



Definitions of Children in Need of Services (CHINS)

Neglect, I.C. 31-34-1-1

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.

Abuse, I.C. 31-34-1-2

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. Evidence that the illegal manufacture of a drug or controlled substance is occurring on the property where the child resides creates a rebuttable presumption that the child's physical or mental condition is seriously endangered.

Victim of Sex Offense, I.C. 31-34-1-3

The child is the victim of a sex offense under I.C. 35-42-4-1 (rape), I.C. 35-42-4-2 (criminal deviate conduct), I.C. 35-42-4-3 (child molestation), I.C. 35-42-4-4 (exploitation), I.C. 35-42-4-7 (seduction), I.C. 34-42-4-9 (sexual misconduct with a minor), I.C. 35-45-4-1 (indecenty), I.C. 35-45-4-2 (prostitution), or I.C. 35-46-1-3 (incest).

Parental allowance of child's participation in obscene performance, I.C. 31-34-1-4

The child's parent, guardian, or custodian allows the child to participate in an obscene performance (as defined by I.C. 35-49-2-2 or I.C. 35-49-3-2).

Parental allowance of child's participation in sex offenses, I.C. 31-34-1-5

The child's parent, guardian, or custodian allows the child to commit a sex offense prohibited by I.C. 35-45-4 (public indecency, prostitution, or voyeurism).

Child endangerment of self or others, I.C. 31-34-1-6

The child substantially endangers the child's own health or the health of another.

Parental failure to participate in school disciplinary proceedings, I.C. 31-34-1-7

The child's parent, guardian, or custodian fails to participate in a school disciplinary proceeding in connection with the student's improper behavior, as provided for by I.C. 20-8.1-5.1-19, where the behavior of the student has been repeatedly disruptive in the school.

Missing child, I.C. 31-34-1-8

The child is a missing child (as defined in I.C. 10-1-7-2).

Child born with fetal alcohol syndrome or trace amounts of substance in system, I.C. 31-34-1-10

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 substance during pregnancy, I.C. 31-34-1-11

The child has an injury, 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.

For all statutes

And the child needs care, treatment, or rehabilitation that the child is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court.

Reporting Suspected Abuse or Neglect

- The duty to report child abuse and neglect is limited to the circumstances of a child who is a “victim of child abuse or neglect.” “Victim of child abuse or neglect” is defined at I.C. 31-9-2-133 as including all the CHINS categories listed at I.C. 31-34-1 except for the following: child endangerment of self or others, I.C. 31-31-0-6; parental failure to participate in school disciplinary proceeding, I.C. 31-34-1-7; and missing child, I.C. 31-34-1-8.
- I.C. 31-33-5-1 and I.C. 31-33-5-4 mandate that “an individual” who has reason to believe a child is a victim of child abuse and neglect “shall immediately make an oral report” to the child protection service of the office of family and children or to a local law enforcement agency.
- Statutes require staff persons from medical, educational, and other public and private agencies to make reports of child abuse and neglect to the person in charge of their organization in their capacity as a staff member, and to the child protection service or a law enforcement agency in their individual capacity.
- I.C. 31-33-22-1 provides that a person commits a class B misdemeanor when he knowingly fails to make a report of child abuse or neglect as required by I.C. 31-33-5-1. I.C. 31-33-22-2 provides that persons in charge of public or private institutions, schools, facilities, or other agencies who have received a report of abuse or neglect from a member of their staff and have knowingly failed to forward that report to the child protection service or to a law enforcement agency, commit a class B misdemeanor.
- I.C. 31-33-8-1 provides that an investigation shall be initiated as follows:(1) when the report alleges neglect, the investigation shall be initiated within a reasonably prompt period, but not later than five days; (2) when the report alleges abuse, the investigation shall be initiated immediately, but not later than twenty-four hours; (3) when the child protection service has reason to believe the child is in imminent danger of serious bodily harm, an onsite investigation shall be initiated in one hour; (4) when the immediate well-being or safety of the child is endangered, an investigation shall be initiated regardless of the time of day.

Voluntary Service Referral Agreement

- The voluntary service referral agreement does not require judicial involvement. It may be used when abuse or neglect has been substantiated, but the Child Protection Service caseworker does not think that court involvement is needed. I.C. 31-33-3-1.
- The person who has been accused of child abuse and neglect may voluntarily enter into the service agreement, which can be in effect for up to six months. The agreement is a contract requiring participation in social services and behavior modification
- The child is not formally removed from the parent pursuant to the voluntary service referral agreement, but the O.F.C. is still able to file a CHINS petition and seek removal based on the initial investigation and any subsequent reasons for removal.
- The O.F.C. shall give a copy of the voluntary service referral agreement to the court which presides over a CHINS case or approves an Informal Adjustment.

