

CHINS Primer 2014

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

By:

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Kids' Voice of Indiana

The CHINS Primer was funded by an education and training grant from the Indiana Supreme Court – Court Improvement Program. The Court Improvement Program is a federally funded initiative designed to improve the judicial process and safety, well-being and permanency outcomes for children and families involved in child abuse and neglect proceedings.

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Dedication

**The CHINS Primer 2014 is dedicated to the memory of
Saundria Bordone, outstanding legal scholar, child advocate,
and friend**

About the Agency

Kids' Voice of Indiana

Kids' Voice of Indiana is a 501(c)3 organization which has been committed for more than twenty-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 Supervised Parent-Child Visitation Program.

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Guide to the Child In Need of Services Process

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I. Introduction

The purpose of the CHINS Primer 2014 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 CHINS Deskbook 2001 by Frances G. Hill and Derelle Watson-Duvall and the 2009 Cumulative Supplement by Saundria Bordone and Derelle Watson-Duvall. These two extensive research books are available free of charge on the Kids' Voice of Indiana website, **www.KidsVoiceIN.org**. Additional case law updates and legal articles on CHINS law are frequently added to our website.

The CHINS Primer 2014 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 2014 includes information on 2014 legislation. Case law citations are current through Volume 8 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 31-33-5-4** states that if a person is required to make a report of abuse or neglect in the person’s capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, the person shall immediately notify the individual in charge or the designated agent of the individual in charge of the institution, school, facility, or agency. The individual notified shall report or cause a report to be made. **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. DCS shall arrange for receipt of all reports of suspected child abuse on at 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**, added effective March 14, 2012, 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.

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.* (Emphasis added). 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];
- (C) **IC 35-42-4-3** [child molesting];
- (D) **IC 35-42-4-4** [child exploitation; possession of child pornography];
- (E) **IC 35-42-4-7** [child seduction];
- (F) **IC 35-42-4-9** [sexual misconduct with a minor];
- (G) **IC 35-45-4-1** [public indecency; indecent exposure];
- (H) **IC 35-45-4-2** [prostitution];
- (I) **IC 35-46-1-3** [incest]; or
- (J) the law of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (I); and

(2) the child needs care, treatment, or rehabilitation that:

- (A) the child is not receiving; and
- (B) is unlikely to be provided or accepted without the coercive intervention of the court.

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

(1) the child lives in the same household as another child who is the victim of a sex offense under:

- (A) **IC 35-42-4-1** [rape];
- (B) **IC 35-42-4-2** [criminal deviate conduct];
- (C) **IC 35-42-4-3** [child molesting];
- (D) **IC 35-42-4-4** [child exploitation; possession of child pornography];
- (E) **IC 35-42-4-7** [child seduction];

- (F) **IC 35-42-4-9** [sexual misconduct with a minor];
 - (G) **IC 35-45-4-1** [public indecency; indecent exposure];
 - (H) **IC 35-45-4-2** [prostitution];
 - (I) **IC 35-46-1-3** [incest]; or
 - (J) the law of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (I);
- (2) the child lives in the same household as the adult who: (A) committed the sex offense under subdivision (1) and the sex offense resulted in a conviction or a judgment under **IC 31-34-11-2** [CHINS factfinding]; or (B) has been charged with a sex offense listed in subdivision (1) and is awaiting trial;
- (3) the child needs care, treatment, or rehabilitation that:
- (A) the child is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court; and
- (4) a caseworker assigned to provide services to the child:
- (A) places the child in a program of informal adjustment or other family or rehabilitative services based upon the existence of the circumstances described in subdivisions (1) and (2) and the assigned caseworker subsequently determines further intervention is necessary; or
 - (B) determines that a program of informal adjustment or other family or rehabilitative services is inappropriate.

Note that the offense of criminal deviate conduct was repealed effective July 1, 2014 with the inclusion of the prohibited conduct added to the definition of rape.

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, indecent exposure, public nudity, prostitution, patronizing or 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 31-34-1-10: 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; or
 - (B) any amount, including a trace amount, of a controlled substance or a legend drug in the child's body; and
- (2) the child needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving; or
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

IC 31-34-1-11: Risks or injuries arising from use of alcohol, controlled substance, or legend drug by child's mother during pregnancy

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; or
- (C) is at a substantial risk of a life threatening condition; that arises or is substantially aggravated because the child's mother used alcohol, a controlled substance, or a legend drug during pregnancy; and

(2) the child needs care, treatment, or rehabilitation that:

- (A) the child is not receiving; or
- (B) is unlikely to be provided or accepted without the coercive intervention of the court.

