

Children's Law Center of Indiana



Frequently Asked Questions about Children in Need of Services (CHINS) in Indiana¹

By Derelle Watson-Duvall, J.D.
Kids' Voice of Indiana
The Derelle Watson-Duvall
Children's Law Center of Indiana
January 2012

1. What is a CHINS case?

In Indiana, abused and neglected children for whom the Department of Child Services (DCS) files juvenile court cases are legally referred to as Children in Need of Services (CHINS). The Indiana Juvenile Code contains ten categories of CHINS. These categories go beyond the traditional concept of child abuse and neglect. The following is a brief overview of the CHINS categories:

Child Neglect. 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.

Child Physical Abuse. The child's physical or mental health is seriously endangered due to injury by the act of omission of the child's parent, guardian or custodian. The law presumes that a child's physical or mental health is seriously endangered if illegal drugs are being manufactured at the child's home.

Child Sexual Abuse. The child is the victim of a sex offense (rape, criminal deviate conduct, child molestation, exploitation, seduction, sexual misconduct with a minor, public indecency, prostitution, or incest) or the child lives in the same home as another child who is a victim of a sex offense and the adult who committed the sex offense also lives in the home.

¹ Disclaimer: Kids' Voice and Children's Law Center staff do not provide legal advice, and neither this presentation nor any other communication you have with any of them creates an attorney-client relationship with you. You should consult your own attorney before taking or failing to take any legal action based on the content of this document or any other communications with Kids' Voice of Children's Law Center staff.

Parental allowance of child's participation in sex offenses. The child's parent, guardian, or custodian allows the child to commit a sex offense prohibited by statute (public indecency, prostitution, or voyeurism).

Child endangerment of self or others. The child substantially endangers the child's own health or the health of another.

Parental failure to participate in school disciplinary proceedings. The child's parent, guardian, or custodian fails to participate in a school disciplinary proceeding in connection with the student's improper behavior, where the behavior of the student has been repeatedly disruptive in the school.

Missing child. The child is missing child.

Child born with fetal alcohol syndrome or trace amount of drugs in system. The child is born with fetal alcohol syndrome, or any amount (including a trace amount) of a controlled substance or a legend drug in the child's body.

Child has injury or abnormal development or endangering condition caused by mother's use of alcohol or drugs during pregnancy. The child has an injury, an abnormal physical or psychological development, or is at a substantial risk of a life threatening condition, any of which arises or is substantially aggravated because the child's mother used alcohol, a controlled substance, or a legend drug during pregnancy.

2. How does the law define "child," "parent," "guardian," and "custodian?"

Several of the CHINS categories require proof that the child's parent, guardian, or custodian acted or failed to act in a prescribed manner in regard to the child. The legal definition of each of these persons becomes important.

Child. A person who is less than eighteen years of age or a person eighteen, nineteen, or twenty years of age who has been adjudicated a CHINS before the person's eighteenth birthday.

Parent. Means a biological or adoptive parent. Unless otherwise specified, it includes both parents, regardless of their marital status. Alleged fathers are fathers who did not marry the child's mother or did not establish paternity by signing a paternity affidavit or being adjudicated the child's legal father in paternity court. Alleged fathers are defined as parents for purposes of CHINS and Involuntary Termination of the Parent-Child Relationship cases.

Guardian. Refers to a person appointed by a court to have the care and custody of a child or the child's estate.

Custodian. Includes any person with whom the child resides, a member of the household of the child's noncustodial parent, and other child caregivers.

3. What is the Department of Child Services (DCS)?

DCS is the state agency which is responsible for receiving and assessing reports of suspected child abuse and neglect, substantiating or unsubstantiating child abuse and neglect allegations, filing and proving CHINS petitions, working with families on Informal Adjustments, and providing court ordered services for Children in Need of Services. There is a local DCS office in every Indiana County. See the DCS website, www.in.gov/dcs for additional information.

4. Does Indiana law prohibit a parent, guardian, or custodian from using corporal punishment to discipline his/her child?

No. The law does not "limit the right of a parent, guardian, or custodian to use reasonable corporal punishment when disciplining a child." Corporal punishment must be reasonable. Indiana courts have held, for example, that whipping a child under the age of ten with a belt is a form of abuse and an unreasonable form of corporal punishment.

5. What is "educational neglect?"

Indiana law requires that a child enroll in and attend school in the fall of the year the child becomes seven years old. The child must attend school until one of the following occurs: 1) the child graduates; 2) the child turns eighteen; or 3) the child is sixteen or seventeen years of age and is given written consent to withdraw by his parents and his principal and completes an exit interview with the principal.