Informal Adjustment

- I.C. 3-34-8-1 through 9 concerns informal adjustment. An informal adjustment is an agreement between the office of family and children and the child's parent, guardian, or custodian regarding the services the family will receive to remediate the identified child abuse or neglect. An informal adjustment may be appropriate when the child remains in his own home and the child and his parent, guardian, or custodian are in agreement with the proposed program of treatment and rehabilitation. Arguably, an informal adjustment could also include the voluntary placement of the child with a relative or the non-custodial parent, but it may not involve state detention of the child.
- An informal adjustment may be recommended by the child, the guardian ad litem or court appointed special advocate (CASA), or by the child's parent, guardian, or custodian. The parties may negotiate an informal adjustment any time prior to the factfinding hearing, despite the initiation of a formal CHINS proceeding. The CHINS petition could be dismissed and the informal adjustment initiated in place of the CHINS proceeding.
- The caseworker must complete a preliminary inquiry and have probable cause to believe the child fits into one of the CHINS categories. Abuse or neglect must be substantiated.
- The informal adjustment statutes do not state what may be included in the agreements. Presumably the agreement may list services that the parents and child are to obtain, and necessary standards or conditions of parenting, i.e. no spanking of the child, use of "time out" for punishment, attending scheduled medical appointments for the child, etc.
- The child and the child's parent, guardian, custodian, or attorney must consent to the informal adjustment. The statute does not address the inability of the child to consent due to age or incompetency. The person responsible for the child abuse or neglect must be advised orally and in writing (before agreeing to the informal adjustment) that information about the abuse or neglect will be reported to the Child Abuse Registry.
- The informal adjustment shall be presented to the juvenile court judge for approval. Obtaining the judge's approval does not require a court hearing, only the signature of the judge on the informal adjustment agreement. Although the informal adjustment is not considered formal state action, it may be assigned a number by the court system and maintained in the court's informal adjustment records. The informal adjustment cannot exceed six months, unless extended by the court for an additional six month period. Within five working days of the

court's approval of an informal adjustment, the office of family and children shall transfer the report of child abuse and neglect to the Child Abuse Registry.

- No later than five months after the court approves a program of informal adjustment, the office of family and children shall file with the court a report indicating the extent of compliance with the informal adjustment. If an informal adjustment is extended for an additional six months, then an additional compliance report is due no later than eleven months after the court's original approval.
- The office of family and children may file with the court a petition for compliance with the informal adjustment. After notice and hearing, the court can order the parents to comply with the informal adjustment. The court may subsequently hold a parent in contempt for failure to participate. Presumably, the office of family and children would have to file the necessary documents to initiate the contempt process.
- If the parents do not comply with the terms of the Informal Adjustment or if the O.F.C. determines that the child's situation requires a CHINS proceeding, a CHINS petition may be filed at any time.

Detention Hearing

- The detention hearing must be held within forty-eight hours (excluding Saturdays, Sundays and legal holidays) of the time the child was taken into custody. I.C. 31-34-5-1.
- The Court must find that there is probable cause to believe that the child is a CHINS. I.C. 31-34-5-3
- The court "shall" release the child to the parent, guardian, or custodian unless the O.F.C. proves the existence of at least one of the detention criteria as quoted below from I.C. 31-34-5-3:
 - (1) detention is necessary to protect the child;
 - (2) the child is unlikely to appear before the juvenile court for subsequent proceedings;
 - (3) the child has a reasonable basis for requesting that the child not be released;
 - (4) the parent, guardian, or custodian:
 - (A) cannot be located; or
 - (B) is unable or unwilling to take custody of the child; or
 - (5) consideration for the safety of the child precludes the use of family services to prevent removal of the child.
- If the child was taken into custody without a court order, then "in accordance with federal law" the court shall make written findings and conclusions on the issues stated in I.C. 31-34-5-2(1) through (5):
 - (1) Whether removal of the child, authorized by I.C. 31-34-2-3 or I.C. 31-34-2-4, was necessary to protect the child.
 - (2) A description of the family services available before removal of the child.
 - (3) Efforts made to provide family services before removal of the child.
 - (4) Why the efforts made to provide family services did not prevent removal of the child.
 - (5) Whether the efforts made to prevent removal of the child were reasonable.
- I.C. 31-34-6-2 provides that the court "shall consider placing a child alleged to be a child in need of services with an appropriate family member of the child before considering any other placement for the child."

