

# CHINS Primer

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## A Guide to the Child in Need of Services (CHINS) Process

By:

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**Kids' Voice of Indiana**

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## **Dedication**

The CHINS Primer is dedicated to the Honorable Frances G. Hill and the attorneys and staff of Kids' Voice of Indiana.

## **About the Agency**



Kids' Voice of Indiana is a 501(c)3 organization which has been committed for more than thirty-five years to promoting, protecting, and preserving the rights and best interest of children across the state of Indiana through three Programs, the Derelle Watson-Duvall Children's Law Center of Indiana, the Bette J. Dick GAL for Kids Program, and the Safe Child Parenting Time Program.

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## **I. Introduction**

The purpose of the CHINS Primer is to provide information on statutes and case law for Indiana Judges and attorneys who occasionally practice in CHINS cases or who practice in other areas of law that are impacted by CHINS law. More detailed information on CHINS law is given in the Indiana CHINS and Family Law Deskbook. Additional case law updates and legal articles on CHINS law are frequently added to [www.kidsvoicein.org](http://www.kidsvoicein.org), the Kids' Voice website.

The CHINS Primer provides legal information, but is not a substitute for legal advice about a specific situation. The CHINS Primer does not create an attorney-client relationship with the reader. Readers of the CHINS Primer should not commence or fail to bring any legal proceedings based on the contents of the CHINS Primer.

The CHINS Primer includes information on legislation through and including July 1, 2017 statutes. Case law citations are current through Volume 92 of the North Eastern Reporter Third.

## **II. Reporting Child Abuse and Neglect**

The CHINS process begins with a report of child abuse or neglect that a person has made to the Indiana Department of Child Services (DCS) or to local law enforcement. According to Indiana law, anyone who has "reason to believe" that a child is a "victim of child abuse or neglect" shall immediately make an oral report to DCS or a local law enforcement agency. **IC 31-33-5-1** and **IC 31-33-5-2**. **IC 31-33-5-2(b)** states that if an individual is required to make a report of abuse or neglect in the individual's capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, the individual shall immediately make a report to DCS or local law enforcement. After making the report, the individual shall notify the individual in charge of the institution, school, facility, or agency or the designated agent that the report was made. **IC 31-33-5-2(b)**. **IC 31-33-5-3** provides that notifying the individual in charge or the individual's designated agent does not relieve an individual of an obligation to report on the individual's own behalf, unless a report has already been made to the best of the individual's belief. **IC 31-33-5-2.5** applies only to an individual who is required to make a report in the individual's capacity as a member of the staff of a hospital. **IC 31-33-5-2.5(b)** requires a hospital staff person to immediately notify the individual in charge of the hospital or the designated agent. **IC 31-33-5-2.5(c)** states that an individual notified under subsection (b) shall immediately report or cause a report to be made to DCS or the local law enforcement agency.

The “reason to believe” which is required for a person to decide to report child abuse or neglect is “evidence that, if presented to individuals of similar background and training, would cause the individuals to believe that a child was abused or neglected.” **IC 31-9-2-101**. This statute means that the legal duty for reporting child abuse or neglect varies based on the potential reporter’s background. For example, a doctor might believe that a child’s injury was likely caused by abuse or neglect, but a child care worker might not recognize that the same child’s injury was likely caused by abuse or neglect. Therefore, based on the same child’s injury, the doctor would have a legal duty to report child abuse, but, depending on the factual situation, the child care worker might not have a legal duty to report child abuse.

The Indiana statutory definition of a “victim of child abuse or neglect” (**IC 31-9-2-133**) is a child who falls within one or more of the CHINS definitions as described by **IC 31-34-1-1** through **IC 31-34-1-5**, **IC 31-34-1-10**, or **IC 31-34-1-11** regardless of whether the child needs care, treatment, rehabilitation or the coercive intervention of the court. The 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

Sec. 1. 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

Sec. 2. (a) 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 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**

Sec. 3. (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** [rape];
  - (B) **IC 35-42-4-2** [criminal deviate conduct] (before its repeal);
  - (C) **IC 35-42-4-3** [child molesting];
  - (D) **IC 35-42-4-4** [child exploitation; possession of child pornography];
  - (E) **IC 35-42-4-5** [vicarious sexual gratification];
  - (F) **IC 35-42-4-6** [child solicitation];
  - (G) **IC 35-42-4-7** [child seduction];
  - (H) **IC 35-42-4-8** [sexual battery];
  - (I) **IC 35-42-4-9** [sexual misconduct with a minor];
  - (J) **IC 35-45-4-1** [public indecency];
  - (K) **IC 35-45-4-2** [prostitution];
  - (L) **IC 35-45-4-3** [making unlawful proposition];
  - (M) **IC 35-45-4-4** [promoting prostitution];
  - (N) **IC 35-46-1-3** [incest]; or
  - (O) the law of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (N); 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, the child:

- (1) lives in the same household as the adult who:
  - (A) committed an offense described in subsection (a)(1) against a child and the offense resulted in a conviction or a judgment under **IC 31-34-11-2** [CHINS factfinding]; or
  - (B) has been charged with an offense described in subsection (a)(1) against a child and is awaiting trial; 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;

(c) 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 an offense described in subsection (a)(1);
- (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; and
- (3) 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 on the existence of the circumstances described in subdivisions (1) and (2), and the caseworker subsequently determines further intervention is necessary; or
  - (B) determines that a program of informal adjustment or other family or rehabilitative services is inappropriate.
- (d) 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 an adult who:
    - (A) committed a human or sexual trafficking offense under **IC 35-42-3.5-1** or the law of another jurisdiction, including federal law, that resulted in a conviction or a judgment under **IC 31-34-11-2** [CHINS factfinding]; or
    - (B) has been charged with a human or sexual trafficking offense under **IC 35-42-3.5-1** or the law of another jurisdiction, including federal law, and is awaiting trial; 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 31-34-1-3.5:** Victim of human or sexual trafficking

Sec. 3.5. (a) A child is a child in need of services if, before the child becomes eighteen (18) years of age:

- (1) the child is a victim of:
  - (A) human or sexual trafficking (as defined in **IC 31-9-2-133.1**); or
  - (B) a human or sexual trafficking offense under the law of another jurisdiction, including federal law, that is substantially equivalent to the act described in clause (A); 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 considered a victim of human or sexual trafficking regardless of whether the child consented to the conduct described in subsection (a)(1).

**IC 31-34-1-4:** Parent, guardian, or custodian allowing child's participation in obscene performance

Sec. 4. A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child's parent, guardian, or custodian allows the child to participate in an obscene performance (as defined by **IC 35-49-2-2** or **IC 35-49-3-2**); 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 31-34-1-5:** Parent, guardian, or custodian allowing child to commit sex offense

Sec. 5. A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child's parent, guardian, or custodian allows the child to commit a sex offense prohibited by **IC 35-45-4** [public indecency, public nudity, prostitution, making an unlawful proposition, promoting prostitution, voyeurism]; 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 31-34-1-6:** Child substantially endangering own or another's health

Sec. 6. A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child substantially endangers the child's own health or the health of another individual; 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 31-34-1-7:** Parent, guardian, or custodian failing to participate in school disciplinary proceeding

Sec. 7. A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child's parent, guardian, or custodian fails to participate in disciplinary proceeding in connection with the student's improper behavior, as provided for by **IC 20-33-8-26**, if the behavior of the student has been repeatedly disruptive in the school; 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 31-34-1-8:** Missing child

Sec. 8. A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child is a missing child (as defined in **IC 10-13-5-4**); 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 31-34-1-10:** Child born with fetal alcohol syndrome or with controlled substance or legend drug in child's body

Sec. 10. Except as provided in **IC 31-34-1-12** and **13** [mother had prescription for drug and made good faith effort to use drug as prescribed], a child is a child in need of services if:

- (1) the child is born with:
  - (A) fetal alcohol syndrome;
  - (B) neonatal abstinence syndrome; or
  - (C) any amount, including a trace amount, of a controlled substance, a legend drug, or a metabolite of a controlled substance or legend drug in the child's body, including the child's blood, urine, umbilical cord tissue, or meconium; 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

Sec. 11. Except as provided in **IC 31-34-1-12** and **13** [mother had prescription for drug and made good faith effort to use drug as prescribed], a child is a child in need of services if:

- (1) the child:
  - (A) has an injury;
  - (B) has abnormal physical or psychological development;
  - (C) has symptoms of neonatal intoxication or withdrawal; or
  - (D) 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.

For purposes of child abuse or neglect reporting and CHINS and termination of parental rights proceedings, the term “parent,” defined at **IC 31-9-2-88**, means either a birth or adoptive parent and includes an alleged father whose paternity of the child has not been legally established. The term “guardian,” as defined at **IC 31-9-2-49(b)**, is a person appointed by a court to have the care and custody of a child, or the child’s estate, or both. The term “custodian,” as defined at **IC 31-9-2-31** for the purposes of **IC 31-34-1**, includes (1) a member of the household of the child’s noncustodial parent; (2) an individual who has or intends to have direct contact, on a regular and continuing basis, with a child for whom the individual provides care and supervision; (3) a license applicant or licensed foster home, residential child care facility, child care center, or child care home; (4) a person who is responsible for care, supervision, or welfare of children at a child care ministry, home, center or facility of a child care provider, or a school; (5) a child caregiver; (6) a person with whom a child resides.

A person who: (1) reports child abuse or neglect; or (2) is a health care provider and detains a child for photographs, x-rays, or medical examination; or (3) participates in a judicial proceeding or other proceeding resulting from or relating to an abuse or neglect report is immune from civil or criminal liability. **IC 31-33-6-1**. Indiana law states that a person who reports child abuse or neglect or who assists in any requirement of Indiana law on child abuse or neglect reporting is presumed to have acted in good faith. **IC 31-33-6-3**. The immunity and good faith presumption laws mean that a person who reports child abuse or neglect or who causes a report to be made, including participating in a judicial proceeding, cannot be criminally prosecuted or successfully sued. A person who acts maliciously or in bad faith is not protected by the immunity law. **IC 31-33-6-2**. In **Doe #1 v. Indiana Department of Child Services**, 81 N.E.3d 199 (Ind. 2017), the Indiana Supreme Court affirmed the trial court’s entry of summary judgment in favor of DCS on John Doe’s claim that DCS had negligently released his identity to the parents of the children whom Doe reported to DCS as victims of child abuse/neglect. *Id.* at 207.

Medical malpractice cases discuss liability for reporting or failing to report child abuse or neglect. In **Anonymous Hosp. v. A.K.**, 920 N.E.2d 704 (Ind. Ct. App. 2010), an interlocutory appeal, the Court reversed the trial court’s denial of Hospital’s motion for summary judgment on a malpractice case initiated by the child’s parents. The Court determined that Hospital was immune from liability for reporting suspected child sexual abuse and there was no evidence to rebut the presumption that Hospital acted in good faith. *Id.* at 708. The Court also concluded that Hospital’s immunity extended to the underlying examination, tests, and diagnosis that triggered the report of suspected child sexual abuse.

Id. at 710. In **C.T. v. Gammon**, 928 N.E.2d 847 (Ind. Ct. App. 2010), the Court affirmed the trial court’s entry of summary judgment in favor of the child’s physician, whom Father accused of negligence for failing to report child abuse or neglect of the child by Mother. The Court found that there is not a private right of action for failure to report child abuse or neglect in Indiana. Id. at 854-55. In **Sprunger v. Egli**, 44 N.E.3d 690 (Ind. Ct. App. 2015), the child died from injuries consistent with child abuse while she was placed in relative care under DCS supervision in a CHINS case. The child had been examined by her primary physician, Dr. Egli, and by a pediatric oncologist, but Dr. Egli determined the child was “within normal limits”, and the results of medical tests ordered by the oncologist were normal. After the child’s death, Mother filed a medical malpractice claim against Dr. Egli, alleging that he had failed to diagnose and report child abuse. The Court affirmed the trial court’s order granting summary judgment in favor of Dr. Egli because Indiana does not recognize a private, civil action for failure to report child abuse. Id. at 695.

Because Indiana law requires everyone who has reason to believe that a child is a victim of abuse or neglect to report child abuse or neglect, Indiana law protects persons who otherwise might be unable to report due to other legal duties owed to patients, clients, or others. Health care providers, licensed social workers, licensed addiction counselors, marriage and family therapists, mental health counselors, and school counselors are authorized to report child abuse or neglect even if doing so would require them to divulge confidential information. **IC 31-32-11-1**. Spouses are not exempt from reporting child abuse or neglect by the other spouse. **IC 31-32-11-1**. A victim advocate (defined at **IC 35-37-6-3.5**) is not relieved from the duty to report child abuse or neglect. **IC 35-37-6-8**. Attorneys may be required to report child abuse or neglect by their clients to the extent the attorney reasonably believes necessary to prevent reasonably certain death or substantial bodily harm, to prevent a client from committing a crime, or to comply with other law or a court order. **Ind. Rule of Professional Conduct 1.6(b)**. Clergy may, in some situations, be required to report child abuse or neglect involving members of their congregations.

A person who knows about child abuse or neglect but fails to report it commits a Class B misdemeanor. **IC 31-33-22-1**. See **Smith v. State**, 8 N.E.3d 668, 692 (Ind. 2014), in which the Indiana Supreme Court affirmed the conviction of a high school principal for failure to immediately report child abuse. The case involved a sixteen-year-old female student who told the principal and other school staff members that she had been raped by a sixteen-year-old male student in the boys’ bathroom at school. The female student had previously been adjudicated a CHINS and was living in a residential placement at the time of the incident. The principal delayed for four hours before making a report to the DCS Hotline. The Court opined that the principal had reason to believe that the female student was a victim of rape due to her demeanor and clear, detailed statement, that the female student was alleged to be a victim of rape, which fit within the child abuse reporting statute, and that the statute

required the principal to report child abuse or neglect immediately without delaying to assess and reflect on the situation. Id. at 690-92.

Knowing and intentional false reporting of child abuse or neglect is a Class A misdemeanor and is a Level 6 felony if the person has a prior unrelated conviction for knowingly false reporting. **IC 31-33-22-3**. Knowingly and intentionally making a false report is very different from mistakenly reporting child abuse or neglect. Mistakenly reporting child abuse or neglect occurs when the reporter has a good faith belief that the child is a victim of abuse or neglect and is not a crime, even when DCS does not substantiate the report of abuse or neglect.

**IC 31-33-22-3(b)** provides that a person who intentionally communicates to a law enforcement agency or to DCS a report of child abuse or neglect knowing the report to be false is liable to the person accused of child abuse or neglect for actual damages. The finder of fact may award punitive damages and attorney's fees in an amount determined by the finder of fact against the intentional false reporter. See **In Re V.C.**, 867 N.E.2d 167, 182-83 (Ind. Ct. App. 2007), in which the Court held that the juvenile court did not err in awarding Father compensatory damages in the amount of \$51,867.39 and punitive damages of \$50,000, where Mother indirectly communicated an abuse allegation to DCS through the child's therapist by coaching and encouraging the child to report sexual abuse allegations against Father that Mother knew were false, and which Mother knew the therapist would be required to report. 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 31-33-22-5** 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 a court finds that the report is unsubstantiated; and was intentionally communicated to a law enforcement agency or DCS by a person who knew the report was false.

### **III. The Department of Child Services Abuse/Neglect Assessment**

DCS shall arrange for receipt of all reports of suspected child abuse or neglect on a twenty-four (24) hour, seven (7) day per week basis. **IC 31-33-7-1**. Reports are received at a centralized Hotline. The reporting number is (800) 800-5556. **IC 31-33-18-5(a)** provides that an audio recording of a telephone call to the child abuse Hotline is confidential, and that the recording may be released only upon a court order.

DCS shall initiate an appropriately thorough child protection assessment of every report of known or suspected child abuse or neglect. **IC 31-33-8-1(a)**. **IC 31-33-8-1(b)** provides that if a judge or a prosecutor reports known or suspected child abuse or neglect, DCS shall initiate an assessment. When DCS receives a report of child abuse or neglect from medical personnel, school personnel, a social worker, law enforcement officials or personnel, judiciary personnel, or prosecuting attorney personnel, **IC 31-33-8-1(c)** provides that DCS shall forward the report to the local county DCS office to determine if an assessment shall be initiated. The term “investigation” rather than “assessment” was used before July 1, 2009. The purpose of the assessment is to determine whether the child is a victim of abuse or neglect. “Assessment” is defined at **IC 31-9-2-9.6** as:

An initial and ongoing investigation or evaluation that includes:

- (1) a review and determination of the safety issues that affect a child and;
  - (A) a child’s parents, guardians, or custodians; or
  - (B) another individual residing in the residence where the child resides or is likely to reside;
- (2) an identification of the underlying causes of the safety issues described in subdivision (1);
- (3) a determination whether child abuse, neglect, or maltreatment occurred; and
- (4) a determination of the needs of a child’s family in order for the child to:
  - (A) remain in the home safely;
  - (B) return to the home safely; or
  - (C) be placed in an alternative living arrangement.

DCS prepares a written document detailing information given by the person who reports child abuse or neglect. **IC 31-33-7-4**. This document is called a 310 report. The 310 report is made available to the prosecutor and law enforcement and to the coroner in the case of a child’s death. **IC 31-33-7-5**. Law enforcement may conduct an immediate on-site assessment of the report along with DCS whenever law enforcement has reason to believe a criminal offense has been committed. DCS and law enforcement frequently work together. **IC 31-33-7-7**. **IC 31-33-8-2**. The primary purpose of law enforcement investigations is to determine whether a crime has been committed, identify an alleged perpetrator, and give information to the county prosecutor’s office. Sometimes there will be a criminal case as well as a CHINS case involving the abuse or neglect of the same child.

The assessment of a child abuse or neglect report shall be initiated immediately and no later than twenty-four (24) hours after receipt of the report if abuse is alleged. **IC 31-33-8-1(e)**. If DCS believes that the child is in imminent danger of serious bodily harm, an immediate onsite assessment shall be initiated not later than one hour after receiving the report. **IC 31-33-8-1(d)**. Neglect assessments shall be initiated within a reasonably prompt time, but not

later than five days. **IC 31-33-8-1(f)**. When the immediate well-being or safety of the child appears to be endangered, an assessment shall be initiated regardless of the time of day. **IC 31-33-8-1(h)**. If the report alleges that the child lives with a parent who is married to or lives with a person who has been convicted of child neglect, battery, or is required to register as a sex or violent offender, DCS shall initiate a reasonably prompt assessment, but not later than five days. **IC 31-33-8-1(g)**. The assessment 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; and (5) the home environment and the relationship of the child to the parent, guardian, custodian, or other persons responsible for the child's care. **IC 31-33-8-7(a)**. **IC 31-33-8-7(b)** states the assessment may include a visit to the child's home, an interview with the child, and a physical, psychological, or psychiatric examination of any child in the home. DCS or the law enforcement agency which participates in the assessment shall arrange for color photographs to be taken of the areas of trauma visible on the child and for a radiological examination if medically indicated. **IC 31-33-8-3**. It is a class A misdemeanor offense for a person to knowingly or intentionally obstruct or interfere with a child abuse assessment. **IC 31-33-22-2(b)**.

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. DCS may seek the assistance of the Court to obtain admission of the case manager to the child's home or school. **IC 31-33-8-7(c)**. If the custodial parent, guardian, or custodian of the child refuses to allow DCS to interview the child, DCS may petition the court, and the court may order the parent, guardian, or custodian to allow DCS to interview the child with or without the parent, guardian, or custodian being present. **IC 31-33-8-7(d)**, **(e)**. In **In Re F.S.**, 53 N.E.3d 582, 585 (Ind. Ct. App. 2016), the Court reversed the trial court's order requiring Mother to allow DCS to interview her two oldest children as part of a child abuse and neglect assessment. The Court concluded the statutes on which DCS based its request to control Mother's conduct by compelling her to submit the children to DCS interviews require DCS to show some evidence suggesting abuse or neglect before the trial court may issue such an order. *Id.* at 599. The Court clarified that the report alone does not allow DCS to conduct an interview with the child. *Id.* at 598. In **In Re A.H.**, 992 N.E.2d 960, 968 (Ind. Ct. App. 2013), *trans. denied*, the Court affirmed the trial court's order granting DCS's petition to interview two children as part of the assessment. The Court could not say that "due process requires DCS to conduct an assessment or part of an assessment in order to obtain information which would provide a basis supporting the accuracy or reliability of the report, prior to interviewing the child or children." *Id.* at 967. In **In Re G.W.**, 977 N.E.2d

381, 387 (Ind. Ct. App. 2012), *trans. denied*, the Court affirmed the trial court's order requiring Mother to make her nine-year-old daughter available for an interview at Susie's Place, a Child Advocacy Center, as part of the DCS assessment of a child sexual abuse allegation involving the nine-year-old daughter's twelve-year-old sister as a victim of sexual abuse. The Court opined that **IC 31-33-8-7(d)** specifically contemplates that DCS may interview the other children in the home to determine their condition as required by **IC 31-33-8-7(a)(3)**. *Id.* at 385. The Court stated that nothing prohibited DCS from designating a third party to interview a child outside the home. *Id.* at 386.

The Court may also order a medical or physical examination or treatment of the child. **IC 31-32-12-1**. DCS or law enforcement can request a court order under **IC 31-32-13** 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. **IC 31-33-8-8**. **IC 31-33-11-1** provides that if a child is hospitalized and is the subject of a DCS assessment, the hospital, if informed of the assessment, may not release the child to the parent, guardian, custodian, or to a court approved placement until the hospital receives DCS authorization or a copy of the court order from DCS indicating that the child may be released.