While the law does not clearly define what constitutes educational neglect, the compulsory education law requires a child to attend school every day that school is in session. A parent would seemingly be neglecting the child's education if the child failed to regularly attend school and had no reasonable medical excuse. Parents who home school their child must provide the child with instruction equivalent to that given in public school.

6. May DCS file a CHINS petition if the child's parents fail to provide medical care to the child due to their religious beliefs?

If a parent, guardian, or custodian fails to provide medical treatment for a child because of the "legitimate and genuine practice" of their religious beliefs, the law presumes that the child is not a CHINS. This presumption can be overcome with evidence, and, it does not prevent a juvenile court from ordering medical services for the child. The presumption also

does not apply in situations in which the life or health of the child is in serious danger. Medical services can be ordered for the child before the filing of a CHINS petition.

7. What can happen if a person reports suspected child abuse or neglect to DCS?

A person who reports suspected child abuse or neglect in good faith or who testifies in court may not be successfully sued or criminally prosecuted for reporting or testifying.

When a report of suspected child abuse or neglect is received, DCS may assign a family case manager who will conduct an assessment by visiting and interviewing the child, the child's siblings, parents, and others.

DCS may also conduct a forensic interview with the child. A forensic interview is performed by a person who has received special training in gathering information from children without suggesting answers to the interviewer's questions. In cases of physical abuse, DCS or a law enforcement agency shall arrange for color photographs of the child of visible areas of trauma and for an X-ray examination if medically indicated. DCS may seek the assistance of the court to obtain admission by the case manager to the child's home or school. DCS can request a juvenile court order to remove the child from the parent's home prior to the completion of the assessment if the immediate removal is necessary to protect the child from further abuse or neglect. It is a class A misdemeanor criminal offense for a person to knowingly or intentionally obstruct or interfere with a child abuse assessment.

8. What is the result of the DCS assessment?

After the assessment is completed, DCS shall classify the report as either "substantiated" or "unsubstantiated."

"Substantiated" means a determination regarding the status of a child abuse or neglect report whenever facts obtained during an assessment of the report provide a preponderance of evidence that child abuse or neglect has occurred. "Unsubstantiated" means a determination regarding the status of a child abuse or neglect report made whenever facts obtained during an assessment of the report provide credible evidence that child abuse or neglect has not occurred. Parents and legally appointed guardians can request a copy of the assessment report from DCS. A substantiated report will be entered into the Child Protection Index.

During the assessment, the family case manager may offer services to the child and parents and help the family develop a Safety Plan. If neglect or abuse is substantiated, the family case manager may offer the family the opportunity to participate in an Informal Adjustment. The family case manager also has the option of requesting that the DCS attorney file a CHINS petition in juvenile court. The child may stay in the parents' home or be removed from the parents' home and placed with a relative or in foster care. DCS will supervise the child and offer court ordered services to the child and family while the CHINS case is open.

9. What is an Informal Adjustment?

The Informal Adjustment is a written agreement signed by DCS and the child's parents. The Informal Adjustment lists a program of court ordered services in which the parents and child will participate to remedy substantiated abuse or neglect. The Informal Adjustment is approved by the court, and usually lasts for six months, but may be extended for an additional three months. DCS monitors the parents' compliance with the Informal Adjustment and submits a report to the court five months after the Informal Adjustment begins. If the court extends the Informal Adjustment for the additional three months, DCS will file a supplemental report on compliance. The court may find parents in contempt for failing to comply with the services and requirements in the Informal Adjustment. The child will not be placed with relatives or in foster care under an Informal Adjustment. Sometimes DCS will work with the family on an Informal Adjustment, and then file a CHINS petition later. A CHINS petition may be filed if there are new allegations of abuse or neglect, the parents are not complying with the Informal Adjustment, or DCS determines that the child is endangered and meets the definition of a Child in Need of Services.

10. If a CHINS petition is filed, what rights do parents and legally appointed guardians have?

DCS is required to give a written notice of rights to the child's parent, guardian, or custodian when the child is taken into custody or when the CHINS petition is filed, whichever occurs first. This advisement of rights states that the parent, guardian, or custodian has a:

1. Right to a detention hearing within 48 hours of the removal of the child from the home.
2. Right to representation by an attorney; right to present witnesses; and a right to cross-examine the state's witnesses.
3. Right not to make statements that would incriminate the parent, guardian, or custodian and a right to be told that any incriminating statements that the parent, guardian, or custodian do make may be used against them in a CHINS proceeding.
4. Right to request a case review by the county child protection team.
5. Right to be advised that a petition to terminate the parent-child relationship must be filed whenever a child has been removed from the parents' care and has been under the supervision of DCS for at least fifteen of the most recent twenty-two months.