For purposes of child abuse or neglect reporting and CHINS 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**, is a person appointed by a court to have care and custody of a child. 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 care and supervision is provided; (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 reports child abuse or neglect or who participates in a court 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.**

Two 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.

Because Indiana law requires everyone who has reason to believe that a child is a victim of abuse or neglect must report, 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, 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. **Ind. Rule of Professional Conduct 1.6(b).** Clergy may, in some situations, be required to report child abuse or neglect by 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, inter alia, 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 Class D 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 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 initiate an appropriately thorough child protection assessment of every report of known or suspected child abuse or neglect. **IC 31-33-8-1(a)**. Legislation effective July 1, 2013 added **IC 31-33-8-1(b)**, which 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, or prosecuting attorney personnel, legislation effective July 1, 2013 requires DCS to forward the report to the local county DCS office to determine if an assessment shall be initiated. **IC 31-33-**

8-1(c). 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 a criminal investigation on the same situation which DCS is assessing, and the two agencies 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 has reason to believe that the child is in imminent danger of serious bodily harm, an immediate onsite assessment shall be initiated within one hour. **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. 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. **IC 31-33-8-7(a), (b)**. DCS or the law enforcement agency 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 A.H.**, 992 N.E.2d 960, 968 (Ind. Ct. App. 2013), 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), the Court affirmed the trial court's order requiring the 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 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 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. It is a class A misdemeanor criminal offense for a person to knowingly or intentionally obstruct or interfere with a child abuse assessment. **IC 31-33-22-2(b)**.

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 information, stating that completed assessment reports and other information relating to the abuse/neglect assessment are available upon request, to each parent, guardian, or custodian of the child. Parents, guardians, or custodians can access the report and investigation information by signing a written release form that outlines 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 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 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, IC 31-33-6-1(4), 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, 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 substantiation by DCS 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 not exclude hearsay 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)**. Effective July 1, 2012, the administrative hearing officer may consider children's hearsay evidence as allowed by the Child Hearsay Exception at **IC 31-34-13-1**. After listening to the evidence, 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)**. If the juvenile court determines that the alleged abuse or neglect did not occur or the person was not a perpetrator, the perpetrator is not entitled to an administrative hearing. **IC 31-33-26-11(c)**. 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 also 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.** 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.** 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 formality of a CHINS case, DCS can file an intake, preliminary inquiry, and request for the court's authorization to file a CHINS petition. **IC 31-34-7-3.** The DCS attorney or, effective July 1, 2013, a prosecutor, makes the decision to request the court's authorization to file a CHINS petition. **IC 31-34-9-1.** The court shall 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.**

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 also 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. IC 31-9-2-107(c),** amended effective July 1, 2014, 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. Stepparents and de facto custodians must also be considered for placement. 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.**

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 Detention and 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**). Legislation effective July 1, 2012, requires Court Appointed Special Advocates and Guardians ad Litem who serve on CHINS, termination, and delinquency cases 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 and volunteers, 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 31-34-22-3(c)**), 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.**

- the opportunity to be heard and make recommendations to the court at the permanency hearing if the child is at least sixteen years old and the proposed permanency plan is for the child to transition from foster care to independent living. **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 sometimes others who are custodians of the child, such as stepparents) are also legal parties to the CHINS case. **IC 31-34-9-7, 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. In **In Re V.C.**, 967 N.E.2d 50, 53-54 (Ind. Ct. App. 2012), the Court rejected incarcerated Father's claim that the juvenile court's denial of his request to issue a subpoena to maternal aunt (whose address Father did not provide) violated Father's due process rights.

The court may appoint an attorney for a parent in a CHINS case and is required to appoint counsel in certain situations. **IC 31-32-4-3(b)**. Recent case law from the Indiana Supreme Court, **In Re G.P.**, 4 N.E.3d 1158 (Ind. 2014), states 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 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. There is no right to a jury trial in CHINS cases. **IC 31-32-6-7(a)**.