After the assessment is completed, DCS shall classify reports as either substantiated or unsubstantiated. **IC 31-33-8-12**. A written report of the assessment is made on state form 311. **IC 31-33-18-4(a)** requires DCS to give verbal and written notice to each parent, guardian, or custodian of the child that completed assessment reports and other information relating to the abuse/neglect assessment are available upon request. Parents, guardians, or custodians can access the report and investigation information by signing a written release form that states what information is requested. **IC 31-33-18-4(b)**. The only prerequisite that can be placed on the parties obtaining the investigation information is to pay reasonable copying costs. **IC 31-33-18-4(b)**. In **F.D. v. Indiana Dept. of Child Services**, 1 N.E.3d 131 (Ind. 2013), Parents sued DCS for failure to notify them that their nephew had molested their two-year-old daughter. The trial court granted summary judgment in favor of DCS, but the Indiana Supreme Court found that summary judgment was not proper and remanded to the trial court for further proceedings. *Id.* at 140. The Court observed that Parents' suit was founded upon the failure by DCS to follow its statutorily mandated duty under **IC 31-33-18-4** to give verbal and written notice to parents that the reports and information relating to the child abuse or neglect investigation are available upon the request of the parent. *Id.* Parents contended that DCS's inaction hindered their ability to obtain proper treatment for their daughter. The Court opined that the facts, which must be construed in favor of Parents as the non-moving party on summary judgment, did not fall within the circumstances granting immunity under the plain words of the statute, which is in derogation of common law and must be narrowly construed against immunity. *Id.*

“Substantiated” is defined at **IC 31-9-2-123** and “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” is defined at **IC 31-9-2-132** and “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.”

DCS maintains the computerized Child Protection Index to organize and access information on substantiated child abuse and neglect assessment reports. **IC 31-33-26-2**. Substantiated reports concerning parents, guardians, and custodians are included in the Index. Unless a court has determined that the child is a CHINS based on a substantiated report of abuse or neglect that names the perpetrator or the facts presented at a CHINS hearing are consistent with the report of abuse or neglect, DCS shall notify the parent, guardian, or custodian of the child named in the report and any perpetrator identified by DCS who is not a parent, guardian, or custodian, that DCS has entered the substantiated report into the Index within thirty (30) days after the entry of the report into the Index. **IC 31-33-26-8(a), (b)**. The identified perpetrator, including the child’s parent, guardian, or custodian, may request an administrative hearing unless a court is in the process of making a determination. **IC 31-33-26-8(c)**. The reason for the administrative hearing is to give the identified perpetrator the opportunity to convince the administrative hearing officer that the DCS substantiation of abuse or neglect is not correct. The identified perpetrator’s request for an administrative hearing must be made within thirty days of DCS service of notice to the identified perpetrator, unless the identified perpetrator demonstrates that failure to request an administrative hearing was due to excusable neglect or fraud. **IC 31-33-26-8(d)**.

At the administrative hearing, DCS must prove by a preponderance of the evidence that the identified perpetrator is responsible for the child’s abuse or neglect. **IC 31-33-26-9(b)**. The administrative hearing officer shall consider hearsay evidence to be competent evidence and may not exclude hearsay evidence based on the technical rules of evidence. If hearsay evidence is objected to and does not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely on hearsay evidence. **IC 31-33-26-9(c)**. The administrative hearing officer may consider children’s hearsay evidence as allowed by the Child Hearsay Exception at **IC 31-34-13-1**. If DCS fails to carry the burden of proof, the administrative hearing officer can order DCS to change or expunge the substantiated report. **IC 31-33-26-9(d)**. The administrative hearing officer can also order DCS to amend a substantiated report by deleting the name of the alleged perpetrator if the hearing officer finds that the person was not the perpetrator of child abuse or neglect that occurred. **IC 31-33-26-15(b)**.



The administrative hearing shall not take place while there is a pending CHINS case or if criminal charges are filed against the perpetrator based on the same facts and circumstances on which DCS classified the report as substantiated. **IC 31-33-26-11(a), (b); IC 31-33-26-12(a). IC 31-33-26-11(c)** provides that if the juvenile court determines the alleged abuse or neglect did not occur or the person was not a perpetrator, the perpetrator is not entitled to an administrative hearing. If the perpetrator is convicted of the criminal charges where the facts provided the basis for the substantiated report, the perpetrator is not entitled to an administrative hearing. **IC 31-33-26-12(b)**. A perpetrator is not entitled to an administrative hearing if the juvenile court has already determined that the child is a CHINS based on a report that names the perpetrator as the individual who committed the abuse or neglect. **IC 31-33-26-8(a)**.

A CHINS case may be filed only if child abuse or neglect is substantiated. If child abuse or neglect is unsubstantiated, DCS cannot take formal legal action. DCS may assist parents by making a safety plan or providing referrals for services.

If child abuse or neglect is substantiated, DCS may, but is not required to, enter into an Informal Adjustment or file a CHINS petition in juvenile court. When DCS determines in a child abuse or neglect assessment that the child will be safe if left in the home and the parents are willing to receive services to remedy the neglect or abuse situation, then DCS may negotiate with the parents to provide services through an Informal Adjustment program. The obvious advantage of the Informal Adjustment over a CHINS case is the limited intervention into the family and the lessened use of state resources. A problem with DCS use of an Informal Adjustment is that the Informal Adjustment may neither adequately protect the child nor fully resolve a neglect or abuse situation.

The Informal Adjustment is signed by DCS and the child's parents and lists a program of court ordered services in which the parents and child will participate to remedy substantiated abuse or neglect. **IC 31-34-8-1**. The Informal Adjustment is approved by the court, and usually lasts for six months, but may be extended for an additional three months. **IC 31-34-8-6**. DCS monitors the parents' compliance with the Informal Adjustment and submits a report to the court five months after the Informal Adjustment begins. **IC 31-34-8-7(a)**. If the court extends the Informal Adjustment for the additional three months, DCS will file a supplemental report on compliance. **IC 31-34-8-7(b)**. The court may find parents in contempt for failing to comply with the services and requirements in the Informal Adjustment. **IC 31-34-8-3**. The child will not be placed in out-of-home care under an Informal Adjustment. Sometimes DCS will try an Informal Adjustment, and then file a CHINS petition later.

When the child's safety requires the protection afforded by a CHINS case, the DCS attorney or a prosecuting attorney may request the court's authorization to file a CHINS petition. **IC 31-34-9-1(a), (b)**. The court shall consider the preliminary inquiry conducted by the case manager and the evidence of probable cause and authorize the filing of the CHINS petition if the court finds probable cause to believe that the child is a Child in Need of Services. **IC 31-34-9-2**. **IC 31-34-9-2** provides the court shall also determine if a child shall be referred for assessment by a dual status assessment team as described in **IC 31-41-1-5**. A dual status child is a child who has been or is the subject of both delinquency and CHINS proceedings.

Although DCS conducts many assessments each month, only a few of the assessments result in the filing of a CHINS case. Even if a CHINS case is filed, the child may not be removed from the home. DCS may work with the parents and child in the parents' home. DCS is required to prioritize consideration of relatives or defacto custodians for placement of Children in Need of Services who have been removed from their parents. **IC 31-34-4-2**. A de facto custodian is a person who has been the primary caregiver and financial supporter of a child who has resided with the person for six months if the child is under three years old or for one year if the child is over three years old. **IC 31-9-2-35.5**. **IC 31-9-2-107(c)** states that, for purposes of **IC 31-34-4**, "relative" means any of the following in relation to the child: parent, grandparent, brother, sister, stepparent, stepgrandparent, stepbrother, stepsister, first cousin, uncle, aunt, or any other individual with whom a child has an established and significant relationship. Relatives must be suitable and willing to accept placement of the child and must also successfully pass a criminal history check and a DCS records check.

#### **IV. Rights of Children, Parents, Relatives, and Others in CHINS Cases**

##### **A. Children's Rights**

IC 31-34-9-7 provides that the child is a legal party to the CHINS case. The child has many other rights to notice, access to reports, and to provide information in the courtroom, which are discussed below. Due to the child's age and special needs, it is very difficult for the child to use his legally given rights without adult assistance. In addition, the court may order the child excluded from the CHINS or termination hearing for good cause. IC 31-32-6-8. If the child has been excluded, the child will not need to attend the court hearings. Some courts routinely exclude children who are below a certain age from the court hearings.

Indiana law provides for a Guardian ad Litem or Court Appointed Special Advocate to assist children. IC 31-34-10-3 requires the court to appoint a Guardian ad Litem or Court Appointed Special Advocate for every child at the CHINS initial hearing. The Guardian ad Litem and Court Appointed Special Advocate are legal parties to the CHINS case. IC 31-34-9-7. The Guardian ad Litem or Court Appointed Special Advocate does not represent the child's wishes, but instead represents and protects the child's best interests. The Guardian ad Litem or Court Appointed Special Advocate may be a trained community volunteer, a staff person from a county program, or an attorney appointed by the court. The Guardian ad Litem or Court Appointed Special Advocate may research, examine, advocate, facilitate, and monitor the child's situation (IC 31-9-2-50; IC 31-9-2-28) and serves until the CHINS case is closed (IC 31-32-3-8). Court Appointed Special Advocates and Guardians ad Litem who serve on CHINS, termination, and delinquency cases are required to complete training on the identification and treatment of child abuse and neglect and early childhood, child, and adolescent development (IC 31-9-2-28(b); IC 31-9-2-50(b)). The Indiana State Office of Guardian ad Litem and Court Appointed Special Advocate is part of the Division of State Court Administration of the Indiana Supreme Court. The State Office certifies county programs that provide Guardian ad Litem or Court Appointed Special Advocate services on CHINS and termination cases. The State Office also provides education and training for county program directors, volunteers, and attorneys, and distributes state funding to certified county programs. IC 33-24-6-4.

The child also has the following rights:

- the right to cross-examine witnesses, subpoena witnesses and evidence, and introduce evidence unless excluded from the hearing. **IC 31-32-2-1. (IC 31-32-4-2(b)** allows but does not require the court to appoint an attorney to represent the child.)
- the right to receive a CHINS summons (**IC 31-34-10-2(b)**) and notices of the CHINS detention hearing (**IC 31-34-5-1(a)**), initial hearing (**IC 31-34-10-2(b)**), dispositional hearing (**IC 31-34-19-1.3(a)**), dispositional modification hearing (**IC 31-34-23-3(a)**), periodic case review hearing (**IC 31-34-21-4(e)**), and permanency hearing (**IC 31-34-21-4(e)**).
- the right to have access to reports prepared for the dispositional (**IC 31-34-18-6(a), (c)**), dispositional modification (**IC 31-34-23-4**), periodic case review (**IC 31-34-22-2**), and permanency (**IC 31-34-22-2(a), (b)**) hearings unless the court determines on the record that the report should not be released to the child. The child's Guardian ad Litem or Court Appointed Special Advocate and an attorney appointed to represent the child will always receive a copy of the report prepared for any hearing.

- the right to be given a fair opportunity to controvert the dispositional report (**IC 31-34-19-2(c)**), dispositional modification report (**IC 31-34-23-4**), periodic case review report (**IC 31-34-22-3(c)**), and permanency hearing report (**IC 31-34-22-3(c)**).
- the right to request DCS to permit sibling visitation if the child or the child’s sibling, or both, receive foster care. **IC 31-28-5-3**. DCS shall permit sibling visitation and establish a sibling visitation schedule if DCS finds that sibling visitation is in the child’s best interests **IC 31-28-5-3**. If DCS denies the request for sibling visitation, the child’s Guardian ad Litem or Court Appointed Special Advocate may petition the juvenile court for an order requiring sibling visitation. **IC 31-28-5-4**. If the juvenile court determines it is in the child’s best interests to have sibling visitation, the juvenile court shall order the visitation and establish a schedule. **IC 31-28-5-4**.
- the right to a case plan as required by federal law. **IC 31-34-15-1**. **IC 31-34-15-2** states that DCS shall negotiate the case plan with the child if the child is at least fourteen years old. If the child is at least fourteen years old, the child may select a child representative to represent the child in the development of the case plan and the child shall be given a copy of the case plan. **IC 31-34-15-3**. **IC 31-34-15-7(b)**, **(c)**.
- the opportunity to be heard and to make recommendations at the permanency hearing if the child is at least sixteen years old and the proposed permanency plan provides for another planned permanent living arrangement. **IC 31-34-21-7(c)**.

#### B. Parents’, Guardians’ and Custodians’ Rights

Parents, including alleged fathers whose paternity has not been established, and non-custodial parents, are legal parties to CHINS cases. **IC 31-34-9-7**. **IC 31-9-2-88(b)**. Legally appointed guardians and others who are custodians of the child, such as stepparents are also legal parties to the CHINS case. **IC 31-9-2-49** defines “guardian” and **IC 31-9-2-31** defines “custodian” for the purposes of the CHINS process. **IC 31-32-2-3(b)** lists the rights of parents, guardians, and custodians in CHINS, parental participation, and financial responsibility hearings. The parent, guardian, or custodian is entitled to: (1) cross-examine witnesses; (2) obtain witnesses or other tangible evidence by compulsory process; and (3) introduce evidence on behalf of the parent, guardian, or custodian. There is no right to a jury trial in CHINS cases. **IC 31-32-6-7(a)**.

The court may appoint an attorney to represent a parent in a CHINS case and is required to appoint an attorney in certain situations. **IC 31-32-4-3(b)**. **In Re G.P.**, 4 N.E.3d 1158 (Ind. 2014), the Indiana Supreme Court held that **IC 31-34-4-6** requires the court to appoint

counsel for a parent in a CHINS case if the parent requests the appointment of counsel and is found by the court to be indigent. *Id.* at 1163. The **G.P.** Court opined that Mother was denied her due process protections when Mother requested court appointed counsel at a CHINS review hearing, was found by the court to be indigent and entitled to appointment of counsel, but no court appointed counsel actually represented Mother at the CHINS review hearings or at the subsequent permanency hearing. *Id.* at 1167. The Court held that, to the extent any case law holds that a trial court has discretion to appoint counsel for an indigent parent in a CHINS proceeding, those cases are not correct on that point. *Id.* at 1163. The Court vacated the trial court’s judgment terminating Mother’s parental rights as a result of the trial court’s failure to have court appointed counsel represent Mother in the CHINS case reviews and permanency hearing. *Id.* at 1169. The court is also required by federal law, the **United States Service Members Civil Relief Act, 50 U.S.C. § 521**, to appoint an attorney for a parent who is on duty with U.S. Armed Forces and to grant a ninety day stay of proceedings.

If DCS removes the child, each of the child’s parents has the right to be notified of the removal. **IC 31-34-3-1** through **IC 31-34-3-4**. DCS must also notify the parent of the detention hearing, initial hearing, and all other CHINS hearings unless the Court has already given the parent notice of later hearings when the parent was present at a CHINS hearing. **IC 31-32-1-4(d), (f)**.

The purpose of a CHINS adjudication is not to punish the parents, but to protect the children. **In Re A.H.**, 913 N.E.2d 303 (Ind. Ct. Ap. 2009). A CHINS adjudication focuses on the condition of the child and can also come about through no wrongdoing on the part of either parent, for example, where a child substantially endangers his own health or that of another or because parents lack the financial ability to meet the child’s extraordinary medical needs. **In Re N.E.**, 919 N.E.2d 102, 105 (Ind. 2010). The resolution of a juvenile proceeding focuses on the best interests of the child, rather than guilt or innocence as in a criminal proceeding. **N.E.** at 103, citing **Baker v. Marion County Office of Family & Children**, 810 N.E.2d 1035, 1039 (Ind. 2004). CHINS cases aim to help families in crisis—to protect children, not to punish parents; the focus is on the child’s best interests and whether the *child* needs help that the parent will not be willing or able to provide (emphasis in opinion). **In Re S.D.**, 2 N.E.3d 1283, 1285. (Ind. 2014). **IC 31-34-4-6** provides that DCS has the duty to inform parents in writing of the following legal rights:

- the right to have a detention hearing within forty-eight (48) hours of the child’s removal by DCS and to request the child’s return;
- the right to be represented by an attorney, cross-examine witnesses and present evidence on the parent’s behalf at each court proceeding on the CHINS petition, and the right to a court appointed attorney upon the parent’s request if the court

finds that the parent does not have sufficient financial means for obtaining representation as described in **IC 34-10-1**;

- the right not to make statements that are incriminating and to be informed that an incriminating statement may be used in the CHINS court proceeding;
- the right to request for the case to be reviewed by the child protection team under **IC 31-33-3-6**;
- the right to be advised that a petition to terminate the parent-child relationship must be filed whenever the child has been removed from the parent and has been under the supervision of DCS for at least fifteen (15) of the most recent twenty-two (22) months.

In **In Re A.G.**, 6 N.E.3d 952 (Ind. Ct. App. 2014), the Court discussed the negative inference drawn by the trial court in a CHINS case from Mother's refusal to testify in the State's case. Mother was diagnosed by a psychiatrist with Factitious Disorder by Proxy in connection with her child's life threatening cyanotic episodes. Citing **Gash v. Kohm**, 476 N. E.2d 910, 913 (Ind. Ct. App. 1985), the Court observed that the privilege against self-incrimination does not prohibit the trier of fact from drawing adverse inferences from a witness's refusal to testify. **A.G.** at 957. Although Mother contended that her right to raise her children has a constitutional dimension which distinguishes a CHINS proceeding from other civil proceedings, the Court found that Mother had not supported her contention with cogent arguments or citations to the record; thus, the issue was waived. **Id.** at 957-58. **See** the following case law on the admissibility of statements made in CHINS cases to criminal proceedings: **Hastings v. State**, 560 N.E.2d 664, 669 (Ind. Ct. App. 1990) (Court found that statements made by Mother to a caseworker as part of an active CHINS case could not be admitted into evidence in criminal proceedings against Mother because the statements were compelled by the State and therefore not voluntary); **Thomas v. State**, 612 N.E.2d 604, 607 (Ind. Ct. App. 1993) (Father's child molesting conviction affirmed; trial court correctly admitted into evidence the CHINS Agreed Entry signed by Father in which he stipulated his children were victims of a sex offense).

Parents, guardians, and custodians have the right to be served with the CHINS petition and summons. **IC 31-34-10-2(b)**. They also have the right to have access to reports prepared for the dispositional (**IC 31-34-18-6(a)**), dispositional modification (**IC 31-34-23-4**), periodic case review (**IC 31-34-22-2(a)**), and permanency hearings (**IC 31-34-22-2(a)**) unless the court determines on the record that the report should not be released to the parents. If the court makes this determination, the court may provide a factual summary of the report to the parents. **IC 31-34-18-6(c)** and **IC 31-34-22-2(c)**. The parents' attorney will always be given access to a copy of the report. **IC 31-34-18-6(b)**, **IC 31-34-22-3(b)**. Parents have the right to be given a fair opportunity to controvert the predispositional

report (IC 31-34-19-2(c)), dispositional modification report (IC 31-34-23-4), periodic case review report (IC 31-34-22-3(c)), and permanency hearing report (IC 31-34-22-3(c)). Parents also have the opportunity to be heard at court and to make recommendations to the court at all CHINS hearings. IC 31-34-5-1(b) (detention hearing); IC 31-34-10-2(h) (initial hearing); IC 31-34-19-1.3(b) (dispositional hearing); and IC 31-34-21-4(d) (case review hearing and permanency hearing).

Case law from the United States Supreme Court and the Indiana Supreme and Appellate Courts emphasizes parents' fundamental U.S. Constitutional rights to raise their children without undue interference from state government. The Fourteenth Amendment to the U.S. Constitution requires DCS and the courts to provide fundamental fairness and due process to parents in CHINS and terminations cases. Indiana law provides that it is the policy of the State of Indiana to "strengthen family life by assisting parents to fulfill their parental obligations" and "to remove children from their families only when it is in the child's best interest or in the interest of public safety." IC 31-10-2-1. State law requires DCS to exert reasonable efforts to preserve families and to reunite parents with their children unless a legal exception applies. IC 31-34-21-5.5. IC 31-34-21-5.6.

IC 31-34-15-2 provides that parents, guardians, and custodians are entitled to negotiate with DCS on the contents of the child's case plan, which shall be completed no later than sixty days after the date of the child's first placement or the date of the dispositional hearing, whichever occurred first. Several termination of the parent-child relationship cases discuss DCS's lack of compliance with case plans. See C.A. v. Indiana Dept. of Child Services, 15 N.E.3d 85, 93 (Ind. Ct. App. 2014) (Court could not conclude that DCS's failure to provide case plan to Mother resulted in a procedural error so egregious that she was denied due process of law; Mother attended team meetings, the purpose of which was to set goals and make a plan to reach goals); In Re B.J., 879 N.E.2d 7, 17 (Ind. Ct. App. 2008) (Father who asserted he was denied due process because DCS failed to provide him with case plan, waived any due process challenge to adequacy of CHINS proceeding because he failed to object during CHINS proceedings and did not raise this claim at the termination hearing); Castro v. Office of Family and Children, 842 N.E.2d 367, 376 (Ind. Ct. App. 2006) (Court could not say that OFC's failure to adhere to time requirements of case plan deprived incarcerated Father of due process; Father was aware of conduct that could lead to termination and was informed of steps needed to facilitate reunification); McBride v. County Off. Of Family & Children, 798 N.E.2d 185, 196 (Ind. Ct. App. 2003) (OFC presented draft case plan to Mother within the sixty-day period, but she did not sign case plan until four months later; Court held that any alleged due process deficiencies regarding case plan did not deprive Mother of due process).

### C. Rights of Relatives and Others

DCS is required to consider placing a Child in Need of Services who has been removed from parents and taken into DCS custody with a suitable and willing relative or defacto custodian before considering any other out-of-home placement. **IC 31-34-4-2**. A de facto custodian is a person who has been the primary caregiver and financial supporter of a child who has resided with the person for six months if the child is under three years old or for one year if the child is over three years old. **IC 31-9-2-35.5**. The definition of “relative” at **IC 31-9-2-107(c)** includes the child’s parent, grandparent, brother, sister, stepparent, step-grandparent, stepbrother, stepsister, first cousin, uncle, aunt, and any other individual with whom a child has an established and significant relationship. **IC 31-34-4-2(b)** states that DCS shall consider placing the child with a relative related by blood, marriage, or adoption before considering any other placement of the child.

