible for the child to return safely to his home as soon as possible. The child's health and safety are of paramount concern. IC 31-34-21-5.5(a). IC 31-34-21-5.6 provides exceptions to the reasonable efforts requirement, which include: (1) the parent's rights were involuntarily terminated as to another child; (2) the child has been abandoned and is under twelve months of age and (3) parental conviction for specifically listed very serious crimes against the other parent or the parent's biological or adopted child or step-child. This statute has been found to be constitutional in Phelps v. Sybinsky, 736 N.E.2d 809 (Ind. Ct. App. 2000). In G.B. v. Dearborn Cty. Div. of Fam. & Child, 754 N.E.2d 1027 (Ind. Ct. App. 2001), the Court again found the statute constitutional and held that the trial court's dispositional order finding that reasonable efforts were not required was a final, appealable order.

IC 31-34-21-7 requires the court to hold a permanency hearing not more than thirty days after the court finds reasonable efforts are not required (because of an exception provided by IC 31-34-21-5.6) or every twelve months after the child was removed from the parent, guardian or custodian, whichever comes first. IC 31-34-21-7(c) requires that if the child is at least sixteen years old and the proposed permanency plan provides for the transition of the child from foster care to independent living, the court shall require DCS to send the child notice of the permanency hearing and shall provide the child an opportunity to be heard and to make recommendations to the court. IC 31-34-21-7(d) establishes a rebuttable presumption that juvenile court jurisdiction should not continue for longer than twelve months. The presumption may be rebutted by DCS showing that the dispositional decree objectives have not been accomplished, that a continuation of the decree is necessary, and that continued jurisdiction is in the child's best interests. If DCS does not sustain its burden for continued jurisdiction, the court shall: (1) direct DCS to establish a permanency plan within thirty days or (2) discharge the child and parent.

One of the purposes of the permanency hearing, in addition to considering the question of continued jurisdiction and whether the dispositional decree should be modified, is for the court to consider and approve a permanency plan. Also, according to IC 31-34-21-7(b)(4), effective July 1, 2007, the court is to consult with the child, in an age appropriate manner, regarding the proposed permanency plan. This consultation can be in person or through an interview with, or written statement or report submitted by a GAL or CASA, a case manager, or the person with whom the child is living and who has primary responsibility for the child's care and supervision.

IC 31-34-21-7.5 details the following permanency plan options: (1) return to or continuation of care in the parent's home or placement with the noncustodial parent; (2) termination of the parent-child relationship; (3) adoption; (4) relative placement in a permanent custodianship; (5) appointment of a legal guardian; (6) placement in another planned, permanent living arrangement. IC 31-34-21-5.8 requires DCS to make placement of the child in accordance with the permanency plan approved by the court and to complete whatever steps are necessary to finalize the permanent placement in a timely manner.

Juvenile court has jurisdiction over guardianship of the child when guardianship is approved as the permanency plan. IC 31-34-21-7.7. A permanency hearing order is not a final, appealable judgment. In Re K.F., 797 N.E.2d 310 (Ind. Ct. App. 2003).

CHINS Cases From April, 2001 to July 31, 2007

A. Child Hearsay Law

1. Townsley v. Marion County Dept. of Child, 848 N.E.2d 684 (Ind. Ct. App. 2006) (CHINS adjudication reversed because court failed to consider admissibility of child's statements in a separate hearing and made broad determination of reliability of inconsistent statements).
2. In Re J.Q., 836 N.E.2d 961 (Ind. Ct. App. 2005) (CHINS adjudication reversed because court failed to consider admissibility of child's statements in a separate hearing and admitted the statements without required notice to mother or opportunity to be heard).

B. CHINS Petition Contents

1. In Re V.C., 867 N.E.2d 167 (Ind. Ct. App. 2007) (no err in adjudicating child as CHINS as to Mother on grounds different from those set forth in CHINS petition).

C. Evidence

1. In Re C.B., 865 N.E.2d 1068 (Ind. Ct. App. 2007) (IC 31-37-18-2 (IC 31-34-29-2) permitted court to admit dispositional report despite its inclusion of hearsay as long as it contained evidence of probative value; and inasmuch as child's best interests outweigh parent's right to confidentiality, court properly admitted results of Mother's urine drug screen test along with dispositional report).