Case Plan

- The case plan shall be completed not later than sixty days after the child's first placement outside of the home, or the date of the dispositional decree, whichever occurs first. I.C. 31-34-15-2.
- A case plan is a description and discussion of the child's placement needs, the efforts of the county department to provide family services, and the permanent placement plan for the child. I.C. 31-34-15-4 states that the case plan must include:
 - (1) A permanent plan for the child and an estimated date for achieving the goal of the plan.
 - (2) The appropriate placement for the child based on the child's special needs and best interests.
 - (3) The least restrictive family-like setting that is close to the home of the child's parent, custodian, or guardian, if out-of-home placement is recommended.
 - (4) Family services recommended for the child, parent, guardian, or custodian.
 - (5) Efforts already made to provide services to the child, parent, guardian, or custodian.
 - (6) Efforts that will be made to provide family services that are ordered by the court.
- The office of family and children is to "negotiate" with the child's parent, guardian, or custodian in preparing the case plan. I.C. 31-34-15-2. A copy of the completed case plan shall be sent to the child's parent, guardian, or custodian within ten days of its completion. I.C. 31-34-15-3.

Initial Hearing Procedures

- Each parent, guardian, or custodian shall be served with a copy of the CHINS petition and a summons before the hearing.
- I.C. 31-34-9-7 provides that the following persons are parties to the CHINS case: the child; the child's parents, guardian, or custodian; the county office of family and children; and the guardian ad litem or court appointed special advocate.
- I.C. 31-34-10-3 requires the juvenile court to begin the initial hearing by determining whether it is appropriate to appoint a guardian ad litem or court appointed special advocate (CASA) for the child. Appointment is mandatory if the child is alleged to be a CHINS under any of the following conditions: the child substantially dangers his own health or the health of another individual under I.C. 31-34-1-6; the child was born with fetal alcohol syndrome or with a specified substance in his body under I.C. 31-34-1-10; the child has an injury, abnormal development, or is at substantial risk of a life threatening condition that is related to the use of alcohol or specified substances by the mother during her pregnancy under I.C. 31-34-1-11; the child is alleged to be a CHINS due to the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with the necessary medical care; or the location of both of the child's parents is unknown.
- The juvenile court shall determine whether the parent, guardian, or custodian admits or denies the allegations of the petition. A failure to respond constitutes a denial. I.C. 31-34-10-7 provides that the juvenile court shall determine whether the child admits or denies the petition when the CHINS category is self-endangerment under I.C. 31-34-1-6.
- If a denial is entered on the CHINS petition the court shall set a factfinding hearing.
- The child's parent, guardian or custodian is entitled to appear with counsel at the initial hearing, and may seek a continuance of the hearing to obtain counsel. The parent, guardian or custodian may request that the court appoint counsel for him/her, but even without such a request, the court should consider the need for appointment of counsel when the parent is a minor or has limited intellectual functioning, is incarcerated or hospitalized for mental health reasons. An amended statute, I.C. 34-10-1-2 provides the following criteria which the court must use in determining whether court appointed counsel should be appointed for an indigent parent in a CHINS case: (1) the likelihood that the parent will prevail on his claim or defense; (2) the parent's ability to investigate and present his claim or defense without an attorney, given the type and complexity of the facts and legal issues; (3) whether the parent has made a diligent effort to obtain counsel before

requesting court appointed counsel. The statute provides that an attorney should be appointed for an indigent person “under exceptional circumstances.

- I.C. 31-34-10-4 provides that the court shall inform the child, if the child is "at an age of understanding," and the parent, guardian, or custodian of the following at the initial hearing:
 - (1) the nature of the allegations in the petition; and
 - (2) the dispositional alternatives available to the court if the child is adjudicated a child in need of services.

- I.C. 31-34-10-5 requires the court to advise the child’s parent, guardian or custodian of potential parental participation orders and financial responsibility orders.