**IC 31-34-3-4.5(a)** requires DCS to exercise due diligence (within thirty days of a child’s removal from parents) to identify and provide notice of the removal to all adult relatives, including the child’s siblings over the age of eighteen. **IC 31-34-3-4.5(b)** states DCs may not provide notice to a person if DCS knows or suspects that the person has caused family or domestic violence. Domestic or family violence is defined at **IC 31-9-2-42**, and includes battery, sex offenses, threats, and abuse of animals with the intent to threaten or intimidate a family or household member. **IC 31-34-3-4.5(c)** provides that the notice must: (1) state that the child has been removed from parents by DCS; (2) set forth the legal options the relative may have, including the care and placement of the child and other options that may be lost if the relative fails to respond to the notice; (3) describe the requirements for the relative to become a foster parent; and (4) describe additional services available to the child placed in foster care.

Relatives who are not licensed foster parents and who desire to have DCS to place children with them must meet the statutory requirements for criminal history checks and checks for substantiated reports of abuse or neglect required by **IC 31-34-4-2** (temporary protective custody relative placement), **IC 31-34-20-1.5** (dispositional placement), and **IC 31-34-21-7.5** (permanency plan placement). The requirements are the same for each statute and are summarized below:

- DCS shall conduct a criminal history check of each person residing in the proposed non-licensed placement.
- Criminal history check is defined at **IC 31-9-2-22.5** and, in pertinent part, includes a fingerprint based criminal history background check of both state and national data bases or a national name base criminal history check for persons living in the residence who are at least eighteen years old. It also includes, for persons who live



in the residence and are at least fourteen years old, the collection of substantiated reports of child abuse or neglect in a jurisdiction where the person resided within the past five years and a check of the national sex offender registry maintained by the U.S. Department of Justice. A check of local law enforcement records in every jurisdiction where a person who is eighteen years of age or older has resided within the previous five years is also part of the criminal history check unless DCS or the court grants an exception to the law enforcement check.

- Criminal history checks performed for the initial protective custody placement need not be repeated for dispositional or permanency placement.
- The following felony convictions defined at **IC 31-9-2-84.8** as “nonwaivable offenses” will preclude the proposed relative placement: murder, causing suicide, assisting suicide, voluntary manslaughter, reckless homicide, battery (within the past five years), domestic battery, aggravated battery, kidnapping, criminal confinement (within the past five years), human and sexual trafficking, felony sex offenses under **IC 35-42-4** (rape, criminal deviate conduct, child molesting, child exploitation, vicarious sexual gratification, child solicitation, child seduction, sexual battery, sexual misconduct with a minor), carjacking (within the past five years), arson (within the past five years), incest, neglect of a dependent, child selling, a felony involving a weapon under **IC 35-47** or **IC 35-47.5** (within the past five years), a felony relating to controlled substances under **IC 35-48-4** (within the past five years), an offense relating to material or a performance that is harmful to minors or obscene under **IC 35-49-3**, a driving while under the influence felony (**IC 9-30-5**) (within the past five years), or a substantially equivalent felony conviction in another state, except for circumstances listed directly below. A juvenile delinquency adjudication for an act listed at **IC 31-9-2-84.8** will also preclude placement.
- The court may order or approve the proposed placement for the child even if a person residing in the home has committed an act that resulted in substantiated abuse or neglect or has certain specific felony convictions or juvenile delinquency adjudications. The felonies which do not preclude placement are: battery; criminal confinement; carjacking; arson; a felony involving a weapon under **IC 35-47** or **IC 35-47.5**; a felony relating to a controlled substance under **IC 35-48-4**; a felony driving while under the influence (**IC 9-30-5**); or a substantially equivalent felony in another state if the conviction did not occur within the past five years, and the person’s commission of the offense, delinquent act, or act of abuse or neglect is not relevant to the person’s present ability to care for the child, and that the placement is in the child’s best interest.
- In determining whether a child may be placed with a person who has committed substantiated child abuse or neglect or who has committed one of the specific

felonies or delinquent acts which do not preclude placement, the court shall consider the following: (1) the length of time since the person committed the offense, delinquent act, or act of substantiated abuse or neglect; (2) the severity of the offense, delinquent act, or abuse or neglect; (3) evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

Case law on rights of relatives and others in CHINS cases includes **D.L. v. Huck**, 978 N.E.2d 429, 438 (Ind. Ct. App. 2012), clarified on rehearing at 984 N.E.2d 223 (Ind. Ct. App. 2013) (Court determined that Aunt and Uncle, with whom child had been placed by DCS with plan of adoption, had liberty interest in their relationship with child and had standing to bring suit for fraud against DCS in connection with DCS's removal of the child; Grandfather, who had requested but been denied placement, did not have standing); **In Re Adoption of Z.D.**, 878 N.E.2d 495, 498 (Ind. Ct. App. 2007) (after termination of Father's parental rights, any of paternal grandmother's derivative due process rights were effectively extinguished by the time paternal grandmother filed her adoption petition); **In Re N.H.**, 866 N.E.2d 314, 317-18 (Ind. Ct. App. 2007) (Court held that trial court erred in finding that guardian Stepfather was not a party to CHINS case, where his guardianship had not been terminated); **In Re G.R.**, 863 N.E.2d 323, 328 (Ind. Ct. App. 2007) (because Mother's parental rights had been involuntarily terminated three months before maternal grandmother and step-grandfather petitioned for kinship placement, maternal grandmother was no longer the child's grandparent and trial court was not required to consider her for placement under **IC 31-34-4-2(a)** or any other CHINS statute); **E.R. v. Office of Family & Children**, 729 N.E.2d 1052, 1061 (Ind. Ct. App. 2000) (Court rejected parents' claim that trial court erred in failing to place children with Spanish-speaking foster parents or with relatives in Mexico; parents failed to cooperate and to enable court to obtain information needed to determine feasibility of placing children with paternal grandparents in Mexico); **In Re C.W.**, 723 N.E.2d 956, 962 (Ind. Ct. App. 2000) (Court affirmed trial court's order denying grandparents' petition for placement; order was in child's best interest because grandparents had not eradicated smoke from their home or vehicle, child had bronchitis, and Court Appointed Special Advocate recommended continued foster care placement); **Worrell v. Elkhart Cty. Office of Family**, 704 N.E.2d 1027, 1029 (Ind. 1998) (Indiana Supreme Court ruled that foster parents do not have standing to request visitation with former foster children).

## **V. Jurisdiction and Procedural Requirements**

A. CHINS, Dissolution, Paternity, Guardianship, and Adoption Overlap while CHINS Case is Pending

The juvenile court has exclusive original jurisdiction in CHINS cases, including cases where the child's parents are divorced or paternity has been established in court. **IC 31-30-1-1(1)**. **IC 31-30-1-12(a)** gives the dissolution court which has jurisdiction of a child custody, parenting time, or child support proceeding concurrent original jurisdiction with the juvenile court for the purpose of modifying custody, parenting time, or child support of a child who is under the jurisdiction of the juvenile court due to a CHINS proceeding. If the dissolution court modifies custody, the modification is effective only when the juvenile court either (1) enters an order adopting and approving the child custody modification; or (2) terminates the CHINS proceeding. **IC 31-30-1-12(b)**. The law is similar for paternity proceedings when a CHINS case has been filed. **IC 31-30-1-13(a)** gives the paternity court which has jurisdiction over the establishment or modification of paternity, child custody, parenting time, or child support concurrent original jurisdiction with another juvenile court for the purpose of establishing or modifying paternity, custody, parenting time, or child support of a child who is under the jurisdiction of another juvenile court due to a CHINS proceeding. **IC 31-30-1-13(b)** states that whenever the court having child custody jurisdiction in a paternity proceeding modifies custody of a child who is under the jurisdiction of another court due to CHINS proceeding, the modification is effective only when the juvenile court with CHINS jurisdiction: (1) enters an order adopting and approving the custody modification; or (2) terminates the CHINS proceeding. The juvenile court's order modifying custody, child support, or parenting time survives the termination of the CHINS case. **IC 31-10-1-12(c)** (dissolution); **IC 31-10-1-13** (paternity).

**IC 31-30-1-6(a)** provides that juvenile jurisdiction law does not prohibit a probate court from exercising its jurisdiction over a guardianship of a child who is under the age of eighteen. If the allegations in the guardianship petition or produced at the guardianship proceedings indicate that the child for whom guardianship is requested meets the definition of a CHINS under **IC 31-34-1**, the probate court on its own motion or at the request of a party shall: (1) send the petition for guardianship or the record of guardianship to DCS; and (2) direct DCS to initiate an assessment to determine whether the child for whom a guardianship is requested is a CHINS. **IC 31-30-1-6(b)**. The probate court retains jurisdiction over the matter until the juvenile court authorizes the filing of a CHINS petition. **IC 31-30-1-6(c)**. Even if abuse or neglect is substantiated, DCS may decide not to initiate a CHINS proceeding because the coercive intervention of the juvenile court is not needed since probate court can protect the child by appointing a guardian. Issues of parental unfitness can be raised in a guardianship case if no CHINS proceeding is pending. **See Matter of Guardianship of Thompson**, 514 N.E.2d 618, 620-21 (Ind. 1987) (probate court had jurisdiction to establish a temporary guardianship on evidence that child's adoptive parents were not residents of the state and were not properly performing parental duties; this did not constitute conflict between juvenile and probate court jurisdiction). **But see Matter of Guardianship of Bramblett**, 495 N.E.2d 798, 799 (Ind. Ct. App. 1986), in

which the Court affirmed the probate court's dismissal of the guardianship on the grounds that the juvenile division had exclusive jurisdiction over the child; therefore, the probate court had no jurisdiction to entertain a guardianship petition which would have the effect of superseding the action taken and order issued by the juvenile division.

**IC 31-30-1-1(10)** states the juvenile court has jurisdiction over guardianship of the person of a child who: (1) has been adjudicated a CHINS; (2) is the subject of a pending CHINS proceeding; and (3) for whom a juvenile court has approved a permanency plan pursuant to **IC 31-34-21-7** that provides for the appointment of a guardian. See also IC 29-3-5-1(a)(12) and **IC 29-3-5-1(g)**. **IC 29-3-5-1(a)(12)** states that a petition for guardianship must include information on whether a CHINS petition or a program of informal adjustment has been filed regarding the minor. The petition must also include information on whether the CHINS or informal adjustment case is open at the time the guardianship petition is filed. The court which has jurisdiction over the guardianship case shall notify DCS of a hearing regarding the guardianship of a minor if a CHINS petition has been filed regarding the child or a program of informal adjustment is pending, and DCS may participate in the hearing. **IC 29-3-5-1(g)**.

In general, Indiana case law indicates that there is no jurisdictional conflict for CHINS cases and adoption cases to proceed concurrently. See **Matter of Adoption of T.B.**, 622 N.E.2d 921, 924 (Ind. 1993) (Court held that a court with probate jurisdiction may adjudicate an adoption matter simultaneously with the juvenile court's adjudication of a CHINS proceeding); **In Re Adoption of H.L.W.**, 931 N.E.2d 400, 410 (Ind. Ct. App. 2010) (Court concluded trial court had ability to consider simultaneously both the CHINS action and the Foster Parents' petition for adoption); **In Re Adoption of H.N.P.G.**, 878 N.E.2d 900, 904 (Ind. Ct. App. 2008) (probate court has jurisdiction to rule on adoption petition despite pendency of CHINS and TPR proceedings in juvenile court with regard to same child); **In Re Adoption of J.D.B.**, 867 N.E.2d 252, 258 (Ind. Ct. App. 2007) (consent statute permitted DCS to voice its assessment of adoptive petitioner's adoption of CHINS child; accordingly, Court concluded probate court had jurisdiction to rule on adoption petition); **In Re Infant Girl W.**, 845 N.E.2d 229, 241 (Ind. Ct. App. 2006) (mere fact that there were pending CHINS and TPR proceedings did not divest probate court of its exclusive jurisdiction over the adoption case).

#### B. Age of Child and Continuing Jurisdiction

The juvenile court has subject matter jurisdiction over a child adjudicated a CHINS prior to the child's eighteenth birthday until the child reaches the age of twenty-one. **IC 31-9-2-13(d)**. **IC 31-30-2-1(a)**. The juvenile court's jurisdiction over a parent or guardian of the estate of a child continues until the parent or guardian of the estate has satisfied the

financial obligation imposed by **IC 31-40. IC 31-30-2-1(c)**. See **In Re A.T.**, 889 N.E.2d 365, 368-69 (Ind. Ct. App. 2008), in which the Court held that the trial court lacked jurisdiction to reinstate the nineteen-year-old child as a ward of DCS because the CHINS case had been previously dismissed.

### C. Procedural Requirements for Filing CHINS Petition

The following seven activities are the procedural requirements for filing a CHINS petition:

1. CHINS category: the facts supporting the alleged abuse, neglect, or endangerment must fit into one of the CHINS categories listed in **IC 31-34-1**.
2. Written information given to intake officer: **IC 31-34-7-1** provides that any person may give an intake officer (defined at **IC 31-9-2-62** as a probation officer or caseworker) “written information” that a child is a CHINS. This written information could include a DCS 310 form.
3. Preliminary inquiry: if the intake officer has “reason to believe” that the child is a CHINS, the intake officer shall make a preliminary inquiry (defined at **IC 31-9-2-94**) to determine whether the interests of the child require further action and complete a dual status screening tool on the child. **IC 31-41-1-3**.
4. Referral of Preliminary Inquiry to DCS attorney: **IC 31-34-7-2** states that the intake officer shall send the report of the preliminary inquiry to the DCS attorney, who, pursuant to **IC 31-34-7-3**, shall decide whether to request authorization from the court to file a CHINS petition.
5. Request for judicial authorization to file CHINS petition: **IC 31-34-9-1** provides that the DCS attorney or a prosecuting attorney may request the juvenile court to authorize the filing of a CHINS petition.
6. Judicial authorization to file CHINS petition: **IC 31-34-9-2** provides that the court shall consider the preliminary inquiry and evidence of probable cause contained in the preliminary inquiry or an affidavit of probable cause and authorize the filing of a CHINS petition if the court finds probable cause to believe that the child is a CHINS. The juvenile court must determine if the child should be referred for an assessment by a dual status assessment team. **IC 31-41-1-5**. Children who have been subjects of both CHINS and delinquency proceedings are referred to a dual status assessment team.
7. CHINS petition filed: **IC 31-34-9-3** outlines the requirements to be included in the verified CHINS petition.

#### D. Ending CHINS Jurisdiction and Dissolution, Paternity, and Guardianship Overlap

Juvenile court jurisdiction ends when any of the following occurs: (1) dismissal; (2) child reaches the age of twenty-one; or (3) discharge of the child and the child's parent, guardian, or custodian. **IC 31-34-9-8(a)** provides that "a person representing the interests of the state" may file a motion to dismiss the CHINS petition. **IC 31-34-9-8(b)** requires the attorney who files the motion to provide to the court a statement of the reasons why dismissal is requested. **IC 31-34-9-8(c)** states that the court shall either grant the motion to dismiss the case or set a hearing on the motion to dismiss not later than ten days after the motion is filed. The court may appoint a Guardian ad Litem or Court Appointed Special Advocate to represent the child's best interests if the court sets a hearing on the motion to dismiss. **IC 31-34-9-8(d)**.

**IC 31-30-2-1(a)(1)** provides that juvenile court jurisdiction over the child terminates on the child's twenty-first birthday, unless the court discharges the child at an earlier time. If the juvenile court has jurisdiction over a guardianship of the person of an adjudicated CHINS for whom guardianship is the permanency plan (described in **IC 31-30-1-1(10)**), the guardianship continues until it is terminated by the juvenile court or when the child reaches nineteen years of age, if the child is a full-time student at age eighteen. **IC 31-30-2-1(d)**. The juvenile court's guardianship ends when the child is eighteen years old if the child is not attending school. **IC 31-30-2-1(d)**. If the guardianship of the person continues after the child becomes eighteen years old or nineteen years old if a full-time student, the juvenile court shall transfer the guardianship proceeding to a court having probate jurisdiction in the county where the guardian resides. **IC 31-30-2-1(d)**. **IC 31-30-2-1(g)** states that the juvenile court may retain jurisdiction over an older youth (defined at **IC 31-28-5.8-4** as an eighteen or nineteen-year-old) who is a recipient or beneficiary of kinship guardianship assistance or other financial assistance provided to or for the benefit of the child.

**IC 31-34-21-11** provides that the court shall discharge the child and the parent, guardian, or custodian when it finds that "the objectives of the dispositional decree have been met." See **In Re Infant Girl W.**, 845 N.E.2d 229, 245 (Ind. Ct. App. 2006) (Court opined that juvenile court was statutorily required to dismiss the CHINS case pursuant to **IC 31-34-21-11** because the objectives of the child's dispositional goal of adoption had been met).

A juvenile court CHINS order which modifies custody, child support, or parenting time survives the termination of the CHINS case until the dissolution court or the paternity court assumes or reassumes jurisdiction of the case to address all issues. **IC 31-30-1-12(c)** (dissolution); **IC 31-30-1-13(c)** (paternity). When the dissolution court or the paternity court assumes or reassumes jurisdiction of the case, custody, child support, or parenting

time may be modified in accordance with applicable statutes. **IC 31-30-1-12(d)** (dissolution); **IC 31-30-1-13(d)** (paternity).

## **VI. CHINS Detention and Initial Hearing**

A CHINS proceeding may be initiated in the county where the child resides, where the act occurred, or where the condition exists. **IC 31-32-7-1**. Upon the motion of the court, the child, or the child's parent, guardian, or custodian, the CHINS case may be assigned to a juvenile court in the county of the child's residence at any time before the dispositional hearing. **IC 31-32-7-2**; **IC 31-32-7-3(a)**. Supervision of a child may be assigned to a court in the county of the child's residence following disposition. **IC 31-32-7-3(b)**.

### **A. Detention Hearing**

The CHINS detention hearing and initial hearing are held at the same time if the child has been removed from the home. **IC 31-34-10-2(i)**. The purpose of the detention hearing is for the court to determine the child's temporary placement. If DCS removes the child from the parents, guardian, or custodian, the court must hold a detention hearing within forty-eight hours. **IC 31-34-5-1(a)**. Saturdays, Sundays, and legal holidays for State employees are not included in computing the time period by which the detention hearing must be held. **IC 31-34-5-1(a)**. If the detention hearing is not held, the child shall be released to the parent, guardian, or custodian. **IC 31-34-5-1(a)**. Although the Indiana statute uses the term "detention hearing", Children in Need of Services are placed in out-of-home placements such as foster care or relative care for their protection and may not be detained in a juvenile detention center unless charged with a delinquent act. **IC 31-34-6-1**. The child and the child's parent, guardian, custodian, foster parents, and other caretakers with whom the child has been placed must be notified of the date, time, and place of the detention hearing, and have the opportunity to be heard at court and to make recommendations. **IC 31-34-5-1(b)**. In **Wardship of Nahrwold v. Dept. of Public Welfare**, 427 N.E. 2d 474, 479-80 (Ind. Ct. App. 1981), the Court held that neither due process nor the statutory scheme required that Mother be permitted to call character witnesses at the detention hearing, and the court can intervene in the parent-child relationship on the basis of probable cause determination that the subject child is in need of services. The court may order the child to be continued in "detention" (out-of-home protective placement) if the court finds that there is probable cause to believe that the child is a CHINS and that one of the following is true:

- the child's detention (out-of-home protective placement) is necessary to protect the child;

- the child is unlikely to appear at court for later hearings;
- the child has a reasonable basis for requesting not to be released;
- the parent, guardian, or custodian cannot be located or is unwilling or unable to take custody of the child;
- due to the child's safety, family services cannot be used to prevent the child's removal.

**IC 31-34-5-3.** If the court does not find that there is probable cause to believe the child is a CHINS and that one of the criteria listed above is true, the court must order the child released to the parent, guardian, or custodian. If the court releases the child, the court can impose conditions on the parent, guardian, or custodian to ensure the child's safety. **IC 31-34-5-3.5.** The court can schedule an additional detention hearing. **IC 31-34-5-4.** **IC 31-34-6-2(b)** states that the court or DCS shall consider placing the child with a relative related by blood, marriage, or adoption before considering any other placement for the child. **IC 31-34-6-2(c)** states that before a child is placed with a relative or de facto custodian, a home evaluation and background checks described in **IC 31-34-4-2** are required.

#### B. The CHINS Petition

The CHINS petition must be filed before the detention hearing is held. **IC 31-34-5-1(c).** The CHINS petition includes the specific facts about child abuse and neglect that have been learned by the DCS family case manager who performed the assessment. The CHINS petition must contain a citation to the provision of the juvenile law that defines a CHINS, and a concise statement of the facts upon which the allegations are based. **IC 31-34-9-3.** In **Maybaum v. Office of Family & Children**, 723 N.E.2d 951, 956 (Ind. Ct. App. 2000), the Court reversed the CHINS adjudication, stating that, when parents do not receive notice of the specific allegations against them, they do not know what evidence to present on their behalf, which evidence or witnesses to obtain by compulsory process or which questions to ask during cross-examination, rights explicitly granted to them under the CHINS statute. **See also Matter of M.O.**, 72 N.E.3d 527, 532 (Ind. Ct. App. 2017) (CHINS petition alleged neglect (**IC 31-34-1-1**), but juvenile court adjudicated sixteen-year-old girl to be a CHINS because she was a danger to herself or others (**IC 31-34-1-6**); Court opined issue was tried by consent under T.R. 15(B) and juvenile court did not err in CHINS adjudication); **In Re V.C.**, 867 N.E.2d 167, 178-79 (Ind. Ct. App. 2007) (Court held that issues not raised by the pleadings may be tried by the express or implied consent of the parties, but a party is entitled to some form of notice that an issue that was not pleaded is before the court); and **In Re Ju.L.**, 952 N.E.2d 771, 780 (Ind. Ct. App. 2011) (Court concluded that DCS provided Mother with adequate notice that the abuse statute was also a



ground for the CHINS petition because Mother's acts toward the children were also at issue).