D. Jurisdiction

1. In Re Infant Girl W., 843 N.E.2d 229 (Ind. Ct. App. 2006), trans. denied, sub nom. In Re Adoption of M.W., 851 N.E.2d 961 (Ind. 2006) (after child's adoption, juvenile court was statutorily required to dismiss CHINS case pursuant to IC 31-34-21-11 because objectives of dispositional decree had been met).
2. In Re K.B., 793 N.E.2d 1191 (Ind. Ct. App. 2003) (trial court had jurisdiction to enter dispositional order because parent had admitted allegations of CHINS petition).
3. Reynolds v. Dewees, 797 N.E.2d 798 (Ind. Ct. App. 2003) (paternity court has concurrent original jurisdiction to modify custody with juvenile court that has pending CHINS case).

E. Parties

1. In Re N.H., 866 N.E.2d 314 (Ind. Ct. App. 2007) (court erred in finding Stepfather was not party to CHINS proceeding where his guardianship of child involved had not been terminated).

F. Permanency Hearing

1. In Re K.F., 797 N.E.2d 310 (Ind. Ct. App. 2003) (permanency order was not a final, appealable judgment).

G. Reasonable Reunification Efforts

1. G.B. v. Dearborn Cty. Div. of Fam. & Chil., 754 N.E.2d 1027 (Ind. Ct. App. 2001) (dispositional order which determined reasonable reunification efforts were not needed due to parents' previous involuntary termination was not based on unconstitutional statute).
- H. Sex Offense Based
1. Slater v. Dept. of Child Services, 865 N.E.2d 1043 (Ind. Ct. App. 2007) (determination that Father's son was CHINS affirmed where requirement of IC 31-34-1-3(b)(2) that DCS show sex offense perpetrated by Father resulted in either conviction or entry of judgment after CHINS factfinding hearing, was met by DCS' showing that sex offense against daughter resulted in adjudication that son was CHINS, entered after factfinding hearing; and court must necessarily determine sex offense victim to be CHINS before it may adjudicate sibling to be CHINS, but IC 31-34-1-3(b)(2) does not require that it be done in separate proceedings).
- I. Sufficiency of Evidence and Dispositional Decree Requirements
1. In Re M.W., 869 N.E.2d 1267 (Ind. Ct. App. 2007) (in reversing CHINS determination, Court held that, despite trial court's determination that neither Mother nor her sons, all of whom denied allegations, were credible, DCS failed to prove case because record devoid of any credible evidence that Mother physically harmed sons or abused alcohol as set forth in CHINS petition).
 2. In Re V.C., 867 N.E.2d 167 (Ind. Ct. App. 2007) (affirmed consolidation of paternity and CHINS actions, adjudication of child as CHINS as to Mother, modification of custody of child to Father, and award of damages to Father).
 3. Perrine v. Office of Child Services, 866 N.E.2d 269 (Ind. Ct. App. 2007) (court erred when it concluded that unavailability of someone "legally responsible" to care for disabled, fourteen-year-old at time of Mother's arrest and incarceration supported CHINS determination, inasmuch as Mother was prevented from arranging for trained child care for child at time of arrest, and Mother's single admitted use of methamphetamine outside child's presence insufficient to support CHINS determination).
 4. In Re C.B., 865 N.E.2d 1068 (Ind. Ct. App. 2007) (DCS presented not only sufficient, but overwhelming evidence that child's physical well-being was seriously endangered and he needed care and treatment he was not receiving from Mother).
 5. In Re C.S., 863 N.E.2d 413 (Ind. Ct. App. 2007) (CHINS determination reversed as to Father for insufficient evidence where court's findings focused on Mother's actions specifically related to her drug use during pregnancy, and DCS' arguments regarding Father related solely to his situation at time petition was filed without consideration of his situation at time case was heard).
 6. In Re D.H., 859 N.E.2d 737 (Ind. Ct. App. 2007) (CHINS determination reversed where it was based on speculation that children would be endangered if allegations of molestation were true).
 7. In Re T.H., 856 N.E.2d 1247 (Ind. Ct. App. 2006) (father's failure to comply with Service Referral Agreement not sufficient to support CHINS adjudication without evidence of neglect of children).

8. In Re A.H., 751 N.E.2d 690 (Ind. Ct. App. 2001) (testimony of detective and caseworker concerning child's statements supported CHINS adjudication that child was victim of sexual misconduct with a minor and neglect; dispositional decree which required father to live elsewhere and family to participate in specialized treatment complied with statute).