Factfinding

- The factfinding is an adversarial civil hearing in which the parties litigate the allegations that the child is in need of services. The standard of proof is preponderance of the evidence.
- The hearsay statement or videotape of a child under the age of fourteen (or under the age of eighteen if impaired) may be admissible in the factfinding hearing under I.C. 31-34-13. I.C. 31-34-13-4 requires that the office of family and children give the parties at least twenty days notice of its intention to introduce the statement or videotape. The office of family and children should file a motion for the admissibility of the statement and request a hearing to determine the admissibility of the statement or videotape.
- The Indiana juvenile code contains no time limit for the factfinding hearing.
- The case law indicates that when a parent is incarcerated in Indiana, the trial court should try to secure the presence of the parent in the CHINS hearings.
- The burden of proof is affected by the rebuttable presumption of CHINS stated in I.C. 31-34-12-4: A rebuttable presumption is raised that the child is a child in need of services because of an act or omission of the child's parent, guardian, or custodian if the state introduces competent evidence of probative value that:
 - (1) the child has been injured;
 - (2) at the time the child was injured, the parent, guardian, or custodian:
 - (A) had the care, custody, or control of the child; or
 - (B) had legal responsibility for the care, custody, or control of the child; and
 - (3) the injury would not ordinarily be sustained except for the act or omission of a parent, guardian, or custodian.
- I.C. 31-34-1-14 states that "[i]f a parent, guardian, or custodian fails to provide specific medical treatment for a child because of the legitimate and genuine practice of the religious beliefs of the parent, guardian, or custodian, a rebuttable presumption arises that the child is not a child in need of services because of such failure." The presumption does not apply when the child's life or health is in serious danger and does not prevent the court from ordering required medical care.
- If the juvenile court finds that the allegations of the CHINS petition have been proven, it shall enter judgment, order a predispositional report, and schedule a dispositional hearing. I.C. 31-34-11-2. The court may continue the case for up to twelve months, unless the child or the child's parent, guardian, or custodian

requests entry of judgment. I.C. 31-34-11-4. If a request for judgment is made, judgment must be entered within thirty days of the request. I.C. 31-34-11-4(b).

- If the juvenile court finds that the allegations of the CHINS petition have not been proven, it shall discharge the child. I.C. 31-34-11-3.

Reasonable Efforts

- The three components of the reasonable efforts concept under Indiana law are: the safety of the child is paramount; the state should generally exert reasonable efforts toward preservation and reunification; and the state should exert reasonable efforts to accomplish an alternative permanency plan when reunification has been rejected as a plan.
- I.C. 31-34-21-5.5(a) states that: "In determining the extent to which reasonable efforts to reunify or preserve a family are appropriate under this chapter, the child's health and safety are of paramount concern."
- I.C. 31-34-21-5.5(b) requires the office of family and children to make "reasonable efforts to preserve and reunify families" in order to prevent or eliminate the need for removing a child from home or to make it possible to return a child safely to his home, unless the court makes a specific finding and order that reasonable efforts toward reunification are not required pursuant to I.C. 31-34-21-5.6 or I.C. 31-34-21-5.8.
- I.C. 31-34-21-5.6 provides that a court "may" make a finding in five limited situations that reasonable efforts toward preservation and reunification are not required. This statute has been variously referred to as an "exception" or "bypass of" the reasonable efforts requirement. A judicial finding supporting the reasonable efforts exception can be made "at any phase of the child in need of services proceeding." In four of the five limited situations the child must first be adjudicated a CHINS. The five situations are:
 1. **The parent, guardian or custodian of a CHINS has been convicted of causing suicide, involuntary manslaughter, rape, criminal deviate conduct, child molesting, child exploitation, sexual misconduct with a minor, or incest** (or a comparable offense in another state, territory or county), and the victim was: less than sixteen years of age and either the convicted parent's biological, adopted, or step-child, or a parent of the child.
 2. **The parent, guardian or custodian of a CHINS has been convicted of murder or voluntary manslaughter** (or a comparable offense in another state, territory, or country) or has been convicted of committing one of the following in relation to murder or voluntary manslaughter: aiding, inducing, or causing another person to commit the crime (I.C. 35-41-2-4); attempting to commit the crime (I.C. 35-41-5-1); or conspiring with another person to commit the crime (I.C. 35-41-5-2), and the victim was: the biological, adopted, or step-child (no age requirement for the child victim) of the convicted person, or the parent of the child.

3. **The parent, guardian or custodian of a CHINS has been convicted of Class A, Class B or Class C felony battery, aggravated battery; Class B felony neglect of a dependent; or Class C felony criminal recklessness** (or a comparable offense in another state, territory, or country), and the victim was the biological, adopted, or step-child (no age requirement for the child victim) of the convicted person.
4. The rights of the parents have been involuntarily terminated as the another of their children.
5. The child is an abandoned infant, the court appoints a guardian ad litem or court appointed special advocate who prepares a written report and recommendation, and after a hearing the court finds that reasonable efforts to locate the child's parents or reunify the child's family would not be in the best interests of the child. An abandoned infant for the purpose of this statute is defined at I.C. 31-9-2-0.5 as a child who is less than 12 months of age and whose parent, guardian or custodian has knowingly or intentionally left the child in an environment that endangers the child's life or health or a hospital or medical facility and has no reasonable plan to assume care, custody and control of the child or a child who appears to be under 45 days old and whose parent has knowingly or intentionally left the child with an emergency medical services provider and did not express an intent to return for the child. (Emergency medical services provider is defined at I.C. 16-41-10-1 as a firefighter, law enforcement officer, paramedic, emergency medical technician, or other person who provides emergency medical services in the course of that person's employment).