### C. Initial Hearing

The court shall hold an initial hearing within ten days of the filing of the CHINS petition if the child is not detained. **IC 31-34-10-2(a)**. The court will verify that each party has received a copy of the CHINS petition and summons. The court will also inquire as to the whereabouts of parents who are not present at the hearing and order DCS to arrange for legal service of the CHINS petition and summons to those parents, including incarcerated parents. DCS will send copies of the CHINS petition and summons to the superintendent of the jail or prison who will give these documents to the incarcerated parent, pursuant to Ind. Trial Rule 4.3. The issue of incarcerated parents' presence at CHINS hearings has not been addressed in recent case law, but termination of parental rights case law indicates that an incarcerated parent has no absolute right to be present at a termination hearing. See In Re J.E., 45 N.E.3d 1243, 1246 (Ind. Ct. App. 2015) (Court opined due process does not mean that parents have the absolute right to be *physically* present at the termination hearing (emphasis in opinion)), *trans. denied*. When incarcerated parents are not physically present at the termination hearing, they should be given the opportunity to participate in the trial in a meaningful manner. Tillotson v. Clay County Dep't. of Family and Children, 777 N.E.2d 741, 746 (Ind. Ct. App. 2002). In In Re C.G., 954 N.E.2d 910, 918-19 (Ind. 2011), a termination of parental rights case, the Court held that DCS's delay in locating Mother, who was incarcerated on federal charges in Henderson, Kentucky, and notifying her about the CHINS case did not substantially increase the risk of error in the termination case. Id. at 918. The case manager learned that Mother had been arrested in Utah, and searched for her in two county jails in Utah, the Marion County, Indiana Jail, and the Indiana Department of Correction without success. The Court noted DCS had no reason to suspect Mother would be in federal custody and no reason to suspect Mother would be in Kentucky. Id.

If a parent's address remains unknown after a diligent inquiry has been made, DCS should publish a legal notice to the parent in a newspaper about the CHINS proceeding. **IC 31-34-10-2(k)** states that the court may schedule an additional initial hearing to be certain that all parents and other legal parties have received the CHINS petition and summons. **IC 31-34-10-2(l)** states that the court may hold an additional initial hearing not more than thirty days after the first initial hearing unless the court grants an extension of time due to extraordinary circumstances and states the extraordinary circumstances in a written court order.

The court will also do the following at the initial hearing:

- Appoint a Guardian ad Litem or Court Appointed Special Advocate to represent and protect the child's best interests. **IC 31-34-10-3**. The Guardian ad Litem and Court Appointed Special Advocate are parties to the CHINS case. **IC 31-34-9-7**.
- May appoint an attorney to represent the parents. **IC 31-32-4-3(b)**. The court must appoint an attorney if the parent requests a court appointed attorney and the court finds the parent to be indigent.
- Inform the child (if the child is at an age of understanding) and parents, guardian, or custodian of the nature of the allegations in the CHINS petition and the dispositional alternatives available to the court. **IC 31-34-10-4**. Determine if the child should be referred for an assessment by the dual status assessment team as described in **IC 31-41-1-5**. **IC 31-34-10-2**.
- Inform the parents, guardian, or custodian that they may be required to participate in services, and the parents or guardian of the estate that they may be held financially responsible for services, and may controvert allegations at the parental participation or financial responsibility hearings. **IC 31-34-10-5**.
- Determine whether the parents, guardian, or custodian admit or deny the allegations of the CHINS petition. **IC 31-34-10-6**. If the child is alleged to be a CHINS because the child substantially endangers his or her own health or the health of another individual (**IC 31-34-1-6**) or because the child is a victim of human or sexual trafficking (**IC 31-34-1-3.5**), the court shall determine whether the child admits or denies the allegations of the CHINS petition. A failure to respond constitutes a denial. **IC 31-34-10-7**.

See **In Re G.P.**, 4 N.E.3d 1158, 1163 (Ind. 2014), in which the Indiana Supreme Court held that the court must appoint an attorney to represent a parent who requests a court appointed attorney in a CHINS proceeding if the court finds the parent to be indigent. The Court opined that, to the extent any case law holds that a court has the discretion to appoint counsel for a parent in a CHINS proceeding, those cases are not correct on that point. Id.

If the parents, guardian, or custodian admit the allegations in the CHINS petition, the court will adjudicate the child to be a CHINS, and schedule a dispositional hearing within thirty days. **IC 31-34-10-8**. If a parent, guardian, or custodian denies the allegations of the CHINS petition, the court will schedule a factfinding hearing. **IC 31-34-10-9**.

In **In Re K.D.**, 962 N.E.2d 1249, 1260 (Ind. 2012), the Indiana Supreme Court reversed the CHINS adjudication. Mother had admitted the allegations of the CHINS petition but Stepfather requested a factfinding hearing which was not held. The Court held that whenever a trial court is confronted with one parent wishing to admit that the child is in

need of services and the other parent wishing to deny that the child is in need of services, the trial court shall conduct a factfinding hearing as to the entire matter. In **In Re S.A.**, 27 N.E.3d 287, 292 (Ind. Ct. App. 2015), *trans. denied*, the Court clarified that when the CHINS adjudication *can* involve both parents at the same time, it *should* involve both parents at the same time so there is one adjudication as to all facts pertaining to the entire matter (emphasis in opinion). The Court opined that, if multiple hearings are unavoidable, then the trial court should, if at all possible, refrain from adjudicating the child to be a CHINS until evidence has been heard from both parents. *Id.* at 292-93. The Court explained that, if an adjudication is unavoidable before evidence has been heard from the second parent, then the trial court must give meaningful consideration to the evidence provided by the second parent in determining whether the child remains a CHINS. *Id.* at 293. **See also Matter of D.P.**, 72 N.E.3d 976, 982, 985 (Ind. Ct. App. 2017) (Court reversed trial court's CHINS adjudication, finding that Mother's CHINS admission, which was based on Father's conduct, was not binding upon Father or conclusive evidence that the child was a CHINS); and **In Re T.N.**, 963 N.E.2d 467, 469 (Ind. 2012) (Indiana Supreme Court held that trial court erred in not conducting a contested factfinding hearing requested by Father, thereby violating his due process rights).

## **VII. CHINS Factfinding Hearing**

If a parent, guardian, or custodian denies the allegations in the CHINS petition, the Court must hold a factfinding hearing. **IC 31-34-11-1**. The factfinding hearing must usually be held within sixty days of the filing of the CHINS petition, but the time period to complete the factfinding hearing may be extended to 120 days if all parties agree to the extension. **IC 31-34-11-1(b)**. **IC 31-34-11-1(d)** provides that if a CHINS factfinding hearing is not held within the statutory time limit, the court shall dismiss the case without prejudice, if asked to do so by motion. Note that a party's failure to object to a continuance requested by another party may result in a waiver of statutory time guidelines due to the principle of invited error. **See A.D. v. Clark**, 737 N.E.2d 1214, 1217 (Ind. Ct. App. 2000).

The DCS attorney has the legal duty of proving that the allegations in the CHINS petition are true and that the child is a CHINS. The DCS attorney must provide proof by a preponderance of the evidence. **IC 31-34-12-3**. A CHINS finding should consider the family's condition not just when the case was filed, but when it is heard. **In Re S.D.**, 2 N.E.3d 1283, 1290 (Ind. 2014). Each CHINS determination is very specific to the condition of that particular child. In **In Re J.C.**, 3 N.E.3d 980, 984 (Ind. Ct. App. 2014).

In addition to proving the allegations in the CHINS petition, the DCS attorney must also prove that 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. In **In Re S.D.**, 2 N.E.3d 1283, 1290 (Ind. 2014), the Indiana Supreme Court, reversing the CHINS adjudication of a two-year-old child who had special medical needs, found the evidence could not reasonably support an inference that Mother was likely to need the court's *coercive intervention* to finish the required 24 hour home care simulation at Riley Hospital on caring for the child's tracheostomy so the child could be returned to Mother's care (emphasis in opinion). **See also In Re D.F.**, 83 N.E.3d 789, 797 (Ind. Ct. App. 2017) (Court opined physically abusive and neglectful Mother's behavior, including self-medicating her mental illnesses with alcohol and marijuana and blaming others for her parenting problems, supported trial court's conclusion that children would not receive care and treatment without coercive intervention of court); **In Re L.S.**, 82 N.E.3d 333, 341-42 (Ind. Ct. App. 2017) (Court affirmed juvenile court's denial of CHINS petition; juvenile court's coercive intervention was not necessary because Mother filed a dissolution case, Father had left the home where Mother and the children lived, and there was an existing order for protection against Father); **Matter of D.P.**, 72 N.E.3d 976, 984-85 (Ind. Ct. App. 2017) (Court reversed trial court's CHINS finding based on domestic violence charges against Father with a no-contact order identifying Mother as the victim because there was no evidence the domestic violence occurred in the child's presence, no evidence on the impact of the violence on the child, and no evidence that the coercive intervention of the court was necessary to protect him); **Matter of N.C.**, 72 N.E.3d 519, 526-27 (Ind. Ct. App. 2017) (Court reversed CHINS adjudication based on Mother's neglect of child because Father had been awarded temporary custody of the child in a domestic relations case and DCS had no concerns about the child's care by Father; coercive intervention of the juvenile court was not needed because whatever neglect the child experienced in Mother's home was rectified by being placed in Father's home); **K.B. v. Indiana Dept. of Child Services**, 24 N.E.3d 997, 999, 1006-07 (Ind. Ct. App. 2015) (CHINS adjudication of Father's two children affirmed; in support of trial court's conclusion that its coercive intervention was necessary, Court noted evidence of Father's unstable housing, Father's failure to cooperate with DCS or the Court Appointed Special Advocate, and the children's excellent school attendance and grades when they lived with grandmother).

The CHINS burden of proof is affected by three rebuttable presumptions, **IC 31-34-1-2(b)**, **IC 31-34-12-4**, and **IC 31-34-12-4.5**. **IC 31-34-1-2(b)** states that "[e]vidence 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 31-34-12-4** states:

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;
- (3) the injury would not ordinarily be sustained except for the act or omission of a parent, guardian, or custodian; and
- (4) there is a reasonable probability that the injury was not accidental.

Recent case law on **IC 31-34-12-4** includes **Indiana Department of Child Services v. J.D.**, 77 N.E.3d 801, 807-09 (Ind. Ct. App. 2017) (Court reversed trial court's denial of CHINS petition for two-month-old infant who was diagnosed with five rib fractures, a fractured right tibia, and a fractured clavicle which were in different stages of healing; Court observed the importance of the presumption statute was underscored in cases such as this case, where injured child was too young to speak for himself), *trans. denied*; and **In Re C.K.**, 70 N.E.3d 359, 374-75 (Ind. Ct. App. 2016) (Court affirmed juvenile court's CHINS case adjudication for four-month-old child who suffered severe subdural hematomas and retinal hemorrhages while in Mother's care; juvenile court did not err in applying presumption statute and Parents did not present sufficient evidence to rebut presumption), *trans. denied*.

**IC 31-34-12-4.5(a)** states there is a rebuttable presumption that a child is a child in need of services if the state establishes that the child lives in the same household as an adult who: (1) committed an offense described in **IC 31-34-1-3** [CHINS category for child victims of sex crimes] or **IC 31-34-1-3.5** [CHINS category for victims of human or sexual trafficking] against a child and the offense resulted in a judgment under **IC 31-34-11-2**; or a conviction; or (2) has been charged with an offense described in **IC 31-34-1-3** or **IC 31-34-1-3.5** against the child and is awaiting trial. **IC 31-34-12-4.5(b)** states:

- (b) The following may not be used as grounds to rebut the presumption under subsection (a):
  - (1) the child who is the victim of the sex offense described in **IC 31-34-1-3** is not genetically related to the adult who committed the act, but the child presumed to be the child in need of services under this section is genetically related to the adult who committed the act.
  - (2) The child who is the victim of the sex offense described in **IC 31-34-1-3** differs in age from the child presumed to be the child in need of services under this section.
- (c) This section does not affect the ability to take a child into custody or emergency custody under **IC 31-34-2** if the act of taking the child into custody or emergency custody is not based upon a presumption established under this section.

However, if the presumption established under this section is the sole basis for

taking a child into custody or emergency custody under **IC 31-34-2**, the court first must find cause to take the child into custody or emergency custody following a hearing in which the parent, guardian, or custodian of the child is accorded the rights described in **IC 31-34-4-6(a)(2)** through **IC 31-34-4-6(a)(5)**.

There is one rebuttable presumption that a child is not a CHINS. **IC 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 the failure.” This statute also clarifies that the presumption does not prevent the court from ordering, when the health of a child requires, medical services from a licensed Indiana physician. The presumption does not apply to any situations in which the life or health of a child is in serious danger.

Indiana law also allows the court to consider a parent’s acts against any child in determining whether a child is a CHINS. **IC 31-34-12-5** states that “[e]vidence that a prior or subsequent act or omission by a parent, guardian, or custodian injured or neglected a child is admissible in proceedings alleging that a child is a child in need of services to show the following:

- (1) Intent, guilty knowledge, the absence of mistake or accident, identification, the existence of a common scheme or plan, or other similar purposes.
- (2) A likelihood that the act or omission of the parent, guardian, or custodian is responsible for the child’s current injury or condition.

In **Matter of J.L.V., Jr.**, 667 N.E.2d 186, 191 (Ind. Ct. App. 1996), the Court concluded that evidence of Mother’s prior involvement with the office of family and children (predecessor agency to DCS) was admissible under both the statute and Ind. Evidence Rules 404(b) and 405(b).

**IC 31-34-12-6** provides that neither the physician-patient privilege nor the husband-wife privilege is grounds for excluding evidence in a CHINS proceeding. A physician’s testimony about a fourteen-year-old child’s statements which were made to the physician for the purpose of medical treatment was found to be admissible pursuant to Ind. Evidence Rule 803(4) [Statement Made for Medical diagnosis or Treatment] in **Q.J., Jr., v. Department of Child Services**, 92 N.E.3d 1092 (Ind. Ct. App. 2018). **See also Matter of A.F.**, 69 N.E.3d 932 (Ind. Ct. App. 2017), a termination of the parent-child relationship case in which the Court opined that the trial court did not abuse its discretion in admitting into evidence the mental health therapist’s testimony about the statements which the ten-year-old child made to the therapist.

Another evidentiary issue in CHINS cases is the child hearsay exception, **IC 31-34-13-1** through **4**. The child hearsay exception provides that the out-of-court statement made by a child under the age of fourteen or a child witness under age eighteen who has an “impairment of general intellectual functioning or adaptive behavior” may be admitted into evidence at the CHINS factfinding hearing or at an administrative hearing conducted pursuant to **IC 31-33-25-9** [ hearing requested by perpetrator to have substantiated report amended or expunged] or to sanction a licensee pursuant to **IC 31-27-4-23** even though the child does not testify at trial, and no other hearsay exception applies to the child’s statement. **IC 31-34-13-2**. The child’s statement may be admitted through the testimony of a witness who heard the statement or through a sponsoring witness who offers the child’s written or videotaped statement as an exception to the general rule excluding hearsay. The statement is admissible to determine whether the child or the child’s sibling is a CHINS. **IC 31-34-13-2**. To admit the statement as evidence, the court must find, after notice to the parties of a hearing, that “the time, content, and circumstances” of the statement and any other evidence provide “sufficient indications of reliability”; and the child testifies at the CHINS factfinding hearing; was available for face-to-face cross-examination when the statement; or is found by the court to be unavailable as a witness. **IC 31-34-13-3**. The court may find the child to be unavailable as a witness because:

- (i) a psychiatrist, physician, or psychologist has certified that the child’s participation in the proceeding creates a substantial likelihood of emotional or mental harm to the child;
- (ii) a physician has certified that the child cannot participate in the proceeding for medical reasons; or
- (iii) the court has determined that the child is incapable of understanding the nature and obligation of an oath.

In **Matter of Relationship of M.B.**, 638 N.E.2d 804 (Ind. Ct. App. 1994), the children were available, but not present, at the admissibility hearing and an affidavit was admitted by the psychologist on the harm to the children in testifying and being cross-examined. The psychologist formed his opinion on the basis of his interview of the children and his review of the notes of the “DPW counselor” who worked with the children. On appeal, the Court rejected Parents’ argument that the affidavit did not suffice as “certification,” as required by **IC 31-6-16-3(2)(c)** (recodified at **IC 31-34-13-3(2)(C)(i)**). The Court ruled as follows: (1) an expert can use hearsay in formulating an opinion on the harm to the child in testifying; and (2) the affidavit from the psychologist sufficed as a certification within the plain meaning of the word “certify” (to authenticate or vouch for a thing in writing). *Id.* at 809-10. The Court found the opinion of the expert that forcing the children to testify and be cross-examined would cause them to withdraw further, would set back their treatment process, and would recreate a threatening and anxiety provoking experience for the

children, was sufficient to meet the burden of showing a substantial likelihood of harm to the children. Id. at 810.

**IC 31-34-13-4** provides that the child’s statement or videotape may not be admitted into evidence under the child hearsay exception unless the DCS attorney informs the parties of: (1) an intention to introduce the statement or videotape into evidence; and (2) the content of the statement or videotape at least seven (7) days before the proceedings to give the parties a fair opportunity to prepare a response to the statement or videotape before the proceeding. Case law clarifies that the court must hold a preliminary child hearsay hearing separate from the CHINS factfinding to allow the admission of child hearsay or videotape under **IC 31-34-13-2**. See In Re J.Q., 836 N.E.2d 961, 965 (Ind. Ct. App. 2005) and Townsley v. Marion County Dept. of Child, 848 N.E.2d 684, 689-90 (Ind. Ct. App. 2006), in which CHINS adjudications based on child hearsay evidence were reversed and remanded due to procedural deficits and issues concerning reliability determinations.

#### **VIII. Selected Case Law on Substantive Issues in CHINS Cases**

##### **Child’s Age Precluded CHINS Finding**

In In Re T.G., 726 N.E.2d 857, 858 (Ind. Ct. App. 2000), the CHINS petition was filed one month before the child’s eighteenth birthday, but the factfinding hearing and adjudication occurred six weeks after the child’s eighteenth birthday. The Court reversed the adjudication, finding that if the child is not adjudicated CHINS prior to the child’s eighteenth birthday, the court loses subject matter jurisdiction. Id. at 860.

In Mafnas v. Owen County Office of Family, 699 N.E.2d 1210, 1211 (Ind. Ct. App. 1998), the oldest of parents’ four children reached the age of eighteen prior to the CHINS adjudication. The Court opined that the CHINS determination made for the oldest child after the child’s eighteenth birthday was void. Id. at 1213.

##### **Child Neglect**

In Q.J., Jr., v. Indiana Department of Child Services, 92 N.E.3d 1092 (Ind. Ct. App. 2018), the Court affirmed the trial court’s CHINS adjudication for six children on evidence that Parents had deprived their two boys of food resulting in serious malnourishment and subjected the boys to severe discipline. Other evidence which supported the CHINS



adjudication revealed that two of Parents' four girls had been physically abused, that all of the girls had been exposed to domestic violence and to the abuse and extreme punishment of the boys and that Parents encouraged the girls to participate in violence against their siblings and one of the girls was struggling with depression, anxiety, and trauma-related symptoms.

In **Matter of N.C.**, 72 N.E.3d 519, 526-27 (Ind. Ct. App. 2017), the Court reversed the six-year old child's CHINS adjudication because Father had been awarded temporary custody of the child in a domestic relations case, the child had been residing with Father for two months, and DCS had no concerns about Father's care of the child. The Court explained that the **In Re S.D.**, 2 N.E.3d 1283 (Ind. 2014) opinion treats endangerment and the need for coercive intervention as two separate elements, both of which must be proven in a CHINS case. **N.C.** at 525-26.

In **In Re D.J. v. Department of Child Services**, 68 N.E.3d 574, 576-77 (Ind. 2017), the CHINS petition was filed because Mother had left her toddler unattended in the bathtub, the two children had no beds, the house was in complete disarray, and there was an overwhelming bad odor in the house. The Indiana Supreme Court reversed the trial court's CHINS adjudication because Parents cooperated and satisfactorily completed DCS services, including the parenting curriculum, and individual and family therapy, by the time of the factfinding hearing. **Id.** at 581. The Court explained that Parents required the coercive intervention of the court *early* in the CHINS process, but the trial court's findings did not show Parents needed *ongoing* coercive intervention (emphasis in opinion). **Id.** at 581.

In **In Re A.H.**, 58 N.E.3d 951, 956 (Ind. Ct. App. 2016), the Court reversed the CHINS adjudication of a seventeen-year-old child who had been diagnosed with anxiety disorder, separation anxiety, and depression, exhibited violent behavior toward her sister and Mother, and had been the victim of bullying and rape. Mother was willing to participate in services, and at the dispositional hearing, DCS informed the court that Mother was doing everything she could for the child. The Court found no evidence that Mother failed to supply the child with the help the child needed. **Id.** at 955.

In **In Re S.K.**, 57 N.E.3d 878, 883 (Ind. Ct. App. 2016), the Court reversed the trial court's order finding Parents' four children to be CHINS. The Court held the following findings were not sufficient to support the juvenile court's conclusion that the children's emotional health was *seriously* endangered: (1) the children did not get along with Father's girlfriend; (2) the children sometimes quarreled and said hateful things to each other; (3) the children were upset and withdrawn after visits with Mother; (4) the children were anxious about having to move or change schools (emphasis in opinion). **Id.** at 883.

In **K.B. v. Indiana Dept. of Child Services**, 24 N.E.3d 997, 999 (Ind. Ct. App. 2015), the Court affirmed the CHINS adjudication of Father's two children on evidence of domestic violence and suspected drug use in Father's home and failure by Father and his girlfriend to comply with the Informal Adjustment which they had signed.