11. Do parents have the right to a free court appointed attorney to represent them in a CHINS case?

No. The juvenile court may but is not required to appoint an attorney for a parent in a CHINS case. The judge decides whether to appoint an attorney for a parent in a CHINS case on an individual basis, considering the parent's income and the complexity of the case. The judge is required by federal law to appoint an attorney for a parent who is in military service with U.S. Armed Forces. Judges frequently appoint attorneys for parents who are under the age of eighteen, mentally disabled, or incarcerated. In some counties, judges appoint attorneys for all parents in CHINS cases.

12. What out-of-home placement options are considered for the child?

Indiana law directs DCS to consider placement of the child with a willing and suitable relative caretaker before considering other options. Relative placement may be placement with a blood or adoptive grandparent, aunt, uncle, or adult sibling. DCS screens relatives for criminal and DCS history and visits relatives' homes before placing the child with relatives. Parents may give the names and addresses of relatives for possible placement to the family case manager. Relatives may also ask the family case manager to place the child with them. Parents should also give the family case manager the name and address of the child's noncustodial parent, including an alleged father. Both of the child's parents have the right to receive notice of and to participate in the CHINS case. If a suitable relative placement cannot be found, the child may be placed in foster care or in a group home or residential treatment center.

13. What occurs at the CHINS Initial Hearing?

At the Initial Hearing, the parent, guardian, or custodian will admit or deny the allegations in the CHINS petition. If there is an admission, the court will find (adjudicate) the child to be a CHINS and set a date for a dispositional hearing within 30 days. If the parents enter a denial to the petition, the court will set a date for a factfinding hearing, which is a trial on the issues in the CHINS petition.

The court will also appoint a Guardian ad Litem or a Court Appointed Special Advocate to independently represent the best interests of the child. The court also informs the parent, guardian, or custodian of the child of the possible dispositional alternatives, parental participation obligations, and parental financial responsibility that may occur if the child is found to be (adjudicated) a CHINS.

14. Is there a right to jury trial in a CHINS case?

No. The juvenile court judge makes the decisions in CHINS cases after considering evidence from parents, legal guardians, DCS, the Guardian ad Litem or Court Appointed Special Advocate, other legal parties, and witnesses.

15. Is a CHINS case equivalent to a criminal case?

No. The CHINS case is a civil case filed to protect the child and secure court ordered services for the child, parents, legally appointed guardians, and custodians. Sometimes the county prosecutor will file a criminal case against a parent, guardian, or other person based on the same issues that caused DCS to file the CHINS case.

16. What is the standard of proof that DCS must meet to prove that child is a CHINS?

DCS must prove the allegations in the CHINS petition by a preponderance of the evidence. This standard is easier to prove than the standard required to convict a person of a crime. A criminal conviction requires proof beyond a reasonable doubt.

17. Should the parents and legally appointed guardian attend all of the CHINS hearings?

Yes. It is very important for the parents and legally appointed guardian to attend every hearing so that they may present their information and desires and so that they may be aware of and follow any court orders given at the hearings.

18. Does the CHINS adjudication mean that both parents and/or the legally appointed guardian neglected or abused the child?

No. The CHINS adjudication focuses on the child's needs and condition. A non-offending parent or guardian may admit the CHINS allegations or may deny the allegations and request a factfinding hearing to present evidence to the court.

19. Can parents be required to pay child support to DCS or to reimburse DCS for services DCS has provided to the child?

Yes. Parents can be ordered to pay support and/or reimbursement to DCS. Parents should inform the family case manager about their income and expenses. Parents should also bring written information about their income and expenses to the CHINS hearings.

20. What is the legal effect of a CHINS adjudication?

If there is an admission, or if the court adjudicates the child to be a CHINS after a factfinding hearing, the child, parent, guardian, or custodian will remain under the jurisdiction of the juvenile court. DCS will file a pre-dispositional report, which will recommend treatment and services for the child and the parents. The court has a wide variety of dispositional options from which to choose. Thereafter, the court will hold periodic review hearings to determine if all the parties are complying with the dispositional decree. If the parents successfully complete their obligations under the dispositional decree, the CHINS case can be closed and the children returned home. If the parents do not comply with the dispositional decree within a specified time period, DCS may file a petition to involuntarily terminate the parent-child relationship.