Dispositional Hearing

- The dispositional statute, I.C. 31-34-19-2(a) and the review statute, I.C. 31-34-22-3(a) provided for the admissibility of "any" report that contains evidence of probative value, even if that evidence would otherwise be excluded.
- The dispositional guidelines at I.C. 31-34-19-6 state that if consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:
 - (1) is:
 - (A) in the least restrictive (most family like) and most appropriate setting available;
 - (B) close to the parents' home, consistent with the best interest and special needs of the child;
 - (2) least interferes with family autonomy;
 - (3) is least disruptive of family life;
 - (4) imposes the least restraint on the freedom of the child and the child's parent guardian, or custodian; and
 - (5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.
- Case law indicates that the "best interests" of the child is a substantial consideration in resolving issues at the dispositional stage of a CHINS case.
- Issues before the court at the dispositional hearing:
 1. The court shall consider the alternatives for the care, treatment, rehabilitation, or placement of the child at the dispositional hearing. I.C. 31-34-19-1(1). This issue includes the determination of which supervision, outpatient treatment, placement, wardship, emancipation, and family services options within the dispositional alternatives statute, I.C. 31-34-20-1, are appropriate for the child.
 2. The court shall consider the necessity, nature, and extent of participation by a parent, guardian, or custodian in the child's program of care, treatment, or rehabilitation. I.C. 31-34-19-1(2). Parental participation may be initiated through the filing of a parental participation petition
 3. The court shall consider the financial responsibility of the parent or the guardian of the child's estate for services provided to the child, parent, or guardian. I.C. 31-34-19-1(3), I.C. 31-40-1-3.
 4. The court shall make a finding regarding whether the office of family and children has exerted reasonable efforts toward preservation or reunification of the family.
 5. Visitation should be addressed and clarified during the dispositional hearing.

- The court may enter one or more of the following dispositional decrees:
 1. Order supervision of the child by the probation department or the county office of family and children.
 2. Order the child to receive outpatient treatment:
 - a. at a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or
 - b. from an individual practitioner.
 3. Remove the child from the child's home and place the child in another home or shelter care facility. Placement under this subdivision includes authorization to control and discipline the child.
 4. Award wardship to a person or shelter care facility. Wardship under this subdivision does not include the right to consent to the child's adoption.
 5. Partially or completely emancipate the child.
 6. Order:
 - a. the child; or
 - b. the child's parent, guardian, or custodian to receive family services.
 7. Order a person who is a party to refrain from direct or indirect contact with the child.

Parental Participation

- The prosecutor, counsel for the office of family and children, probation officer, caseworker, department of correction, and the child's guardian ad litem or court appointed special advocate have standing to file a parental participation petition. I.C. 31-34-16-1. The petition shall be verified. I.C. 31-34-16-2. The petition shall be captioned and contain the allegations set out in I.C. 31-34-16-3, as follows:
- A petition seeking participation of a parent, guardian, or custodian must be entitled "In the Matter of the Participation of____, the Parent, Guardian, or Custodian of ____". The petition must allege the following:
 - (1) That the respondent is the child's parent, guardian, or custodian.
 - (2) That the child has been adjudicated a child in need of services.
 - (3) That the parent, guardian, or custodian should:
 - (A) obtain assistance in fulfilling obligations as a parent, guardian, or custodian;
 - (B) provide specified care, treatment, or supervision for the child;
 - (C) work with a person providing care, treatment, or rehabilitation for the child; or
 - (D) refrain from direct or indirect contact with the child.