In **In Re S.D.**, 2 N.E.3d 1283, 1291 (Ind. 2014), the Indiana Supreme Court reversed the trial court's CHINS adjudication of Mother's two-year-old child who had special medical needs and was hospitalized at Riley Hospital. By the time of the factfinding hearing, Mother had learned how to administer medication through the child's gastrostomy tube, both Mother and a DCS approved secondary caregiver had finished two classroom sessions on caring for the child's tracheostomy, and DCS had returned Mother's four other children to her home. Neither Mother nor the secondary caregiver had completed the 24 hour home care simulation, which was required by Riley Hospital before the two-year-old child could be released to Mother's home, although Mother had long known of this requirement. The Court opined that the evidence could not reasonably support an inference that Mother was likely to need the court's *coercive intervention* to finish the home care simulation (emphasis in opinion). *Id.* at 1290. The Court observed that a CHINS finding should consider the family's condition not just when the case was filed, but when it is heard. *Id.*

In **J.C. v. Indiana Dept. of Child Services**, 3 N.E.3d 980, 983-84 (Ind. Ct. App. 2013), the Court affirmed the trial court's CHINS adjudication for Mother's fifteen-year-old son due to evidence that he: (1) had missed about half of the scheduled school days during a twenty-eight day period; (2) was on probation for substance abuse and reported continuing use of drugs; (3) was engaged in self-harming behaviors and suicidal thoughts and was not using his mental health medications to address his diagnosis of major depressive disorder; and (4) frequently left home without permission. Evidence was also presented that Mother had not communicated or engaged with her fifteen-year-old son's treatment providers, probation officer, school counselors, or DCS, all of which led to the Court's conclusion that the coercive intervention of the trial court was necessary. *Id.* at 984. The Court reversed the CHINS adjudication of Mother's twelve-year-old son, noting that the only CHINS allegation that directly pertained to him was his truancy for seven days. *Id.* at 984-85. The Court reiterated that each CHINS determination is very specific to the condition of that particular child. *Id.* at 984.

In **In Re R.S.**, 987 N.E.2d 155, 159 (Ind. Ct. App. 2013), the Court reversed the trial court's CHINS adjudication of Parents' infant, who had been born one month after the trial court had terminated Parents' rights to the infant's three older siblings, ages four, three, and two years. The Court observed that Parent's parental relationships with the three older siblings were terminated in part because Parents lacked housing and financial resources to

properly care for the siblings' special needs. Id. at 159. The Court noted evidence that the infant was healthy and tested negative for drugs, and Parents had income and clean appropriate housing for the infant. Id. The Court said that a CHINS adjudication may not be based on conditions that no longer exist, and the trial court should also consider the parents' situation at the time the case is heard. Id.

In In Re V.H., 967 N.E.2d 1066, 1073 (Ind. Ct. App. 2012), the Court reversed the CHINS adjudication of a sixteen-year-old child on evidence that Mother was addressing the child's behavioral issues through counseling, evaluation, and special education services, and the child did not need care, treatment, or rehabilitation that she was not receiving and was unlikely to be provided or accepted without the coercive intervention of the court.

In In Re V.C., 967 N.E.2d 50, 55 (Ind. Ct. App. 2012), the Court affirmed the CHINS adjudication on evidence that there was no approved suitable relative available to take custody of the child when Mother informed DCS that her mental state had deteriorated to the point that she could no longer care for the child and Father was incarcerated.

In M.K. v. Indiana Dept. of Child Services, 964 N.E.2d 240, 245-47 (Ind. Ct. App. 2012), the Court reversed the CHINS adjudication, finding no support for the trial court's conclusion that the children were endangered by neglect, because Parents had income and employment, were visiting Fort Wayne but had an apartment in Baltimore that was being repaired, Mother had packed ample supplies for the bus trip to Fort Wayne, and the children appeared to be fed and properly clothed in winter attire.

In In Re S.W., 920 N.E.2d 783, 790 (Ind. Ct. App. 2010), the Court affirmed the trial court's determination that the seventeen-year-old girl was a CHINS on evidence that the Sheriff found the girl and a friend walking down a rural road about twelve miles from the girls' home at 11:00 p.m., Parents refused to pick her up from the police station, the girl told the family case manager that drug use and domestic violence had occurred in her home, and the girl tested positive for marijuana.

In In Re A.H., 913 N.E.2d 303, 307-11 (Ind. Ct. App. 2009), the Court affirmed the CHINS determination on evidence that Parents demonstrated an overall inability or refusal to understand, retain and follow through with appropriate parenting advice on the amount and frequency of feeding and burping the baby, changing the baby's diaper, supporting the baby's head, cleaning the baby's eyes, and when to call the baby's doctor.

In In Re T.S., 881 N.E.2d 1110, 1113-14 (Ind. Ct. App. 2008), the Court affirmed the CHINS adjudication on evidence that Mother was hospitalized at Larue Carter Hospital pursuant to an involuntary commitment when the child was born, and, although Mother

hoped Maternal Grandmother would be able to adopt the child, Grandmother did not take any steps toward adoption and did not attend the CHINS factfinding hearing.

In **In Re C.S.**, 863 N.E.2d 413, 418 (Ind. Ct. App. 2007), the Court reversed the juvenile court's CHINS adjudication as to Father based on insufficient evidence, where Father: underwent genetic testing, was willing to establish paternity, had a job and housing, and had voluntarily taken a parenting class and consistently tested negative for drugs. The juvenile court's findings had focused on Mother's actions with respect to the child and specifically related primarily to Mother's drug use. Id.

In **Matter of E.M.**, 581 N.E.2d 948, 953-55 (Ind. Ct. App. 1991), the Court reversed the CHINS adjudication, noting that **IC 31-34-1-1** does not require parents to be the only supervisors of their children, parents may allow others to supervise and discipline the child, and, even if Mother's methods of parenting were "inappropriate," "inappropriateness" is not enough to support court intervention.

In **Parker v. Dept. of Public Welfare**, 533 N.E.2d 177, 179 (Ind. Ct. App. 1989), the Court affirmed the CHINS adjudication on evidence that Mother took the children to a friend's house before consuming large quantities of Valium and speed, and was irrational, uncooperative, and combative with police whom she asked for help to locate the children. The Court opined that the courts and the welfare department are not required to wait until a tragedy occurs to intervene. Id. at 179.

Injury by Act or Omission
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In **In Re D.F.**, 83 N.E.3d 789, 797 (Ind. Ct. App. 2017), the Court affirmed the CHINS adjudication for four children on evidence that Mother physically attacked her two oldest daughters. Mother struck her sixteen-year-old daughter in the face and head, and pulled and dragged her fourteen-year-old daughter by her hair. The DCS case manager observed the sixteen-year-old daughter had a swollen face, and the fourteen-year-old daughter had a scratch on her face and was missing a chunk of hair.

In **Indiana Department of Child Services v. J.D.**, 77 N.E.2d 801, 809 (Ind. Ct. App. 2017), *trans. denied*, the Court reversed and remanded the trial court's denial of the CHINS petition. An emergency room physician, a radiologist, and a child abuse pediatrician from Riley Hospital testified about the two-month-old child's injuries, which included corner fractures, posterior rib fractures, and a fractured clavicle. The physicians testified that the child's fractures were in different stages of healing, which indicated at least two separate incidents of trauma, the child did not suffer from any medical condition that could have

explained the injuries, Mother was unable to provide an explanation as to how the child was injured, and the injuries were non-accidental. The trial court stated that whether the child's injuries were non-accidental was a question of law, but the Court opined that the manner in which the child was injured was a question of fact. *Id.* at 808. The Court opined the trial court's statement finding the child was not a CHINS made it clear the trial court's decision was driven by a misunderstanding and misapplication of the law. *Id.* The Court explained that: (1) identifying the cause of a patient's injuries is a matter squarely within the purview of medical science; (2) in many cases, doctors or other medical professionals with the appropriate training and education will be the only individuals with the expertise required to understand and explain the biomechanical forces necessary to produce certain types of injuries; and (3) such testimony is of particular importance in cases such as this case, where a very young infant has numerous serious injuries for which parents have provided no plausible explanation. *Id.*

In *In Re C.K.*, 70 N.E.3d 359, 375 (Ind. Ct. App. 2016), *trans. denied*, the Court affirmed the juvenile court's finding that the child, who was four months old at the time of the filing of the CHINS petition, was a CHINS. Day care center staff noticed the infant was non-responsive and was not moving his arms or legs, so paramedics transported the child to the nearest hospital, where tests showed he had intracranial hemorrhaging. A pediatric neurosurgeon characterized the child's subdural hematomas, which were on both sides of his brain as "severe". Tests also revealed that the child had hemorrhages to the retina of his right eye. A Riley Hospital physician who was board-certified in child abuse pediatrics felt the child's injuries were suspicious for non-accidental trauma. The Court opined the trial court had before it sufficient evidence to establish that the child suffered injuries, that while he was in Mother's care he was showing symptoms of a head injury upon his arrival at day care, that his injuries were of a type not ordinarily sustained except for the act or omission of a parent, and that the injuries were not accidental. *Id.* at 374. The Court concluded the trial court properly applied the rebuttable presumption at **IC 31-34-12-4**. *Id.* at 375.

In *In Re A.G.*, 6 N.E.3d 952, 956-58 (Ind. Ct. App. 2014), the Court affirmed the CHINS adjudication of Mother's two children, who were one year old and two months old, on evidence that the older child had experienced life threatening cyanotic episodes while in Mother's care; the older child's medical providers could not explain the episodes consistent with any medical condition on which there was not external action on the child; a psychiatrist had diagnosed Mother with Factitious Disorder by Proxy; Mother was responsible for the older child's life threatening cyanotic episodes; a psychiatrist opined that that neither child would be safe in Mother's care and the results of Mother having custody could be life threatening to the children; and Mother's refusal to testify caused the trial court to draw a negative inference that Mother was concerned about incriminating herself.

In **In Re M.W.**, 869 N.E.2d 1267, 1271 (Ind. Ct. App. 2007), the Court reversed the CHINS adjudication, finding the record was devoid of any credible evidence that Mother had physically harmed her sons or that she abused alcohol as alleged in the CHINS petition. Mother and the children denied that Mother abused alcohol or harmed the children, and the son who had reported physical abuse testified that he had made it up. Id. at 1271.

In **In Re C.B.**, 865 N.E.2d 1068, 1073 (Ind. Ct. App. 2007), the Court affirmed the CHINS adjudication of a two-year-old child with multiple physical injuries, including a broken arm, bruised eye and face, bruises and swelling on the chest, neck, back of the head, groin, and buttocks. The doctor testified that the child had been beaten, probably on several occasions, and the Court found that, while it was not certain whether Mother had inflicted the injuries, there was no question that the child had suffered this harm while in Mother's care and custody and the record suggested that Mother was slow to seek medical treatment for the child. Id. at 1073.

In **Roark v. Roark**, 551 N.E.2d 865, 871-72 (Ind. Ct. App. 1990), the Court affirmed the CHINS adjudication on evidence that Father bruised the children's buttocks and legs through belt whippings, left finger bruises on the children's faces when he slapped them, held a child's hand over an open flame, forced a child to hold a push-up position until the child cried out in pain, and locked the children in their rooms while he took a nap. Additionally, the infant daughter of Father's girlfriend suffered second and third degree burns while in Father's care.

Parental Drug Use
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In **Matter of K.S.**, 78 N.E.3d 740, 745 (Ind. Ct. App. 2017), the Court reversed the juvenile court's finding that the four-month-old child was a CHINS because Mother used marijuana during her pregnancy and did not have stable housing. The Court noted that, although Mother admitted she used marijuana two months before the child's birth, there was no evidence showing how, specifically, Mother's marijuana use *seriously* impaired or *seriously* endangered the child (emphasis in opinion). Id. at 745.

In **In Re S.M.**, 45 N.E.3d 1252, 1257 (Ind. Ct. App. 2015), the newborn child's meconium tested positive for marijuana, but the Court found there was insufficient evidence to support the CHINS adjudication and reversed the adjudication. The Court opined there was no evidence showing *how*, specifically, the marijuana-positive meconium endangered the child (emphasis in opinion). Id. at 1257

In **In Re L.P.**, 6 N.E.3d 1019, 1021 (Ind. Ct. App. 2014), the Court reversed the CHINS adjudication of Mother's six-year-old child on evidence that Mother tested positive for methamphetamine at the time of the child's removal, but thereafter voluntarily submitted to ten drug screens, all of which were negative, by the time of the factfinding hearing. The Court opined that the factual finding of an isolated use of methamphetamine, without more, did not support the trial court's conclusion of law that the child was a CHINS. Id. at 1021.

In **In Re Des.B.**, 2 N.E.3d 828, 829 (Ind. Ct. App. 2014), the Court affirmed the CHINS adjudication of Mother's two children, who were under three years old, on evidence that Mother used cocaine for "energy" in her work as an exotic dancer, used marijuana daily, had a pattern of violent relationships with her children's fathers, had a criminal history of convictions for domestic battery, criminal mischief, and operating a vehicle while intoxicated, and had pled guilty to possession of marijuana.

In **B.N. v. Marion County Dept. of Child Serv.**, 969 N.E.2d 1021, 1026 (Ind. Ct. App. 2012), the Court reversed the CHINS adjudication based on Mother's arrest for possession of marijuana and oxycodone (a controlled substance) and her involvement in domestic violence with the children's father four years previously. Mother provided DCS with current prescriptions, submitted to voluntary drug screens which were negative, and no longer saw the children's father. The Court opined DCS had not met the burden required by **IC 31-34-1-1**. Id. at 1025.

In **In Re J.L.**, 919 N.E.2d 561, 564 (Ind. Ct. App. 2009), the Court affirmed the trial court's CHINS adjudication on evidence that Mother conceded to a lengthy history of drug abuse, including smoking marijuana two to three times per week, Mother continued to use drugs after the CHINS petition was filed, and the child was in the residence while Mother and Maternal Grandmother were using illegal substances. The Court opined that the fact that the child was asleep in another room did not alter the finding that the child was in Mother's care and custody while Mother was under the influence of marijuana. Id. at 564. Mother essentially abandoned the child without any responsible adult supervision. Id.

In **Perrine v. Marion County Office of Child Services**, 866 N.E.2d 269, 277 (Ind. Ct. App. 2007), the Court reversed the juvenile court's CHINS adjudication. Evidence showed that Mother admitted to a single use of methamphetamine outside the child's presence, the paraphernalia commonly used for methamphetamine consumption was found in the bedroom of an adult temporary houseguest, Mother was only unavailable to care for the disabled fourteen-year-old child for six to nine hours while she was incarcerated, Mother was unreasonably prevented by law enforcement from providing care for the child by her landlord or relatives who were trained to care for the child's special needs, and the criminal

charges against Mother were dropped shortly after she was released from jail. *Id.* at 274-77. The Court held that a single admitted use of methamphetamine, outside the presence of the child and without more, is insufficient to support a CHINS determination. *Id.* at 277.

### Mental Endangerment

In ***In Re A.H.***, 58 N.E.3d 951, 956 (Ind. Ct. App. 2016), the Court reversed the CHINS adjudication of a seventeen-year-old child who had been diagnosed with anxiety disorder, separation anxiety, and depression, exhibited violent behavior toward her sister and Mother, and had been the victim of bullying and rape. The Court held that all of the evidence in the record showed Mother was willing and able to engage with all needed services on behalf of the child, so the court's coercive intervention was not needed. *Id.* at 956.

In ***In Re Ju.L.***, 952 N.E.2d 771, 781-83 (Ind. Ct. App. 2011), the Court affirmed the CHINS adjudication on evidence that the children were subjected to numerous physical examinations and interviews because of abuse allegations made by Mother against Father, and Mother had never wavered in her belief that the boys were being abused by Father even though the boys had admitted to lying and there was never any physical evidence of abuse.

In ***In Re R.P.***, 949 N.E.2d 395, 404 (Ind. Ct. App. 2011), the Court affirmed the CHINS adjudication. The Court opined that a parent or guardian can endanger a child's mental condition by making multiple false sexual abuse allegations. *Id.* at 401. The Court said this principle was especially relevant in this case, where Mother made multiple sexual molestation allegations that were not supported by the evidence, subjected the children to multiple sexual abuse examinations, and failed to enroll the children in ongoing therapy as recommended by DCS officials. *Id.* at 401-02. The Court disagreed with Mother's proposition that injury is a requirement for CHINS adjudication; a child may be a CHINS if his or her mental condition is *endangered* (emphasis in opinion). *Id.* at 402.

In ***In Re V.C.***, 867 N.E.2d 167, 181-82 (Ind. Ct. App. 2007), the Court affirmed the juvenile court's CHINS adjudication. The Court noted the following evidence supported the CHINS adjudication: (1) Mother had engaged in a pattern of false accusations of sexual abuse against Father that was harmful to the child and had a detrimental effect upon the child's relationship with both Father and his family; and (2) Mother's acts of enrolling the child with three different sexual abuse therapists where the child was constantly interrogated and educated about sexual abuse, subjecting the child to repeated invasive medical exams, and repeatedly examining the child's genitalia on a regular basis for signs



of sexual abuse, caused psychological, emotional, and mental harm to the child. Id. at 180-81.

## Child Sexual Abuse

In **In Re J.V.**, 875 N.E.2d 395, 402-03 (Ind. Ct. App. 2007), the Court affirmed the CHINS adjudication on evidence that: (1) police, responding to a 911 call, observed pictures on a digital camera which showed Mother naked on the living room couch in sexual poses, Mother and Father engaged in sex acts, the children with Mother, naked, and one child touching Mother's vaginal area; (2) police observed women's lingerie, high heels and many empty beer bottles in the living room; and (3) Mother had a long history with DCS and her parental rights to four other children had previously been involuntarily terminated.

In **Slater v. Dept. of Child Services**, 865 N.E.2d 1043, 1048 (Ind. Ct. App. 2007), the Court affirmed the son's CHINS adjudication under **IC 31-34-1-3(b)(2)** [child lives in same household as another child who is victim of sex offense and adult who committed offense also lives in household]. The Court held, as a matter of first impression, that the statutory provisions of **IC 31-34-1-3(b)(2)** mandating OFC to show that a sex offense resulted either in a criminal conviction or a CHINS adjudication do not require a separate proceeding for the victim's sibling to be adjudicated a CHINS. Id. at 1047-48. The juvenile court had first determined that the daughter was a victim of Father's sex offense, and adjudicated the daughter to be a CHINS before adjudicating the son, who lived in the home with daughter and Father, to be a CHINS. Id. at 1048.

In **In Re D.H.**, 850 N.E.2d 737, 744 (Ind. Ct. App. 2007), the Court reversed the trial court's CHINS adjudication based on the seventeen-year-old half sister's allegations of past sexual abuse by Stepfather who lived in the home and of neglect by Mother in failing to protect the seventeen-year-old's five half siblings. The Court opined that the Rape Shield Statute does not apply in CHINS cases because they are civil proceedings, and the trial court had therefore abused its discretion by excluding evidence of the seventeen-year-old's sexual history based on the Rape Shield Statute. Id. at 741.

In **In Re A.H.**, 751 N.E.2d 690, 702 (Ind. Ct. App. 2001), the Court affirmed the CHINS adjudication. The Court noted evidence that: (1) when the child sleepwalked into Father's bedroom and crawled into his bed, Father inserted his finger in the child's vagina and touched her breasts; (2) on five to ten occasions, Father put his hand down the child's pants, rubbed her vagina, and touched her pubic hair; (3) the child informed Mother that Father was molesting her, but Mother did not believe the child and insisted that the child's medications were causing the child to believe that the abuse happened. Id. at 695-99.

In **Hallberg v. Hendricks Cty. Office**, 662 N.E.2d 639, 647 (Ind. Ct. App. 1996), the Court affirmed the CHINS adjudication on evidence of the physician that “nothing led him to believe that the allegations of sexual abuse were untrue”, testimony of the child that Father had touched her “privates”, testimony of the caseworker that the child told her Father had touched and kissed her “private” parts, and evidence that the abuse occurred during Father’s visitations ordered by divorce court.

Child Danger to Self or Others
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In **Matter of M.O.**, 72 N.E.3d 527, 533 (Ind. Ct. App. 2017), the Court affirmed the juvenile court’s determination that the sixteen-year-old child was a CHINS in accordance with **IC 31-34-1-6** because she substantially endangered her own health or the health of another individual. The Court noted the following evidence in support of the juvenile court’s finding of endangerment: (1) the child was only sixteen at the time the CHINS case was initiated, she had a history of running away from her placements, and continued to be on the run at the time of the factfinding hearing; (2) the child refused to appear at court even after the judge spoke to the child by telephone and ordered her to appear; (3) the child substantially endangered her own health because “bad things could happen to a young girl on her own trying to avoid authority”; (4) the juvenile court took judicial notice of its own records that the child had sixteen referrals to juvenile court, was a respondent in a termination of parental rights case for her son, had been the subject of a previous CHINS case, had previously failed referrals for services, and had true delinquency findings for theft, resisting law enforcement, and modification of her probation; and (5) Father testified that the child was a threat to herself and others, and in need of mental health treatment. *Id.* at 533.

### **IX. CHINS Dispositional Hearing**

The court must hold the dispositional hearing within thirty days of finding that the child is a Child in Need of Services. **IC 31-34-19-1(a)**. The dispositional hearing is held after the parents, guardians, and custodians have admitted the allegations in the CHINS petition or the court has held the factfinding hearing, and has found the child to be a CHINS. The purpose of the dispositional hearing is for the court to determine the child’s placement, the services which will be provided to the child and to the parents, including visitation, parental participation, protective orders, and the parents’ ability to pay child support and to reimburse DCS for the cost of services. **IC 31-34-19-1(b)** provides that if the dispositional

hearing is not completed within thirty (30) days of the court's CHINS finding, the court shall dismiss the case without prejudice upon a filing of a motion with the court.

