



The Children's Law Center of Indiana

Frequently Asked Questions About CHINS in Indiana

Question: *What is a CHINS case?*

Answer: In Indiana, abused and neglected children 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 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.

Child Sex 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, and incest).

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 a missing child.

Child born with fetal alcohol syndrome or trace amount of substance 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 substances 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.

Question: *Legally speaking, how does the law define "child," "parent," "guardian," and "custodian?"*

Answer: 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.

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

Custodian. -- means any person with whom the child resides.

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

Answer: No. The relevant statute states that the juvenile code does not "limit the right of a parent, guardian, or custodian to use reasonable corporal punishment when disciplining a child." The interpretation of the word "reasonable" becomes pivotal. 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. In another case, however, the court rejected the welfare department's attempt to prevent a mother from using all forms of corporal punishment. The statute, noted the court, does not prohibit "reasonable" corporal punishment.

Question: *Is there such a thing as "educational neglect ?"*

Answer: Yes. 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.

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. In addition to neglect of education under the CHINS statute, a child's truancy from school may result in criminal charges as well.

Note: Parents who "home school" their children may defend themselves against a charge of misdemeanor education neglect by claiming they provide the child with "instruction equivalent to that given in the public school."

Question: *May a child be a CHINS if the child's parents fail to provide medical care to the child due to their religious beliefs ?*

Answer: In Indiana, 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, a rebuttable presumption arises that the child is not a CHINS. This presumption can be overcome with evidence, of course, and, in any case, 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.

Question: *May the authorities remove a child from the parents' home without a court order ?*

Answer: Yes. In emergencies, Indiana law authorizes a caseworker, probation officer, or law

enforcement officer to remove the child from the home without a court order if removal of the perpetrator by the police will not adequately protect the child. The following conditions must also be met:

- 1.) The caseworker has probable cause to believe the child is a CHINS.
- 2.) It appears the child's physical or mental condition will be seriously impaired or endangered if the child is not immediately taken into custody.
- 3.) There is no reasonable opportunity to obtain a court order.
- 4.) Consideration for the safety of the child precludes the immediate use of family services to prevent removal, and
- 5.) It is not practicable to obtain the assistance of law enforcement in removing the child from the home. (This will apply only when a caseworker or probation officer is removing the child.)

When the child is taken into custody and detained without a court order, the county office of family and children (formerly known as the welfare department) must notify the child's parent, guardian, or custodian that the child is being held and the reasons for the detention.

Question: *Are the parents entitled to notice of their legal rights during this process ?*

Answer: Yes. The office of family and children 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 should state 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 legal representation; 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 the county office of family and children for at least fifteen of the most recent twenty-two months.

Question: *After the child is removed and detained, what out-of-home placement options are considered for the child ?*

Answer: The Indiana statutes direct the office of family and children to consider placement of the child with a willing and suitable relative caretaker. Relative placement generally includes a blood or adoptive grandparent, aunt, uncle, or adult sibling. The office of family and children should screen such relative placements carefully and should request the opportunity to conduct home studies whenever they seem appropriate. If suitable relative placements cannot be found, children can be placed in foster care or non-secure shelter care facilities.

Question: *What is informal state action ?*

Answer: When the office of family and children's child abuse or neglect investigation indicates that the child will be safe if left in the home and the parents are willing to participate in services to remedy the abusive or neglectful situation, the office of family and children may choose not to initiate a formal CHINS petition. Instead, it may work with the

parents to provide services to them on an informal basis, with little or no involvement with the court. The two most common types of informal state action are the Service Referral Agreement (SRA) and the program of Informal Adjustment (IA).

Service Referral Agreement. Under the terms of the agreement, the parents will successfully participate in, and complete, the rehabilitative services recommended by the caseworker. The agreement does not require the consent of the child or the approval of the court. The agreement cannot exceed six months. Before entering the agreement, the parents must be advised orally and in writing that the office of family and children will submit the child abuse or neglect report to the Child Abuse Registry if they do not substantially comply with the terms of the agreement.

Informal Adjustment. Unlike the Service Referral Agreement, a program of Informal Adjustment must be presented to the juvenile court judge for approval. However, this can be done without having to hold a hearing. The program cannot exceed six months, unless extended by the court for an additional six months. The person responsible for the abuse or neglect must be notified orally and in writing before entering the program that information concerning the abuse or neglect will be reported to the Child Abuse Registry.

If parents do not comply with the terms of the Service Referral Agreement or a program of Informal Adjustment, the office of family and children has the option of proceeding with a formal CHINS petition.

Question: *What occurs at the CHINS Initial Hearing ?*

Answer: 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 enter a judgment of CHINS and set a subsequent date for a dispositional hearing. If the parents enter a denial to the petition, the court will set a date for factfinding hearing, which is a trial on the issues.

The court will also decide whether to appoint a guardian ad litem to independently represent the best interests of the child. If the parents deny the allegation in the CHINS petition, the court must appoint a guardian ad litem because at that point, there is a conflict of interest between the parents and the child. There are also other statutory conditions that require the appointment of a guardian ad litem. Additionally, the court has the discretion to appoint a guardian ad litem at any time throughout the CHINS action.

The parent, guardian, or custodian of the child is also apprised of the possible disposition, parental participation, and financial responsibility that may occur if there is a CHINS adjudication.

Parents are entitled to be represented by counsel throughout the CHINS process. If the parents plead and prove indigency, they may request the court to appoint counsel for them under the pauper counsel statute. However, the court is under no obligation to appoint counsel. The court retains the discretion to appoint counsel based on certain statutory considerations.

Question: *What happens if the juvenile court finds that the office of family and children has not proven that the allegations in the CHINS petition are true ?*

Answer: In that case, the child and the child's parent, guardian, or custodian are discharged. The child returns home, and the case is closed.

Question: *What is the legal effect of a CHINS adjudication ?*

Answer: If there is an admission, or if the court finds the CHINS petition true after a factfinding hearing, the child, parent, guardian, or custodian will remain under the jurisdiction of the juvenile court. The court will set a dispositional hearing and order the office of family and children to file a pre-dispositional report, which will suggest 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 statutorily defined period, the office of family and children will file a petition to involuntarily terminate the parent-child relationship.