Review Hearings

- The purpose of the periodic case review hearing is to insure that the child is adequately cared for and to push the case forward to parent-child reunion or some alternative permanent plan. The review process can be used to modify existing dispositional orders and to document the progress or failures of the parent's rehabilitation effort.
- I.C. 31-34-21-2 provides that the court shall conduct a "formal court hearing" in each CHINS case at least every six months from the date the child is removed from the home or the dispositional decree, whichever occurs first. The hearing may be held more often than every six months if so ordered by the court.
- At the review hearing, I.C. 31-34-21-5(a) states that the court shall determine: (1) whether case plan, services and placement meet the special needs and best interests of the child; (2) whether O.F.C. has made reasonable efforts to provide family services; (3) a projected date for the child's return home, adoptive placement, the child's emancipation, or the appointment of a legal guardian.
- I.C. 31-34-21-4 requires that the office of family and children shall send written notice of the review hearing ten days before the hearing to the following persons: (1) the child's parent, guardian, or custodian; (2) an attorney who has entered an appearance on behalf of the child's parent, guardian, or custodian; (3) prospective adoptive parents named in an adoption petition, under certain situations; (4) any person whom the office of family and children knows is "currently providing care" for the child; (5) any other suitable relative or person whom the office of family and children knows has had "a significant or care taking relationship to the child;" and (6) any emergency medical services provider who has taken custody of the child as an abandoned infant. I.C. 31-34-21-4(c) provides that all persons who are entitled to the ten day notice shall be given an "opportunity to be heard and to make any recommendation to the court." Each of those person also has the right to "submit a written statement to the court that, if served upon all parties to the child in need of services proceeding...[and other specified persons], may be made a part of the court record."
- I.C. 31-34-21-4.5 provides that a foster parent may petition the court to intervene as a party in review and permanency hearings. The court may grant the intervention if it is in the best interest of the child. Foster parents who have been the subject of a substantiated abuse/neglect report or who have been convicted of a felony listed at I.C. 12-17.4-4-11 are not allowed to petition to intervene.
- I.C. 31-34-21-3 and I.C. 31-34-22-1 provide that the office of family and children shall prepare a progress report for the case review. The report shall address the "progress made in implementing the dispositional decree, including the progress

made in rehabilitating the child, preventing placement out-of-home, or reuniting the family.”

- I.C. 31-34-22-3(a) provides that the review report may be "admitted into evidence to the extent that the report contains evidence of probative value even if the evidence would otherwise be excluded.”
- I.C. 31-34-22-2 provides that the report shall be made available to the child and the child's parent, guardian, custodian, and guardian ad litem "within a reasonable time after the report's presentation to the court or before the hearing.” If the court determines on the record that the report contains information that should not be released to the child or the child's parents, guardian or custodian, the full report shall be provided to counsel and the guardian ad litem/CASA.
- I.C. 31-34-21-5(b) states that the court shall consider the following at the review hearing:
 - (1) Whether the county office of family and children, the child, or the child's parent, guardian, or custodian has complied with the child's case plan.
 - (2) Written documentation containing descriptions of:
 - (A) the family services that have been offered or provided to the child or the child's parent, guardian, or custodian;
 - (B) the dates during which the family services were offered or provided; and
 - (C) the outcome arising from offering or providing the family services.
 - (3) The extent of the efforts made by the county office of family and children to offer and provide family services.
 - (4) The extent to which the parent, guardian, or custodian has enhanced the ability to fulfill parental obligations.
 - (5) The extent to which the parent, guardian, or custodian has visited the child, including the reasons for infrequent visitation.
 - (6) The extent to which the parent, guardian, or custodian has cooperated with the county office of family and children or probation department.
 - (7) The child's recovery from any injuries suffered before removal.
 - (8) Whether any additional services are required for the child or the child's parent, guardian, or custodian and, if so, the nature of those services.
 - (9) The extent to which the child has been rehabilitated.
 - (10) If the child is placed out-of-home, whether the child is in the least restrictive, most family-like setting, and whether the child is placed close to the home of the child's parent, guardian, or custodian.
 - (11) The extent to which the causes for the child's out-of-home placement or supervision have been alleviated.
 - (12) Whether current placement or supervision by the county office of family and children should be continued.

(13) The extent to which the child's parent, guardian, or custodian has participated or has been given the opportunity to participate in case planning, periodic case reviews, dispositional reviews, placement of the child, and visitation.

(14) Whether the county office of family and children has made reasonable efforts to reunify or preserve a child's family unless reasonable efforts are not required under section 5.6 of this chapter [this refers to the reasonable efforts exception provision at I.C. 31-34-21-5.6].

(15) Whether it is an appropriate time to prepare or implement a permanency plan for the child.