**IC 31-34-19-1.3(a)** requires DCS to provide notice of the date, time, place, and purpose of the dispositional hearing to the child, parents, guardians, custodians, other parties, the Guardian ad Litem or Court Appointed Special Advocate, foster parents, and other caretakers with whom the child is temporarily placed. Written notice must be mailed five days before the date of the scheduled hearing. **IC 31-32-1-4(b)**. Written notice of the hearing is not required if verbal notice has been given to the person by the court at an earlier hearing. **IC 31-32-1-4(d)**. Persons, including foster parents, who receive notice of the hearing, have the opportunity to be heard by the court at the hearing and to make recommendations to the court. **IC 31-34-19-1.3(b)**.

Before the dispositional hearing, the DCS family case manager will prepare a predispositional report for the court. **IC 31-34-18-1(a)** provides that the DCS predispositional report must contain a statement of the child's needs for care, treatment, rehabilitation, and placement of the child and DCS's recommendations for the child. Other legal parties to the case, including the child, the parents, guardians, custodians, and the Guardian ad Litem or Court Appointed Special Advocate may also prepare predispositional reports for the court. **IC 31-34-18-1(b)**. A person who prepares a predispositional report may confer with a representative of the child's school, including special education service providers, a community mental health center representative, and others as the court directs. **IC 31-34-18-1.1**. The predispositional report shall also include recommendations for participation by parents, guardians, or custodians in care, treatment, or rehabilitation programs. **IC 31-34-18-2(a)**. **IC 31-34-18-4** provides guidelines for predispositional reports. A person who prepares a predispositional report is required to recommend to the court the least restrictive, most family-like, and most appropriate placement for the child. If possible, the placement should be close to the parents' home, and not disrupt family life. All recommendations must be consistent with the best interests, safety, and special needs of the child. Recommendations must impose the least restraint on the freedom of the child and parents and provide an opportunity for parental participation. **IC 31-34-18-6.1(a)** provides that the report will include a description of all dispositional options considered and an evaluation of each option, the names, relationship to the child, and occupations of persons whom the case manager has consulted, and the report and recommendations of the dual status assessment team if the child is a dual status child under **IC 31-41**. The DCS family case manager shall also prepare a financial report on the parents or the child's estate to assist the court in determining financial responsibility for services provided. **IC 31-34-18-3**.

If out-of-home placement is appropriate for the child, the DCS family case manager shall consider whether the child should be placed with a suitable and willing blood or adoptive relative before considering other out-of-home placements. **IC 31-34-18-2(b)**. The case manager who prepares the predispositional report shall conduct a criminal history check (defined at **IC 31-9-2-22.5**) of all persons age eighteen or older who live in the household of an unlicensed relative home before placing the child in the unlicensed relative home. **IC 31-34-20-1.5(b)**. The criminal history check also includes collecting each report of substantiated child abuse or neglect relating to a household member age fourteen or older for the past five years. **IC 31-9-2-22.5**. The court can allow the child to be placed in the home of a person who has committed one of the criminal offenses listed at **IC 31-34-20-1.5(d)**, a juvenile delinquency adjudication for a nonwaivable offense listed in **IC 31-9-2-84.8**, or substantiated abuse or neglect if the court finds that the person's past behavior is not relevant to the person's present ability to care for the child and the placement is in the child's best interest. **IC 31-34-20-1.5(d)**. In making this determination, **IC 31-34-20-1.5(e)** requires the court to consider the length of time since the commission of the offense, delinquent act, or act that resulted in substantiated abuse or neglect, the severity of the offense, abuse, or neglect, and evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

Predispositional reports shall be made available before the hearing to the child, parents, guardians, custodians, and the Guardian ad Litem or Court Appointed Special Advocate. **IC 31-34-18-6(a)**. If the court determines on the record that the report contains information that should not be released to the child or parents, a factual summary may be provided to the child and parents. **IC 31-34-18-6(c)**. **IC 31-34-18-6(b)** provides that the attorney for the parents, guardians, custodians, the attorney for the child, and the Guardian ad Litem or Court Appointed Special Advocate will always be given a copy of the predispositional report. The predispositional report may be admitted into evidence at the dispositional hearing. **IC 31-34-19-2(a)**. The court can consider hearsay information in the report as long as the hearsay information is probative, which means that the information affords proof of relevant facts. **IC 31-34-19-2(a)**. See **In Re C.B.**, 865 N.E.2d 1068, 1072-73 (Ind. Ct. App. 2007), in which the Court concluded that the trial court did not abuse its discretion in admitting into evidence the dispositional report for Mother's first child, which included information about Mother's positive drug test at the time of the birth of Mother's second child. Mother's second child was born three months after the removal of her first child, who was adjudicated CHINS. The court shall give the child, parents, guardians, custodians, foster parents, or other caretakers a fair opportunity to controvert any part of the report admitted into evidence. **IC 31-34-19-2(c)**.

At the dispositional hearing, the court will ensure that copies of the predispositional reports have been provided to the parties and will admit the reports into evidence. The court will

also give the child (if present), parents, guardians, custodians, Guardian ad Litem or Court Appointed Special Advocate, foster parents, and other caretakers the opportunity to be heard and make recommendations. **IC 31-34-19-1.3(b)**. The court is required to enter a dispositional decree that is the least restrictive, most family like, and most appropriate setting available consistent with the child's best interest and special needs. **IC 31-34-19-6**.

The court shall also include a reasonable opportunity for parental participation in the dispositional decree. **IC 31-34-19-6**. **IC 31-34-19-7** states that the court shall consider whether the child should be placed with a suitable and willing relative related by blood, adoption, or marriage before considering other out-of-home placements for the child such as foster care. **IC 31-34-19-7(c)** states that before a child is placed with a relative or a de facto custodian, a home evaluation and background checks described at **IC 31-34-4-2** are required. **IC 31-9-2-107(c)** defines "relative" for purposes of **IC 31-34-19** as a parent, grandparent, brother, sister, stepparent, stepgrandparent, stepbrother, stepsister, first cousin, uncle, aunt, or any other individual with whom a child has an established and significant relationship. The court may also place the child with the child's noncustodial parent. **See In Re M.S.**, 999 N.E.2d 1036 (Ind. Ct. App. 2013), in which the Court found that the evidence supported the child's continued placement with Father in the state of Washington. The Court opined the trial court's decision to place the child with Father and then dismiss the CHINS proceedings was not error. Id. at 1041. The Court observed that the legal presumption in favor of natural parents lent strong support to the trial court's decision. Id. at 1040.

**IC 31-34-20-1** provides that the court can order one or more of the following at the dispositional hearing:

- Supervision of the child by DCS;
- Outpatient treatment for the child;
- Removal of the child from the child's home and authorize DCS to place the child in another home, a shelter care facility, a group home, a child caring institution, or a secure private facility placement;
- Award wardship (defined at **IC 31-9-2-134.5**) to DCS for supervision, care, and placement;
- Partially or completely emancipate the child pursuant to **IC 31-34-20-6**;
- Order the child's parents, guardians, or custodians to complete services recommended by DCS and approved by the court;
- Order parents or other parties to the case to refrain from direct or indirect contact with the child.
- Order a perpetrator of child abuse or neglect to refrain from returning to the child's residence.

The court shall send a copy of the dispositional decree to each person who receives placement of the child. **IC 31-34-19-8**. The court must accompany the dispositional decree with written findings and conclusions upon the record listed at **IC 31-34-19-10(a)**. The findings and conclusions shall include: (1) the child's needs for care, treatment, rehabilitation, or placement; (2) the need for participation by parents, guardians, or custodians in the plan of care for the child; (3) efforts made to prevent the child's removal from or to reunite the child with parents, guardians, or custodians; (4) family services that were offered or provided to the child or parents, guardians, or custodians; (5) the court's reasons for the disposition; and (6) whether the child is a dual status child under **IC 31-41**.

**IC 31-34-19-10(b)** states that the court may incorporate a finding or conclusion from a predispositional report as a finding or conclusion in the court's decree. See **In Re R.P.**, 949 N.E.2d 395, 403-04 (Ind. Ct. App. 2011) (Court concluded that trial court's findings were specific to case and addressed elements required by statute); **In Re T.S.**, 881 N.E.2d 1110, 1113 (Ind. Ct. App. 2008) (Court stated that boilerplate language in dispositional orders is not helpful to a reviewing court and generally is not sufficient to permit appellate review); **In Re J.Q.**, 836 N.E.2d 961, 967 (Ind. Ct. App. 2005) (Court remanded CHINS determination in light of trial court's failure to adequately state reasons for its disposition, along with its procedural error in admitting child's statements); and **In Re A.I.**, 825 N.E.2d 798, 815 (Ind. Ct. App. 2005) (Court found no constitutional deficiency with respect to compliance with **IC 31-34-19-10**; it was clear that trial court considered all statutory factors).

The court may order visitation for parents, guardians, custodians, and siblings at the dispositional hearing. Restrictions may be placed on visitation. See **Lang v. Starke Cty Office of Fam. Children**, 861 N.E.2d 366, 371-73 (Ind. Ct. App. 2007), in which the Court discussed Father's refusal to comply with DCS restrictions on visitation that included no corporal punishment and no conversations with the children about the pending termination case. See also **In Re E.W.**, 26 N.E.3d 1006, 1009-10 (Ind. Ct. App. 2015) (while there is no statute specific to the CHINS context relating to parenting time, the Court found the general family law statute at **IC 31-17-4-2** instructive in determining whether the child's visitation with Mother should be terminated; Court affirmed trial court's order which terminated Mother's visitation on evidence that Mother behaved inappropriately during visits, the visitation supervisor testified that at least half of the visits were detrimental to the child, and the child's therapist, family case manager, and Court Appointed Special Advocate testified that contact with Mother was detrimental to the child's well-being); **In Re J.J.**, 711 N.E.2d 872, 875 (Ind. Ct. App. 1999) (dispositional guidelines clarify that visitation considerations should be based on best interests of child); and **Matter of Joseph**, 416 N.E.2d 857, 862 (Ind. Ct. App. 1981) (visitation between

abused child and Father properly denied on grounds that it was not in best interests of child). In **Hallberg v. Hendricks Cty. Office**, 662 N.E.2d 639, 644-45 (Ind. Ct. App. 1996), the Court rejected Father's argument that the Allen Superior Court divorce visitation order was binding on the CHINS proceeding in Hendricks County. The Court noted the juvenile court's exclusive jurisdiction over the CHINS proceeding, regardless of where the visitation order was entered.

**IC 31-34-20-1(a)(7)** authorizes the court to enter a no-contact order as a dispositional decree. The verified petition, titled "In the Matter of a No Contact Order for \_\_\_\_\_" may be filed only by the DCS attorney, the Guardian ad Litem, or the Court Appointed Special Advocate. **IC 31-34-25-1**. The petition must allege that: (1) the respondent is likely to have direct or indirect contact with the child in the absence of an order; (2) the child has been adjudicated a CHINS; and (3) the best interests of the child will be served if the person refrains from direct or indirect contact with the child. **IC 31-34-25-3**. The court may hold a hearing on the petition concurrently with a dispositional hearing or a dispositional modification hearing and shall enter a decree if the court finds that the allegations in the petition are true. **IC 31-34-25-4**. **IC 31-34-25-5** provides that the clerk shall comply with **IC 5-2-9** if the court enters a no contact order. Violation of privacy, a class A misdemeanor offense defined at **IC 35-46-1-15.1**, includes a violation of a CHINS no contact order.

**IC 31-34-20-1(a)(6)** authorizes the court to order parents, guardians, and custodians to complete services recommended by DCS and approved by the court under **IC 31-34-16** [parental participation petitions], **IC 31-34-18** [predispositional reports], and **IC 31-34-19** [dispositional hearings]. The verified parental participation petition, titled "In the Matter of the Participation of \_\_\_\_\_, the Parent, Guardian, or Custodian of \_\_\_\_\_" may be filed only by the DCS attorney, the Guardian ad Litem, or the Court Appointed Special Advocate. **IC 31-34-16-1**. The petition must allege: (1) that the respondent is the child's parent, guardian, or custodian; and (2) that the child has been adjudicated a child in need of services. A petition seeking participation may recommend that the parent, guardian, or custodian should do one or more of the following: (1) obtain assistance in fulfilling obligations as a parent, guardian, or custodian; (2) provide specified care, treatment or supervision for the child; (3) work with a person providing care, treatment, or rehabilitation for the child; (4) refrain from direct or indirect contact with the child; (5) participate in a mental health or addiction treatment program. **IC 31-34-16-3**. The court may hold a hearing on the petition concurrently with a dispositional hearing or a dispositional modification hearing, and shall enter a decree if the court finds that the allegations in the petition are true. **IC 31-34-16-4(a), (c)**. If the order concerns the participation of a parent, the court shall advise the parent that failure to participate as required by the court order can lead to [involuntary] termination of the parent-child relationship. **IC 31-34-16-4(b)**.

In **In Re A.M.-K.**, 983 N.E.2d 210, 217 (Ind. Ct. App. 2013), the Court found that DCS had not presented sufficient evidence to support the juvenile court's parental participation order requiring Mother to take all medications as prescribed when Mother objected to the order due to side effects of the medication and her religious beliefs. The Court concluded that DCS presented sufficient evidence to support the juvenile court's remaining orders, including the requirement that Mother participate in a psychiatric evaluation. Id. In **In Re V.H.**, 967 N.E.2d 1066, 1074 (Ind. Ct. App. 2012), the Court reversed the CHINS adjudication and vacated the parental participation order as a matter of course, but noted that, although the juvenile court has broad discretion in determining what programs and services in which a parent is required to participate, the requirements must relate to some behavior or circumstance that was revealed by the evidence. In **In Re M.R.**, 934 N.E.2d 1253, 1255 (Ind. Ct. App. 2010), the Court vacated the juvenile court's parental participation decree with regard to Alleged Father, and opined that Alleged Father's mere status as a party did not confer authority to the court to order his parental participation prior to a determination that he was, in fact, a parent.

In **In Re A.C.**, 905 N.E.2d 456, 462 (Ind. Ct. App. 2009), the Court held there was sufficient evidence to support the CHINS adjudication. The Court also held that the evidence did not support the requirements of the participation decree that Mother submit to drug and alcohol assessment, random drug testing, and substance abuse treatment, and establish paternity for the child, so the case was remanded with instructions to vacate portions of the parental participation decree. Id. at 464-65. The Court noted: (1) there was no reference to alleged substance abuse in the juvenile court's findings of fact or conclusions of law; (2) the evidence did not support the participation decree which required Mother to submit to drug and alcohol assessments, random drug screens, and substance abuse treatment established; (3) the findings of fact determined that paternity had been established, and the judgment of paternity and support was entered into evidence; (4) the findings did not support the participation decree ordering Mother to establish paternity for the child. Id. at 464. The Court observed that the permanency plan for reunification was not furthered by ordering Mother to participate in services which were unnecessary to address a behavior or circumstances that was relevant to the child's removal. Id.

Statutes have been enacted to increase the role of DCS in the court's dispositional decisions. **IC 31-34-19-6.1** establishes a multi-step procedure to address the general requirement that the court accept the DCS dispositional and dispositional modification recommendations and the statutory procedures when the court disagrees with DCS.

- **IC 31-34-19-6.1(a)** requires the juvenile court, before entering its dispositional decree or modification of a dispositional decree, to consider the following:
  - (1) recommendations made by DCS in its predispositional report; and



(2) recommendations made by the child's parent guardian, or custodian, Guardian ad Litem or Court Appointed Special Advocate, foster parent or other caretaker, or other party to the CHINS case. The court may submit the court's own recommendations if the court determines that the child's best interests require consideration of other dispositional options.

- **IC 31-34-19-6.1(b)** states that, if the juvenile court accepts the recommendations in the DCS predispositional report, the juvenile court shall enter its dispositional decree with its findings and conclusions under **IC 31-34-19-10**.
- **IC 31-34-19-6.1(c)** states that if the court does not accept the recommendations in the DCS predispositional report and wants DCS to consider the recommendations of the court, a party, or the foster parent or relative caretaker, the dispositional hearing or modification hearing shall be continued for not more than seven business days after service of notice of the court's determination. DCS shall consider the recommendations requested by the court and submit a supplemental predispositional report stating the final DCS recommendations and reasons for accepting or rejecting the recommendations that were not included in the original DCS report. If the court accepts the supplemental DCS recommendations, the court may adopt the recommendations as its findings and enter its dispositional decree.
- **IC 31-34-19-6.1(d)** states the juvenile court shall accept each final DCS recommendation contained in the supplemental predispositional report unless the juvenile court finds that a recommendation is: (1) unreasonable, based on the facts and circumstances of the case; or (2) contrary to the welfare and best interests of the child.
- **IC 31-34-19-6.1(e)** states that if the juvenile court does not accept one or more of the DCS final recommendations contained in the supplemental predispositional report, the juvenile court shall: (1) enter its dispositional decree with written findings and conclusions; and (2) specifically state why the juvenile court is not accepting the final DCS recommendations.
- The court should also make findings regarding whether a placement is an emergency required to protect the health and welfare of the child. **IC 31-34-19-6.1(g)**.
- DCS may appeal the juvenile court's decree which is contrary to the final DCS recommendations. **IC 31-34-19.6-1(f)**.
- **IC 31-34-19.6-1(g)** specifies what costs DCS shall pay for the child during and after the appeal. **IC 31-34-19-6.1(g)** states:

- (g) If the department prevails on appeal, the department shall pay the following costs and expenses incurred by or on behalf of the child before the date of the final decision:
- (1) Any programs or services implemented during the appeal initiated under subsection (f), other than the cost of an out-of-home placement ordered by the juvenile court.
  - (2) Any out-of-home placement ordered by the juvenile court and implemented after entry of the dispositional decree or modification order, if the court has made written findings that the placement is an emergency required to protect the health and welfare of the child.

If the court has not made written findings that the placement is an emergency, DCS shall file a notice with the Indiana Judicial Center. **IC 31-34-19-6.1(g)**.

The expedited appeal process for DCS to appeal court orders contrary to DCS recommendations is delineated at Ind. Appellate Rule 14.1. Only DCS may file a Notice of Expedited Appeal under Ind. App. R. 14.1. In ***In Re T.S.***, 906 N.E.2d 801 (Ind. 2009), the child was removed from Mother's care because of allegations of physical abuse, found to be a CHINS, and placed with his half-brother in the foster home of half-brother's paternal grandparents. After several months, DCS requested that the child be reunited with Mother, but the trial court decided it would be contrary to the child's best interest to follow DCS's recommendation. The court found that the child should remain with the foster parents until the end of the school year. DCS appealed the court's decision pursuant to Appellate Rule 14.1. The Indiana Supreme Court held that: (1) the court's placement order constituted a new dispositional decree; therefore, Rule 14.1's clear language permits the expedited appeal; (2) the statute creates a presumption of correctness for the DCS final recommendations; (3) once the court has appropriately considered the DCS recommendations in light of relevant evidence and reached a contrary conclusion, the appellate function, governed by Indiana Trial Rule 52, is that "the court on appeal shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses"; (4) DCS had not shown that any of the trial court's specific factual findings were unsupported by any facts or inferences; (5) DCS had not shown that the court's findings failed to support the court's determination contrary to the DCS recommendations. *Id.* at 803-05. The Court declined to find that the juvenile court's determination was clearly erroneous and affirmed the trial court. *Id.* at 805.

**IC 31-40-1-2(a)** states that DCS shall pay the cost of any child services provided by or through DCS for the child and the child's parent, guardian, or custodian. **IC 31-40-1-2(d)** clarifies that DCS is not responsible for the payment of any costs or expenses for child

services for a child placed in an institution, group home, or secure private facility if the entity does not have an executed contract with DCS unless the services to be provided by the entity are recommended or approved by the DCS director or the director's designee in writing prior to the placement. **IC 31-40-1-2(e)** states that DCS is not responsible for payment of any costs or expenses for child services for a child placed in a home or facility located outside Indiana unless the DCS director or the director's designee approves the placement. **IC 31-40-1-3(a)** provides that a parent or guardian of the estate of an adjudicated CHINS or a participant in an informal adjustment program is financially responsible for services provided by DCS. The parent or guardian of the estate shall furnish the court and DCS with an accurately completed and current child support obligation worksheet before: (1) a detention hearing; (2) a hearing held after payment of costs by DCS for a CHINS; (3) the dispositional hearing; or (4) any other hearing to consider modification of a dispositional decree. **IC 31-40-1-3(b), (c)**. The court shall order the parents or guardian of the child's estate to pay for or reimburse the cost of services provided to the child, parent, or guardian, unless the court specifically finds that the parent or guardian is unable to pay or justice would not be served by ordering payment. **IC 31-40-1-3(c)**.

In **L.J.F. v. Lake County Dept. of Pub. Welfare**, 484 N.E.2d 40, 41 (Ind. Ct. App. 1985), the Court held that a reimbursement hearing was required to determine Parents' responsibility for child's residential placement costs. In **In Re M.L.K.**, 751 N.E.2d 293 (Ind. Ct. App. 2001), the Court reversed the reimbursement order to Office of Family and Children on due process grounds, finding that appropriate notice, preferably through a petition for reimbursement, is required to obtain a valid reimbursement order. *Id.* at 297. The Court also addressed other issues because they were likely to occur on remand. The Court noted that OFC's right to seek reimbursement is not unlimited, and the court must comply with the statutory requirements of **IC 31-40-1-3(c)**, which state that reimbursement shall be ordered unless the court finds that the parent or guardian is unable to pay or that justice would not be served by ordering payment. *Id.* at 298-99. The Court noted the importance of an inquiry into the ability to pay, stating that the trial court had heard absolutely no evidence regarding the parents' income, assets, or financial status beyond their history of payment of the weekly court-ordered child support. *Id.* at 299. In **Washburn v. Office of Family & Children**, 726 N.E.2d 361, 364 (Ind. Ct. App. 2000), the Court found that the trial court's ruling was unclear as to whether it had issued a final judgment for full or partial reimbursement of the child's residential costs, and reversed and remanded for further proceeding to determine the amount, if any, owed by parents to OFC in compliance with the reimbursement statutes and the Indiana Child Support Guidelines. The Court also noted that the right to reimbursement is not unlimited, and the trial court must consider the parents' ability to pay and whether justice would be served by an order in excess of that which a parent would have paid under child support orders during the child's

minority. *Id.* at 364. **See also Matter of C.K.**, 695 N.E.2d 601, 605 (Ind. Ct. App. 1998) (Court ruled that the trial court can enter judgment against parent for full amount of the child's placement costs beyond weekly support amount ordered, but reversed and remanded for juvenile court to consider: (1) Father's ability to pay entire reimbursement sought, and (2) whether justice would be served by ordering reimbursement of the full amount).