Permanency Hearing

- I.C. 31-34-21-7(a) provides that a permanency hearing is required in any of the following situations:
 - 1) within thirty days of a ruling that reasonable efforts toward reunification are not required under I.C. 31-34-21-5.6;
 - 2) every twelve months after a child has been removed from his parent, guardian, or custodian or the date of the original dispositional decree, whichever occurs first; or
 - 3) more often if ordered by the juvenile court.
- I.C. 31-34-21-4 requires that the office of family and children shall send written notice ten days before the permanency hearing to the following persons: (1) the child's parent, guardian, or custodian; (2) an attorney who has entered an appearance on behalf of the child's parent, guardian, or custodian; (3) the child's foster parents; (4) prospective adoptive parents named in an adoption petition, under certain situations; (5) any person whom the office of family and children knows is "currently providing care" for the child; and (6) any other suitable relative or person whom the office of family and children knows has had "a significant or caretaking relationship to the child."
- I.C. 31-34-21-7(b) requires that the court shall do the following at the permanency hearing: (1) make the determination and findings required for the six month periodic review at I.C. 31-34-21-5 and necessary reasonable efforts findings; (2) consider whether juvenile jurisdiction should continue and whether the dispositional decree should be modified; (3) consider the recommendations of persons required to be given notice of the permanency hearing under I.C. 31-34-21-4; (4) consider and approve a permanency plan for the child; (5) determine whether an existing permanency plan must be modified; and (6) examine procedural safeguards used by the office of family and children to protect parental rights.
- I.C. 31-34-21-7(c) states that there is a rebuttable presumption that jurisdiction over a CHINS continues for not longer than twelve months after the date of removal or twelve months after the date of the dispositional decree, whichever occurs first. The state may rebut the presumption and show that jurisdiction should continue by proving that: (1) the objectives of the dispositional decree have not been accomplished; (2) that a continuation of the decree with or without modifications is necessary; and (3) it is in the child's best interests for the court to maintain jurisdiction. If O.F.C. does not sustain its burden for continued jurisdiction, the court shall: (1) direct O.F.C. to establish a permanency plan within thirty days; or (2) discharge the child and the child's parent, guardian, or custodian.

- On the theory that the permanency hearing is a dispositional hearing rather than an adjudicatory hearing, reliable and probative hearsay should be admissible. Also, I.C. 31-34-21-8 requires that a written progress report be prepared for the permanency hearing consistent with the requirements and procedures for review hearing reports at I.C. 31-34-22. I.C. 31-34-22-3(a) provides that a report may be admitted into evidence even if it contains evidence that would otherwise be inadmissible (hearsay), if probative.
- Quoting from I.C. 31-34-21-7.5(1), the possible options for permanency are:
 - (A) Return to or continuation of existing custodial care within the home of the child's parent, guardian or custodian or placement of the child with the child's noncustodial parent.
 - (B) Initiation of a proceeding by the agency or appropriate person for termination of the parent-child relationship under I.C. 31-35.
 - (C) Placement of the child for adoption.
 - (D) Placement of the child with a responsible person, including:
 - (i) an adult sibling;
 - (ii) a grandparent;
 - (iii) an aunt;
 - (iv) an uncle; or
 - (v) other relative;
 who is able and willing to act as the child's permanent custodian and carry out the responsibilities required by the permanency plan.
 - (E) Appointment of a legal guardian. The legal guardian appointed under this section is a caretaker in a judicially created relationship between the child and caretaker that is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child:
 - (i) Care, custody, and control of the child.
 - (ii) Decision making concerning the child's upbringing.
 - (F) Placement of the child in another planned, permanent living arrangement.

Involuntary Termination Proceeding

- The juvenile court and the probate court have concurrent original jurisdiction in all cases involving termination of the parent-child relationship. I.C. 31-30-1-5(2); I.C. 31-35-2-3. A termination petition is a separate and distinct legal proceeding and of "much greater magnitude" than the underlying CHINS action, and should be separately docketed from the CHINS action.
- An involuntary termination petition may be filed by the prosecutor, the attorney for the office of family and children, or the guardian ad litem/CASA. I.C. 31-35-2-4.
- The parents must be served with the termination petition and summons because it is a new civil proceeding. Parents should receive service pursuant to the Indiana Trial Rules, including publication service pursuant to Rule 4.13 if their whereabouts are unknown.
- The verified petition for involuntary termination must allege the following, quoting from I.C. 31-35-2-4(b)(2)(A) through (D):
 - (A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
 - (ii) a court has entered a finding under I.C. 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
 - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
 - (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
 - (C) termination is in the best interests of the child; and
 - (D) there is a satisfactory plan for the care and treatment of the child.
- Special termination pleadings may be used when a parent has been convicted of one of the enumerated crimes against a child. I.C. 31-35-3-1 through 9 provide that when a parent is convicted of a heinous crime against his/her biological or adopted child or the child of his/her spouse, and the child victim was less than sixteen years of age, the criminal conviction is prima facie evidence in an involuntary termination case against the parent as to the child victim or the

parent's other child that the conditions that resulted in the removal of the child from the parent will not be remedied or that continuation of the parent-child relationship poses a threat to the well-being of the child. The heinous crimes which apply to this statute are: murder, causing suicide, voluntary manslaughter, involuntary manslaughter, rape, criminal deviate conduct, child molesting, child exploitation, sexual misconduct with a minor, and incest.