In addition to reimbursement orders under **IC 31-40-1-3**, the court may issue a child support order pursuant to **IC 31-40-1-5**. **IC 31-40-1-5** specifically obligates the juvenile court to facilitate child support orders for children who have been removed from their homes. **IC 31-40-1-5(a)** indicates that the child support provisions apply whenever a court issues an order removing the child from the home of the child's parent or guardian, and placing the child in a child caring institution, a foster family home, a group home, or the home of a relative. The juvenile court's responsibilities with regard to child support vary depending upon whether there is an existing child support order. **IC 31-40-1-5(b)** provides that if there is an existing child support order for a child, the court shall order that the support payments be assigned to DCS for the duration of the child's placement outside of the home. The juvenile court shall give notice of the assignment of support and of its assumption of jurisdiction to the court that previously had jurisdiction to modify or enforce the child support order. If an existing support order is not in effect, **IC 31-40-1-5(c)** provides that the court shall include in its order for out-of-home placement of the child an assignment of any rights to child support or payment of medical costs to DCS. The court shall order "each" of the child's parents or the guardian of the child's estate to pay child support based on the child support guidelines, unless one of the following exceptions applies: (A) the court finds that an order based on the child support guidelines would be "unjust or inappropriate considering the best interest of the child and other necessary obligations of the child's family," or (B) DCS does not make foster care maintenance payments to the custodian of the child. **IC 31-40-1-5(d)** states that child support payments shall be paid through the clerk of circuit court as trustee for remittance to DCS. **IC 31-40-1-5(f)** requires the juvenile court to notify the court that entered a support order assigned to DCS or had jurisdiction, immediately before the placement, to modify or enforce the existing support order when juvenile court terminates placement of the child. **IC 31-40-1-5(g)** clarifies that the juvenile court may also order, pursuant to **IC 31-40-1-3**, reimbursement by the parents or the guardian of the child's estate "for all or any portion of the expenses for services provided to or for the benefit of the child" that are paid by DCS, in addition to child support payments.

**IC 31-34-21-1(b)** states that the court shall order DCS to file a report on implementing the dispositional decree every three (3) months after the decree is entered. The court may also order DCS to file a progress report at any time. **IC 31-34-21-1(a)**. If, after reviewing the

report, the court seeks to consider modification of the dispositional decree, the court shall proceed under the dispositional modification statutes, **IC 31-34-23**.

## **X. Reasonable Efforts to Preserve and Reunify Families**

The three components of the reasonable efforts concept under Indiana law are:

- The child's health and safety are of paramount concern in determining the extent to which reasonable efforts to reunify or preserve a family are appropriate. **IC 31-34-21-5.5(a)**.
- Except as provided in **IC 31-34-21-5.6**, DCS shall make reasonable efforts to preserve and reunify families by preventing or eliminating the need to remove the child or to make it possible for the child to return safely to the child's home as soon as possible. **IC 31-34-21-5.5(b)**.
- The Court can make a specific finding and order that reasonable efforts toward preservation and reunification are not required in five limited situations. **IC 31-34-21-5.6**.

The five limited situations in which the court can find that reasonable efforts toward family preservation or reunification are not required are:

- The child is a CHINS and the parent's rights to another child have previously been involuntarily terminated by a court under **IC 31-35-2** or **IC 31-35-3** or any comparable law in any other state, territory, or country. **IC 31-34-21-5.6(b)(4)**.
- The child is an abandoned infant, the Guardian ad Litem/Court Appointed Special Advocate has filed 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 child's best interests. **IC 31-34-21-5.6(b)(5)**. **IC 31-9-2-0.5** states that, for the purposes of **IC 31-34-21-5.6**, an abandoned infant is: (A) a child who is less than twelve months old and whose parent has knowingly or intentionally left the child in an environment that endangers the child's life or health or in a hospital or medical facility, and has no reasonable plan to assume the care, custody, and control of the child; or (B) a child who is or appears to be not more than thirty 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.
- The parent of a CHINS has been convicted of causing suicide, involuntary manslaughter, rape, criminal deviate conduct [repealed], child molesting, child exploitation, sexual misconduct with a minor, or incest (or a comparable offense in another state, territory, or country), and the victim of the crime was less than sixteen

years of age and was the convicted parent's biological child, adopted child, or stepchild, or was the parent of the child. **IC 31-34-21-5.6(b)(1)**.

- The parent 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 (**IC 35-41-2-4**); attempting to commit the crime (**IC 35-41-5-1**); or conspiring with another person to commit the crime (**IC 35-41-5-2**), and the victim was the biological child, adopted child, or stepchild (no age requirement for the child victim) of the convicted person, or the parent of the child. **IC 31-34-21-5.6(b)(2)**.
- The parent of a CHINS has been convicted of Class A, B, C or Level 2, 3, 4, or 5 felony battery, aggravated battery, Class B or Level 1 or 3 felony neglect of a dependent; Class C or Level 5 felony criminal recklessness; promotion of human trafficking, promotion of human trafficking of a minor; sexual trafficking of a minor, or human trafficking (**IC 35-42-3.5-1**) as a felony (or a comparable offense under federal law or in another state, territory, or country), and the victim was the biological child, adopted child, or stepchild (no age requirement for the child victim) of the convicted person. **IC 31-34-21-5.6(b)(3)**.

If the court finds that reasonable efforts to reunify or preserve the child's family are not required, DCS shall complete a permanency plan and the court shall hold a permanency hearing within thirty days. **IC 31-34-21-5.7(a),(b)**. **IC 31-34-21-7(a)(1)**. DCS shall refer the case to the permanency roundtable, defined at **IC 31-9-2-88.7**, if the child is placed in a child caring institution, group home, or secure private facility. **IC 31-34-21-5.7(b)(3)**.

In **Matter of S.G. v. IN Dept. of Child Services**, 67 N.E.3d 1138, 1147 (Ind. Ct. App. 2017), the Court affirmed the trial court's determination that DCS did not need to undertake reasonable efforts to reunify Mother with four of her children. In a prior CHINS case, Mother's parental rights to two of her children had been involuntarily terminated and the children had been adopted. The Court concluded that the no reasonable efforts statute, **IC 31-34-21-5.6(b)(4)** is not unconstitutional as applied to Mother and does not authorize arbitrary enforcement. *Id.* at 1147. In **In Re R.H.**, 55 N.E.3d 304, 311 (Ind. Ct. App. 2016), the Court affirmed the juvenile court's order finding that DCS need not make reasonable efforts to reunify Mother with her eleventh child, who was taken into DCS custody immediately following birth. Mother's parental rights to two of her other children had previously been involuntarily terminated. Mother claimed that DCS had unlawfully discriminated against her and that she was entitled to reasonable accommodations to participate in services under the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA) for her undiagnosed disabilities. The Court concluded Mother was

not denied services or reasonable accommodations to participate in services because of her disability, and the juvenile court did not violate Mother's rights by entering an order finding that DCS was not required to make reasonable reunification efforts. Id. at 311.

**In Re M.S.** 999 N.E.2d 1036, 1041 (Ind. Ct. App. 2013), Mother appealed the trial court's decision to place the child with Father in the state of Washington and then dismiss the CHINS proceeding. When Mother and Father were divorced, the divorce court had not made a custody determination regarding the child. Mother argued that DCS had neglected its duty under **IC 31-34-21-5.5** to make reasonable efforts to reunify or preserve a family. The Court agreed with DCS that its reunification efforts were reasonable because Mother was ill-equipped to care for the child and the primary concerns for the child's health and safety were satisfied through his continued placement with Father. Id. at 1041. The Court said that the placement of the child with Father was a familial reunification of sorts, albeit not of the kind Mother would have preferred. Id.

In **C.T. v. Marion Cty. Dept. of Child Services**, 896 N.E.2d 571, 583 (Ind. Ct. App. 2008), the Court affirmed the termination judgment, but stated its agreement with Mother that a parent's constitutionally protected right to raise her own children did not "evaporate" when a court determines that DCS is no longer required to make a reasonable effort to reunify the family. The Court specifically cautioned DCS that a juvenile court's determination that reunification services are no longer required pursuant to **IC 31-34-21-5.6** neither abolishes a parent's fundamental right to family integrity nor absolves DCS of its responsibility to properly oversee and manage the case. Id. at 588.

In **G.B. v. Dearborn Cty. Div. of Fam. & Child.**, 754 N.E.2d 1027, 1032 (Ind. Ct. App. 2001), the Court considered the parents' argument that **IC 31-34-21-5.6**, which allows the court to find that reasonable reunification efforts are not required, is unconstitutional. The Court found that the challenged statute is not more intrusive than necessary to protect the welfare of children, and is narrowly tailored to include only those parents who have had a least one chance to reunify with a different child through the aid of government resources and have failed to do so. Id. at 1032. The Court found that **IC 31-34-21-5.6** does not violate substantive due process under the U.S. and Indiana Constitutions. Id. at 1033. The Court further noted that, even if the trial court finds that reasonable reunification efforts are not required, the court and OFC are still required to follow the statutory procedures in both CHINS and termination cases. Id. at 1032.

## **XI. CHINS Dispositional Modification Hearing**

**IC 31-34-19-9** states that at the dispositional hearing the juvenile court shall advise the child and the child's parent, guardian, or custodian of the dispositional modification procedures. Dispositional modification procedures are delineated at **IC 31-34-23** and also reference the dispositional statutes, **IC 31-34-18** and **IC 31-34-19**. **IC 31-34-23-1** provides that a dispositional decree may be modified as long as the court retains jurisdiction. **IC 31-34-23-1** states that the court may modify any dispositional decree upon the court's own motion or upon the motion of the child; the child's parent, guardian, or custodian; the Guardian ad Litem or Court Appointed Special Advocate; the DCS attorney; or any person providing services to the child or the child's parent, guardian, or custodian under a court decree. **IC 31-34-23-3** provides for two types of modification: (1) an emergency change in a child's residence, or (2) any other modification. **IC 31-34-23-3(a)** states that if the motion requests an emergency change in the child's residence, the court may issue a temporary order. DCS shall then give notice to the persons affected and the court shall hold a hearing on the question if requested. **IC 31-34-23-3(b)** states that if the motion requests any other modification, DCS shall give notice to the persons affected, and the court shall hold a hearing on the question. **IC 31-34-23-4** states that notice of the hearing shall be given in accordance with **IC 31-34-19-1.3**, the dispositional notice statute. **IC 31-34-19-1.3** requires DCS to give notice of the date, time, place, and purpose of the hearing to: (1) each party or person for whom a summons is required to be issued under **IC 31-34-10-2** (child, parents, guardian, custodian, Guardian ad Litem, Court Appointed Special Advocate, other person necessary for proceedings); and (2) each foster parent or other caretaker with whom the child is placed. See **Matter of C.B.**, 616 N.E.2d 763, 769 (Ind. Ct. App. 1993), in which the Court reversed the juvenile court's modification of the dispositional decree which required the return of the child to Indiana from Tennessee, where she had been living with her uncle. The juvenile court's order was invalid because notice of the modification hearing had not been given to the child's uncle, who was the child's custodian and legal guardian.

In addition to changes in the child's placement, a modification hearing may be needed to address changes in parental participation and financial responsibility orders. The modification process could be used to add a new allegation of child abuse or neglect which requires additional treatment for the child or participation by the parents. In **Matter of D.T.**, 547 N.E.2d 278, 284 (Ind. Ct. App. 1989), the Court ruled that the dispositional modification order gave Mother adequate notice of the conditions she had to remedy to obtain reunification with her children and to avoid termination of her parental rights.

**IC 31-34-23-4** states that, if a dispositional modification hearing is required, **IC 31-34-18** [predispositional report] and **IC 31-34-19** [dispositional hearing] apply to the preparation and use of the dispositional modification report. **IC 31-34-19-2(a)** allows any



predispositional report to be admitted into evidence to the extent that the report contains evidence of probative value; therefore, hearsay of probative value can be admitted into evidence in dispositional modification reports. In **In Re T.S.**, 906 N.E.2d 801 (Ind. 2009), the Court held that **IC 31-34-19-6.1** [the procedure requiring the juvenile court to accept each final DCS recommendation unless the court finds that the recommendation is unreasonable or contrary to the welfare and best interests of the child] applies to dispositional modification determinations. Applying **IC 31-34-18** to modification hearings: (1) alternative reports for the court's consideration may be prepared by the child; the child's parents, guardian, or custodian; and the Guardian ad Litem and Court Appointed Special Advocate (**IC 31-34-18-1(b)**); (2) reports shall be made available within a reasonable time before the hearing (**IC 31-34-18-6(a)**); and (3) the child; parents, guardian or custodian; DCS attorney; and the foster parent or other caretaker shall be given a fair opportunity to controvert any part of the report admitted into evidence (**IC 31-34-19-2(c)**).

## **XII. CHINS Appeals**

**IC 31-32-15-1** provides that appeals may be taken as provided by law. The parties to the CHINS case listed at **IC 31-34-9-7** (child, parents, guardian, or custodian, DCS, Guardian ad Litem and Court Appointed Special Advocate, and other court ordered parties) have standing to file an appeal of a CHINS judgment and should be named as parties to any CHINS appeal filed. The CHINS adjudication may not be appealed until after the dispositional hearing has taken place and the dispositional decree has been entered. **See In Re D.J. v. Department of Child Services**, 68 N.E.3d 574, 578 (Ind. 2017), in which the Indiana Supreme Court explicitly held that a CHINS determination, by itself, is not a final appealable judgment.

The Indiana Supreme Court and Appellate Courts have declined to dismiss CHINS appeals due to mootness. **See In Re F.S.**, 53 N.E.3d 582, 591 (Ind. Ct. App. 2016) (Court declined to dismiss as moot Mother's appeal of an order requiring her to allow DCS to interview her children as part of a DCS assessment; Court opined a decision on the merits would offer direction to courts in future cases; **In Re S.D.**, 2 N.E.3d 1283, 1290 (Ind. 2014) (due to harmful collateral consequences of a CHINS adjudication for a parent, Court declined to dismiss Mother's appeal of CHINS adjudication of her two-year-old special medical needs child); **In Re Des.B.**, 2 N.E.3d 828, 834 n.3. (Ind. Ct. App. 2014) (Court said it is well established that the reunification of children with their parent and trial court's closure of CHINS proceeding does not render parent's appeal from CHINS determination moot); **Roark v. Roark**, 551 N.E.2d 865, 867-68 (Ind. Ct. App. 1990) (Court said that CHINS finding presents collateral consequences, including release of records, serious enough to

justify consideration of Father's appeal on its merits despite Father's reunification with family and the court's closure of CHINS case).

In reviewing the sufficiency of the evidence in CHINS appeals, the Appellate Court will not reweigh the evidence or judge the credibility of witnesses. **Matter of K.S.**, 78 N.E.3d 740, 744 (Ind. Ct. App. 2017). The Court will engage in a two-tier standard of review, first determining whether the evidence supports the findings, and second determining whether the findings support the judgment. **In Re A.G.**, 6 N.E.3d 952, 957 (Ind. Ct. App. 2014); **Hallberg v. Hendricks Cty. Office**, 662 N.E.2d 639, 643 (Ind. Ct. App. 1996). The Court will consider only the evidence and the reasonable inferences most favorable to the trial court's decision. **J.C. v. Indiana Dept. of Child Services**, 3 N.E.3d 980, 982 (Ind. Ct. App. 2013). The Court will not set aside the findings or judgment in a CHINS proceeding unless the judgement is clearly erroneous. **Indiana Dept. of Child Services v. J.D.**, 77 N.E.3d 801, 806 (Ind. Ct. App. 2017). A judgment is clearly erroneous when it relies upon an incorrect legal standard. **In Re L.P.**, 6 N.E.3d 1019, 1020 (Ind. Ct. App. 2014). A CHINS designation focuses on the child's condition rather than the parents' culpability. **In Re N.E.**, 919 N.E.2d 102, 105 (Ind. 2010). In **In Re T.H.**, 856 N.E.2d 1247 (Ind. Ct. App. 2006), the Court stated that, in practical terms, the Court may look first to determine whether the judgment is supported by the findings, and if it is not so supported, appellate review is concluded. The Court concluded that the trial court's findings and conclusions did not support the CHINS judgment and reversed the CHINS adjudication. *Id.* at 1250. In **In Re J.Q.**, 836 N.E.2d 961, 966 (Ind. Ct. App. 2005), the Court reversed the trial court's CHINS determination, holding that the trial court's limited findings made it difficult to determine whether or not a mistake had been made.

Ind. Appellate Rule 14.1 sets out the expedited appeal process when the juvenile court enters orders for services or placements which are contrary to DCS recommendations. The rule governs appellate review of **IC 31-34-4-7(f)** (services provided before entry of CHINS dispositional decree or approval of CHINS informal adjustment) and **IC 31-34-19-6.1(f)** (CHINS dispositional decree). App. R. 14.1 also applies to modification of CHINS and dispositional decrees, and to dispositional modification orders. **See In Re T.S.**, 906 N.E.2d 801, 806 (Ind. 2009) and **IC 31-34-19-6.1(a)** and **(c)**.

Only DCS may file a Notice of Expedited Appeal, and the notice shall be filed with the trial court clerk within five business days after the court's order of placement or services is noted in the CCS. DCS shall serve notice of the appeal on the following: (1) trial court judge; (2) court reporter; (3) county commissioners; (4) Guardian ad Litem or Court Appointed Special Advocate; (5) a child who is fourteen years of age or older; (6) child's counsel; (7) parents' counsel; (8) Attorney General; (9) any other party. Any party who has received notice shall have five business days from service of notice to file an appearance

and request any additional items to be included in the record. The trial court shall be considered a party to the appeal if it files a timely appearance. Failure to file an appearance shall remove that party from the appeal.

The Clerk's Record and Transcript shall be completed and filed within ten business days of the Notice of Appeal. The Record contains the pre-dispositional report and attachments and other documents required by Ind. Appellate Rule 2. DCS shall have five business days from the filing of the Notice of Completion of Transcript (or Clerk's Record if a transcript was not requested) to file a memorandum stating why the trial court's decision should be reversed. Any responding party shall have five business days after DCS has filed its memorandum to file a responsive memorandum stating why the decision should be sustained or reversed, and to file any accompanying supplemental Appendix. Extensions of time are not allowed. Rehearing of an appellate decision may not be sought. A Petition to Transfer must be filed no later than five business days after the adverse decision of the Court of Appeals.

If DCS prevails on appeal, payment shall be made in accordance with **IC 31-34-4-7(g)** (before the dispositional decree and before approval of an informal adjustment) or **IC 31-34-19-6.1(g)** (after the dispositional decree or modification of the dispositional decree).

### **XIII. CHINS Periodic Case Review Hearing**

The Court is required to hold a formal periodic case review hearing for every Child in Need of Services at least every six months after the child's removal from the parents or at least every six months after the dispositional decree, whichever date comes first. **IC 31-34-21-2(a), (b)**. The Court may hold the child's case review hearing more often than every six months. The periodic case review hearing is sometimes called the placement and jurisdiction review hearing. The purpose of the periodic case review hearing is to oversee case progress and determine whether there is a need to adjust or update the case plan. If an indigent parent previously waived counsel and requests the appointment of counsel for the periodic case review hearing, the court should appoint counsel for the parent, and, if necessary, continue the hearing so that counsel for the parent can be present. **See In Re G.P.**, 4 N.E.3d 1158, 1163-64 (Ind. 2014), in which the Court held that **IC 31-34-4-6** gives the right to court appointed counsel to indigent parents who request court appointed counsel in CHINS cases, and that a parent who previously elected to waive counsel is not permanently bound by that decision.

**IC 31-34-21-4(a), (e)** requires DCS to provide notice of the case review seven days before the hearing to: (1) the child's parents, guardian, custodian; (2) the attorney for the parents,

guardians, or custodian; (3) a prospective adoptive parent named in an adoption petition which has been filed (if all consents to adoption have been filed with DCS, the adoption court has determined that consents are not needed, or a petition for termination of the parental rights has been filed and is pending); (4) the Guardian ad Litem or Court Appointed Special Advocate; (5) other parties; (6) the child's foster parent; (7) any other person whom DCS knows is currently caring for the child and who is not required to be licensed; and (8) any other suitable relative or person whom DCS knows has had a significant or caretaking relationship to the child.

DCS must prepare and file a progress report on every child's case every three months after the child's dispositional decree is entered. **IC 31-34-21-1(b)**. DCS is also required to prepare a progress report for the case review hearing. The report shall include information on the progress made in rehabilitating the child, preventing out-of-home placement, or reuniting the family. **IC 31-34-22-1(a)**. Before preparing the progress report, DCS shall consult with a foster parents about the child's progress made while in the foster parent's care. **IC 31-34-22-1(b)**. Other legal parties to the CHINS case, including the parents and the child's Guardian ad Litem or Court Appointed Special Advocate may also prepare reports for the case review hearing. The court can consider hearsay information in the periodic case review reports as long as the hearsay information is probative, which means that the information affords proof of relevant facts. **IC 31-34-22-3(a)**.