- The involuntary termination petition statute, I.C. 31-35-2-4(b)(3), obligates the petitioner to state if factors exist that would require dismissal of the involuntary termination petition and to specify each factor that would apply as a basis for dismissal. A motion to dismiss shall be filed if :
 - 1) the case plan of the office of family and children documents a “compelling reason, based on facts and circumstances stated in the petition or motion, for concluding” that proceeding on a petition to terminate the parent-child relationship is “not in the best interests of the child.” “A compelling reason may include the fact that the child is being cared for by a custodian who is a parent, stepparent, grandparent, or responsible adult who is the child’s sibling, aunt, or uncle or a relative who is caring for the child as a guardian.”
 - 2) all of the following conditions exist: the reasonable efforts exception in I.C. 31-34-21-5.6 does not apply; the office of family and children did not provide services under the case plan or permanency or dispositional orders to permit and facilitate safe return of the child to the home; and the period for completion of family services under the case plan, permanency plan, and other dispositional orders has not expired.
 - 3) all of the following conditions exist: the reasonable efforts exception in I.C. 31-34-21-5.6 does not apply; the office of family and children did not provide services under the case plan or permanency or dispositional orders: and the services that have not been provided are substantial and material to implement safe return of the child to the child’s home.
- Parents have the right to court appointed counsel in an involuntary termination proceeding, regardless of the parents’ income.
- Parents’ rights should be explained by the judge and they should have the opportunity to admit or deny the petition.
- I.C. 31-35-2-6.5 requires that ten day notice (prior law required five day notice) of a hearing on a motion to dismiss or a hearing on a petition for termination of the parent-child relationship must be given by the party who filed the termination petition, which could include the office of family and children, prosecutor, or the

guardian ad litem/CASA. The following persons shall be given notice: (1) the child's parent, guardian, or custodian, and any other party to the CHINS proceeding; (2) the child's foster parent; (3) prospective adoptive parents named in an adoption petition, under certain situations; (4) any person whom the office of family and children knows is "currently providing care" for the child; (5) any other suitable relative or person whom the office of family and children knows has had "a significant or care taking relationship to the child"; and (6) an attorney who has entered an appearance on behalf of the child's parent, guardian, or custodian. I.C. 31-35-2-6.5 provides that all persons who are entitled to the ten day notice of the termination hearing shall be given an "opportunity to be heard and make recommendation to the court at the hearing."

- The standard of proof on the termination petition is "clear and convincing evidence." I.C. 31-34-12-2. If the parent opposes the termination petition, a guardian ad litem/CASA must be appointed for the child. I.C. 31-35-2-7. The court may appoint the guardian ad litem/CASA who currently represents the child in the CHINS case to serve in the termination case.
- I.C. 31-35-6-4 provides that:
 - (1) all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support, pertaining to that relationship are permanently terminated; and
 - (2) the parent's consent to the child's adoption is not required.
- (b) Any support obligations that accrued before the termination are not affected. However, the support payments shall be made under the juvenile or probate court's order.
- If a termination judgment is entered, the child continues as a CHINS, subject to the review hearing requirements. The office of family and children and the guardian ad litem/CASA will seek a permanent option for the child. The court has the authority under I.C. 31-35-6-1 to refer the case to the probate court for adoption proceedings or to order any dispositional alternatives available under I.C. 31-34-20-1. If the juvenile court refers a post-termination case to the probate court for adoption, the juvenile court shall review the child's case once every six months until a petition for adoption is filed. I.C. 31-35-6-1(b).
- When the case is referred to the court with probate jurisdiction for adoption proceedings, the guardian ad litem/CASA shall comply with the following requirements from I.C. 31-35-6-2:
 - (1) Provide the county department with information regarding the best interests of the child.
 - (2) Review the adoption plan as prepared by the county department as to the best interests of the child.

(3) Report to the court with juvenile jurisdiction and, if requested, to the court having probate jurisdiction, regarding the plan and the plan's appropriateness in relationship to the best interests of the child.