The DCS periodic case review report shall be made available to: the child; the child's parents, guardian, or custodian; the foster parent or the long term foster parent (defined at **IC 31-34-21-4.6**); the Guardian ad Litem or Court Appointed Special Advocate; and any other person who is entitled to receive notice of the case review hearing. **IC 31-34-22-2(a)**. The court may determine on the record that the DCS report contains information that should not be released to any person who is entitled to receive the report. **IC 31-34-22-2(b)**. If the court makes this determination, the person will not be given the report. The report will always be provided to the attorneys for the parents, guardian, or custodian and the Guardian ad Litem or Court Appointed Special Advocate. The court may provide a factual summary of the report to the child, the child's parents, guardian, or custodian, and the foster parent if the court decides not to release the entire report. **IC 31-34-22-2(c)**. All those who are entitled to receive the DCS periodic case review report shall be given a fair opportunity to controvert any part of the report admitted into evidence. **IC 31-34-22-3(c)**.

**IC 31-34-21-4.5** allows foster parents, long term foster parents (defined at **IC-31-34-21-4.6** as foster parents who have cared for a child for at least the twelve most recent months or fifteen of the most recent twenty-two months), or former foster parents to petition the court to intervene as legal parties in the periodic case review hearing. A foster parent who has been the subject of a substantiated child abuse or neglect report or who has been

convicted of a nonwaivable offense as defined by **IC 31-9-2-84.8** may not petition to intervene. **IC 31-34-21-4.5(b)**. The court may grant the petition to intervene if the court determines that the foster parents' intervention is in the child's best interests. **IC 31-34-21-4.5(c)**. See Matter of Ale.P., 80 N.E.3d 279, 289 (Ind. Ct. App. 2017), in which the juvenile court granted former Foster Parents' motion to intervene and heard evidence on whether it was in the children's best interests to be returned to the home of former Foster Parents; Court affirmed the juvenile court's order denying the motion for return of the children to former Foster Parents.

**IC 31-34-21-4(d)** gives those who receive notice of the case review hearing the following:

- the opportunity to be heard and to make recommendations to the court
- the right to submit a written statement to the court, that, if served on all parties to the CHINS case and others who receive notice of the case review, may be made a part of the court record
- the right to present oral testimony to the court
- the right to cross examine any of the witnesses at the hearing.

At the case review hearing, the court shall determine whether the child's case plan, services, and placement meet the special needs and best interests of the child; whether DCS has made reasonable efforts to reunify the family; and a projected date for the child's return home, placement for adoption, the child's emancipation, or the appointment of a legal guardian for the child. **IC 31-34-21-5(a)**. The court must also look at the following factors, listed at **IC 31-34-21-5(b)**:

- whether DCS and the child's parents, guardian, or custodian have complied with the child's case plan.
- written documentation describing the family services offered to the child and parents, guardian, or custodian; dates the services were offered; and the outcome from the services.
- the extent of DCS efforts to offer and provide services.
- the extent to which the parents, guardian, or custodian have enhanced their ability to fulfill parental obligations.
- the extent to which the parents, guardian, or custodian have visited the child, including the reasons for infrequent visitation.
- whether any additional services are required for the child or the child's parents, guardian, or custodian, and, if so, the nature of those services.
- the child's recovery from any injuries suffered before removal.
- the extent to which parents have cooperated with DCS.
- the extent to which the child has been rehabilitated.

- if the child is placed out-of-home, whether the child is placed in the least restrictive, most family-like setting and whether the placement is close to the home of the parents, guardian, or custodian.
- the extent to which the causes for the child's out-of-home placement have been alleviated.
- whether the current placement or DCS supervision should be continued.
- the extent to which the child's parents, guardian, or custodian have participated in or been given the opportunity to participate in case planning, periodic case reviews dispositional reviews, placement of the child, and visitation.
- whether DCS has made reasonable efforts to reunify or preserve the child's family unless the court has previously determined that reasonable efforts are not required under **IC 31-34-21-5.6**.
- whether a permanency plan for the child should be prepared or implemented pursuant to **IC 31-34-21-7.5**.

The court can order the following after the periodic case review hearing is concluded:

- continue the child in the same placement
- order the additional services for the child and parents
- change the child's placement, including returning the child to the parent's home
- change the parents', guardian's or custodian's visitation with the child
- schedule a permanency hearing (**IC 31-34-21-7**)
- discharge the child and parents if the objectives of the dispositional decree have been met (**IC 31-34-21-11**).

The court must make written findings in the six month periodic case review order. **IC 31-34-21-5(b)**. See A.P. v. PCOFC, 734 N.E.2d 1107, 1116 n.12 (Ind. Ct. App. 2000). In McBride v. County Off. Of Family & Children, 798 N.E.2d 185, 197 (Ind. Ct. App. 2003), the Court noted that the trial court's orders on the periodic case review hearings incorporated extensive OFC reports and recommendations and the orders contained substantially all of the determinations required under the statute. The Court opined that the trial court is not required to enter a specific finding for each of the factors listed at **IC 31-34-21-5(b)**. **IC 31-34-21-5.6(c)** states that during or at any time after the first periodic case review, the court may make a finding suspending reasonable reunification efforts pending the disposition of the parent's, guardian's, or custodian's criminal offense for a charge listed at **IC 31-34-21-5.6(b)(3)**. This statute applies if the court finds that a parent, guardian, or custodian has been charged with and is awaiting trial for the offense. The offenses listed at **IC 31-34-21-5.6(b)(3)** are: battery as a Class A, B, or C, or Level 2, 3, 4, or 5 felony; aggravated battery; criminal recklessness as a Class C or Level 5 felony; neglect of a dependent as a Class B or Level 1 or 3 felony, felony promotion of human

trafficking, promotion of human trafficking of a minor, sexual trafficking of a minor, or human trafficking (**IC 35-42-3.5-1**); or a comparable offense under federal law or in another state, territory, or country and the victim of the offense is the alleged offender's biological child, adopted child, or stepchild.

Case law on the periodic case review hearing includes **E.R. v. Office of Family and Children**, 729 N.E.2d 1052 (Ind. Ct. App. 2000), in which the Court opined that the court hearing for each periodic review results in a formal determination regarding placement. *Id.* at 1060. The Court found that the placement decisions were reviewable in this interlocutory appeal. *Id.* Parents contended that the placement decisions were contrary to the evidence and not in the children's best interests. Parents argued that the children were being harmed by their foster care placement, which was not "culturally appropriate" because the children, who were from Mexico, had not been placed in Spanish speaking foster homes. The Court noted that: (1) Marion County OFC assigned two Spanish speaking case managers to provide assistance in obtaining services with the goal of reunification; (2) OFC had attempted to recruit Spanish speaking foster parents; (3) the children were provided with Spanish speaking counselors; (4) the juvenile court and OFC used the system available at the time and attempted to adapt the system in a manner that would best accommodate the children's immediate needs; (5) Parents invited any error in the juvenile court's inability to assess placement of the children with relatives in Mexico. *Id.* at 1060-61. The Court was unwilling, based on the evidence in this record, to determine that only Hispanic foster parents can provide "culturally appropriate" care for Hispanic children who are determined CHINS. *Id.* at 1061. In another case, **In Re C.W.**, 723 N.E.2d 956 (Ind. Ct. App. 2000), Grandparents appealed the court's denial of their two petitions for kinship placement. The Court noted the juvenile court's statement that the kinship placement was not suitable because the child was subject to recurrent bronchitis and Grandparents smoked in their home and vehicles, which constituted a present threat to the child's physical health. *Id.* at 962. The Court found that the juvenile court acted within its discretion when it denied Grandparents' first petition for kinship placement. *Id.* The Court found that Grandparents lacked standing for the second petition because the child had been adopted by foster parents; therefore, Grandparents' second petition for kinship placement was properly denied. *Id.* at 963.

If the court's orders require a modification of the child's dispositional decree, the Court must follow Indiana statutes which prioritize DCS recommendations. **IC 31-34-23-4. IC 31-34-19-6.1.** If the court does not accept the recommendations in the DCS periodic case review report and wants DCS to consider the recommendations of the court, a party to the case, or the foster parents, the court shall continue the case review hearing for not more than seven business days. DCS shall consider the recommendations requested by the court and submit a supplemental report stating the final DCS recommendations. The court is

required to accept each final recommendation of the DCS supplemental report unless the court finds that a recommendation is unreasonable or contrary to the welfare and best interests of the child. Ind. Appellate Rule 14.1 delineates the expedited appeal process for DCS to appeal court orders which are contrary to DCS's recommendations.

#### **XIV. CHINS Permanency Hearing**

The purpose of the permanency hearing is for the Court to make a definitive long-term decision about a permanent placement for the child. The permanency hearing may be combined with the periodic case review hearing, but should be distinguished from the review, since the permanency hearing has a different purpose. If an indigent parent previously waived counsel and requests the appointment of counsel for the permanency hearing, the court should appoint counsel for the parent, and, if necessary, continue the hearing so that counsel for the parent can be present. See In Re G.P., 4 N.E.3d 1158, 1163-64 (Ind. 2014). In McBride v. County Off. Of Family and Children, 798 N.E. 2d 185, 197-98 (Ind. Ct. App. 2003), the Court opined that Mother's claims of alleged error in the permanency hearing, including conducting the permanency hearing in connection with the case review hearing, did not violate Mother's due process rights.

**IC 31-34-21-7(a)** states that the permanency hearing should be held:

- within thirty days of a court ruling that reasonable efforts to reunify or preserve the child's family are not required, pursuant to **IC 31-34-21-5.6**;
- every twelve months after the child has been removed from parents or every twelve months from the date of the dispositional decree, whichever occurred first; or
- more often if ordered by the court.

**IC 31-34-21-4(a)** and **(d)** require DCS to provide notice of the permanency hearing seven days before the hearing to: the child's parents, guardian, or custodian; the attorney(s) for the parents, guardian, or custodian; a prospective adoptive parent named in a petition for adoption which has been filed (if all consents to adoption have been filed with DCS, the adoption court has determined that consents are not needed, or a petition for termination of the parental rights has been filed and is pending); the Guardian ad Litem or Court Appointed Special Advocate; other parties; the child's foster parent; any other person whom DCS knows is currently caring for the child and who is not required to be licensed; and any other suitable relative or person whom DCS knows has had a significant or caretaking relationship to the child. If the child is at least sixteen years old and the proposed permanency plan is another planned, permanent living arrangement, DCS shall give notice of the permanency hearing to the child. **IC 31-34-21-7(c)**. DCS may give written notice of the permanency hearing by personal delivery or mail. **IC 31-32-1-4(a)**.



All those who receive notice of the permanency hearing, including the foster child age sixteen or older whose permanency plan is another planned, permanent living arrangement, shall be given the opportunity to be heard at court and to make recommendations. **IC 31-34-21-4(d)**. For permanency hearings, those who receive notice also have the following:

- the right to submit a written statement to the court, that, if served on all parties to the CHINS case and others who receive notice of the permanency hearing, may be made a part of the court record;
- the right to present oral testimony to the court;
- the right to cross-examine any of the witnesses at the hearing.

**IC 31-34-21-4.5(a)** allows foster parents, long term foster parents (defined at **IC-31-34-21-4.6** as foster parents who have cared for a child for at least the twelve most recent months or fifteen of the most recent twenty-two months), or former foster parents to petition the Court to intervene as legal parties in the permanency hearing. **IC 31-34-21-4.5(b)** provides that a foster parent who has been the subject of a substantiated child abuse or neglect report or who has been convicted of a nonwaivable offense as defined by **IC 31-9-2-84.8** may not petition to intervene. The court may grant the petition to intervene if the court determines that the foster parents' intervention is in the child's best interests. **IC 31-34-21-4.5(b)**. If the court permits foster parents to intervene, foster parents become legal parties for the permanency hearing.

The DCS family case manager is required to prepare a report in accordance with **IC 31-34-22** for the permanency hearing. **IC 31-34-21-8**. The report shall include information on case progress and the DCS recommendation for the child's permanency plan. Other legal parties to the CHINS case, including the parents, guardian or custodian and the Guardian ad Litem or Court Appointed Special Advocate, may also prepare reports with recommendations for the permanency hearing. Before preparing the DCS report, the family case manager shall consult with a foster parent on the child's progress while in the care of the foster parent. **IC 31-34-22-1(b)**.

The permanency hearing reports shall be made available to: the child; the child's parents, guardian, or custodians; the foster parents; the Guardian ad Litem or Court Appointed Special Advocate; and any other person who is entitled to receive notice of the permanency hearing. **IC 31-34-22-2(a)**. The court may determine on the record that the DCS report contains information that should not be released to a person who is usually entitled to receive the report. **IC 31-34-22-2(b)**. If the court makes this determination, that person will not be given the report. The report will always be provided to the attorney for the child; the attorneys for the child's parents, guardian or custodian; and the Guardian ad Litem or Court

Appointed Special Advocate. **IC 31-34-22-2(b)**. The court may provide a factual summary of the report to the child, the child's parents, guardian, or custodian, and the foster parent if the court decides not to release the entire report to them. **IC 31-34-22-2(c)**.

At the permanency hearing, the court will usually admit the reports into evidence. The court can consider hearsay information in the permanency reports as long as the hearsay information is probative, which means that the information offers proof of relevant facts. **IC 31-34-22-3(a)**. The court will give the child (if present), parents, guardian or custodian, Guardian ad Litem or Court Appointed Special Advocate, foster parents, and others who received notice of the hearing the opportunity to be heard, make recommendations, submit a written statement, testify, and cross-examine witnesses. **IC 31-34-21-4(d)**.

The court must also consult with the child in an age appropriate manner regarding the proposed permanency plan. **IC 31-34-21-7(b)(4)**. The court may do this by speaking with the child in person, or through an interview with or written report submitted by: (1) the Guardian ad Litem or Court Appointed Special Advocate; (2) a DCS family case manager; or (3) the person with whom the child is living and who has primary responsibility for the child's care and supervision. If the child is at least sixteen years of age, and the proposed permanency plan provides for another planned permanent living arrangement, **IC 31-34-21-7(c)** provides that the court shall: (1) require DCS to provide notice of the hearing to the child; (2) provide the child an opportunity to be heard and to make recommendations to the court; (3) require DCS to document or provide testimony regarding the efforts to secure a permanent placement for the child; (4) ask the child about the child's desired permanency outcome and document the child's response; (5) make a determination on why another planned permanent living arrangement is in the child's best interests and why it is not in the child's best interests to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative; and (6) require DCS to document or provide testimony to ensure that the child's placement is following the reasonable and prudent parent standard and that the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities. **IC 31-9-2-101.5** defines "reasonable and prudent parent standard" as the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child. **IC 31-9-2-8.5** defines "age or developmentally appropriate" as (1) activities or items that are generally: (A) accepted as suitable for children of the same chronological age or level of maturity; or (B) determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group, and (2) in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

The most important determinations which the court shall make at the permanency hearing are to consider and approve the child's permanency plan, determine whether an existing permanency plan must be modified; consider the question of continued jurisdiction, and consider whether the dispositional decree should be modified. **IC 31-34-21-7. IC 31-34-21-7.5(c)** lists the options for permanency plans, which are summarized as:

- Return to or continuation of existing custodial care by the parent, guardian, or custodian, including placement with the child's noncustodial parent. **IC 31-34-21-5.5** allows DCS to conduct a criminal history check of the child's parents, guardian, or custodian and household members before reunification with the parents, guardian, or custodian. DCS may use the results of the criminal history check to decide whether it is safe for the child to return home. **IC 31-34-21-5.5(c), (d)**.
- Placement of the child for adoption.
- Placement of the child with a responsible relative, who is willing to act as the child's permanent custodian.
- Appointment of a legal guardian (juvenile court may appoint a guardian of the person for the child pursuant to **IC 31-34-21-7.7**).
- If the child is sixteen years of age or older, placement of the child in another planned, permanent living arrangement.
- The court must also consider and approve a time schedule for implementing the permanency plan and order interim arrangements for the child's care while the permanency plan is being completed. **IC 31-34-21-7.5(c)**.

**IC 31-34-21.7.5(a)** provides that the home approved for the child's permanency plan cannot be inhabited by persons who: (1) have been convicted of or had juvenile delinquency findings for nonwaivable offenses as defined at **IC 31-9-2-84.8**, or (2) have committed substantiated abuse or neglect. **IC 31-34-21-7.5(d)** lists the exceptions to **IC 31-34-21-7.5(a)**. The court can approve the child's permanency plan to be placement in the residence of a person who has committed a specific felony listed in **IC 31-34-21-7.5(d)** or substantiated abuse or neglect. The court may approve a permanency plan if a person residing in the household has been convicted of battery, criminal confinement, carjacking, arson, a felony involving a weapon under **IC 35-47**, a felony involving controlled explosives under **IC 35-47.5**, a felony relating to controlled substances under **IC 35-48-4**, a felony under **IC 9-30-5** [driving while under the influence], or a substantially equivalent felony for which the conviction was entered in another state, if the conviction did not occur within the past five years. **IC 31-34-21-7.5(d)**. The statute also allows the permanency plan to include placement in the residence of a person who had a juvenile adjudication for a nonwaivable offense. **IC 31-34-21-7.5(d)**. In making the determination to allow the permanency placement pursuant to **IC 31-34-21.5(d)**, the court shall consider the length of time since the person committed the offense, delinquent act, or act of substantiated abuse or

neglect, the severity of the offense, delinquent act, or act of substantiated abuse or neglect, and evidence of the person's rehabilitation, including the person's cooperation with a treatment plan if applicable. **IC 31-34-21-7.5(e)**.

At the permanency hearing, the court must also examine the procedures used by DCS to be sure that parents' rights are being protected. **IC 31-34-21-7(b)(7)**. If parents' rights have not been protected throughout the CHINS process, there may not be a good legal record to support an involuntary termination of the parent-child relationship judgment if termination is the permanency plan. See **A.P. v. PCOFC**, 734 N.E.2d 1107, 1118 (Ind. Ct. App. 2000), in which the Court reversed the termination judgment because the CHINS and termination proceedings were replete with numerous and substantial procedural irregularities. In **In Re B.W.**, 17 N.E.3d 299, 311 (Ind. Ct. App. 2014), the Court reversed the trial court's order appointing guardians over the children as the permanency plan and remanded the case with instructions that the trial court reunite the children with Mother. The Court found the evidence was undisputed that Mother had successfully completed every requirement of the twenty-two part parental participation plan. Id. at 307. The Court said there is a presumption that a child's best interests are ordinarily served by placement in the custody of the natural parent. Id. at 311.

**IC 31-34-21-7(d)** states that there is a rebuttable presumption that the juvenile court's jurisdiction over the child in a CHINS proceeding continues for not longer than twelve months after the date of the dispositional decree or twelve months after the child was removed from the parents, guardian, or custodian, whichever occurs first. DCS may rebut the presumption and show that jurisdiction should continue by "proving that the objectives of the dispositional decree have not been accomplished, that a continuation of the decree with or without any modifications is necessary, and that it is in the child's best interests for the court to maintain its jurisdiction over the child." **IC 31-34-21-7(d)**. If DCS does not sustain its burden for continued jurisdiction, the court shall direct DCS to establish a permanency plan within thirty days or discharge the child and the child's parents, guardian, or custodian. **IC 31-34-21-7(d)**. The statute also provides that the court may retain jurisdiction to the extent necessary to effectuate a permanency plan, if DCS does not rebut the presumption.

**IC 31-34-21-5.8** applies whenever the court has approved a permanency plan for the child. **IC 31-34-21-5.8(b)** provides that when continuation of reasonable efforts to preserve and reunify the family is inconsistent with the child's permanency plan, DCS can make: (1) reasonable efforts to complete an out-of-home placement in accordance with the permanency plan and court approval; and (2) complete whatever steps are necessary to finalize the permanent placement of the child in a timely manner. **IC 31-34-21-5.8(c)** provides that when the court approved permanency plan is placement of the child for

adoption or another planned, permanent living arrangement, then periodic progress reports, case reviews, and postdispositional hearings to determine the following are not required:

- (1) Whether reasonable efforts have been made to eliminate the need for removal of the child from the child's home or to make it possible for the child to safely return to the child's home.
- (2) Whether the child is placed in close proximity to the home of the child's parent, guardian, or custodian.

**But see C.T. v. Marion Cty. Dept. of Child Services**, 896 N.E. 2d 571, 588 (Ind. Ct. App. 2008), in which the Court cautioned Marion County DCS that a juvenile court's determination that reunification services are no longer required does not absolve DCS of its responsibility to properly oversee and manage the case.

Appellate Courts have issued several opinions on whether a parent may appeal the trial court's permanency order. The opinions have been based on different factual situations and have reached different conclusions on this issue. In **In Re Tr. S.**, 63 N.E.3d 1065, 1069 (Ind. Ct. App. 2016), the Court dismissed Mother's appeal of the trial court's permanency order that continued the suspension of her visitation with her two children, found DCS was no longer required to provide reunification services to Mother except for random drug screens, and changed the permanency plan to termination of the parent-child relationship. The Court held that the permanency hearing order was not a final appealable judgment, and Mother had not followed the proper procedure to seek a discretionary interlocutory appeal. *Id.* at 1069. **See also In Re D.W.**, 52 N.E.3d 839, 842 (Ind. Ct. App. 2016) (Court concluded trial court's order was not a final judgement; therefore, the Court lacked subject matter jurisdiction over Mother's appeal), *trans. denied*; and **In Re K.F.**, 797 N.E. 2d 310, 315 (Ind. Ct. Ap. 2003) (Court held that the permanency plan order in the CHINS proceedings did not dispose of all claims as to all parties, and thus the order was not an appealable final judgment). **But see In Re R.H.**, 55 N.E.3d 304, 309 (Ind. Ct. App. 2016) (Court declined to dismiss Mother's appeal of trial court's finding that reasonable reunification efforts were not required; trial court's order also suspended Mother's visitation with the child and changed plan to adoption, so Court found the orders operated as a final judgment); and **In Re E.W.**, 26 N.E.3d 1006, 1009 (Ind. Ct. App. 2015) (trial court had determined that a permanency plan of Another Planned, Permanent Living Arrangement was in the child's best interests and later ordered that all contact between Mother and the child should cease; Court concluded trial court's order operated as a final appealable judgment and considered Mother's appellate argument).