If DCS removes the child, the custodial parent 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). A separate analysis as to each parent is not required in the CHINS determination stage. **N.E.** at 106. **IC 31-34-10-2**. **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 to have the case 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. The **A.G.** Court, citing **Gash v. Kohm**, 476 N. E.2d 910, 913 (Ind. Ct. App. 1985), observed that the privilege against self-incrimination does not prohibit the trier of fact from drawing adverse inference from a witness' refusal to testify. 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. **A.G.** at 957-58. Criminal case law indicates that DCS family case managers are not required to give Miranda warnings because case managers do not place a person in custody or limit a person's ability to leave during questioning. See the following case law on applicability of statements made in CHINS cases to criminal proceedings: **Clephane v. State**, 719 N.E.2d 840, 843 (Ind. Ct. App. 1999) (defendant's statements to case manager were voluntary and convictions for sexual misconduct with a fifteen-year-old child and contributing to the delinquency of a minor were affirmed); **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 in criminal proceedings against Mother because they were compelled by the State and therefore not voluntary); **Thomas v. State**, 612 N.E.2d 604, 607 (Ind. Ct. App. 1993) (no Miranda problem in admitting CHINS agreed entry in child molestation trial because defendant was not in custody when CHINS agreed entry was signed, and therefore rights applicable to arrest had not yet attached).

Parents, guardians, and custodians have the right to be served with the CHINS petition and summons. 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), (b)**), 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 also have 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)**). Parents also have the opportunity to be heard at court and to make recommendations to the court at all CHINS hearings.

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**. Both federal and 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**.

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 (60) days after the date of the child's first placement or the date of the dispositional hearing, whichever occurs first. **IC 31-34-15-2**. Termination of the parent-child relationship judgments which parents appealed alleging DCS's lack of compliance with case plans did not result in reversal of the termination judgments. See **In Re B.J.**, 879 N.E.2d 7, 17 (Ind. Ct. App. 2008) (Father waived any due process challenge to adequacy of CHINS proceeding because he had failed to object during CHINS proceedings and did not raise claim at 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**. Effective

July 1, 2014, the definition of “relative” at **IC 31-9-2-107(c)** includes the child’s parent, grandparent, brother, sister, stepparent, stepgrandparent, stepbrother, stepsister, first cousin, uncle, aunt, and any other individual with whom a child has an established and significant relationship. 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 31-34-4-2(b)**, added effective July 1, 2014, 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 (30) 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(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 request for information on any substantiated reports contained in the National Registry of substantiated cases of abuse or neglect established by the U.S. Department of Health and Human Services.

- Criminal history checks performed for the initial protective custody placement need not be repeated for dispositional or permanency placement.
- An act resulting in a substantiated child abuse or neglect report or the following felony convictions listed at **IC 31-27-4-13** will usually preclude the proposed 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), 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**), or a substantially equivalent felony in another state, except for circumstances listed directly below. A juvenile delinquency adjudication for an act listed at **IC 31-27-4-13** will also usually 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.
- 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 later plan of adoption, had liberty interest in their relationship with child and had standing to bring suit against DCS; 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 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) (Supreme Court ruled that foster parents do not have standing to request visitation with former foster children).

V. Jurisdiction

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 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 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 concurrent original jurisdiction with another juvenile court for the purpose of modifying custody of the child. **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 approving the custody modification; or (2) terminates the CHINS proceeding.

IC 31-30-1-6(a) provides that juvenile jurisdiction law does not prohibit a probate court from exercising its jurisdiction over guardianship of a child who is under the age of eighteen (18). 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)**. 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 there is not a pending CHINS proceeding. 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) gives the juvenile court jurisdiction over guardianship of a child who: (1) has been adjudicated a CHINS; (2) who 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 of the person. See also **IC 29-3-5-1(a)(12)** and **IC 29-3-5-1(g)** added effective July 1, 2011. **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.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). **But see In Re Adoption of E.B.**, 733 N.E.2d 4, 5 (Ind. Ct. App. 2000) (Court affirmed trial court's denial of adoption petition on jurisdictional grounds due to pending CHINS action).

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 (21). **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. Jurisdictional Prerequisites to CHINS Jurisdiction

Strict compliance with statutory procedures is required for the juvenile court to assert subject matter in a CHINS case. In **In Re Heaton**, 503 N.E.2d 410, 413-414 (Ind. Ct. App. 1986), the Court reversed and vacated the CHINS adjudication due to failure to

comply with jurisdictional prerequisites, including failure to file a CHINS petition and failure to notify parents of hearings. The Court opined that the trial court lacked subject matter jurisdiction of the CHINS proceeding, and any order or judgment rendered was a nullity. The following seven activities are generally considered the jurisdictional prerequisites in a CHINS case:

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 or 311 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.
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 (effective July 1, 2013) 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.
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 upon any of the following occurrences: (1) dismissal; (2) child reaches the age of twenty-one (21); 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” [DCS attorney or prosecuting attorney effective July 1, 2013] may file a motion to dismiss the CHINS petition. **IC 31-34-9-8(b)** requires the attorney 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 (10) 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)**. In **In Re K.B.**, 793 N.E.2d 1191, 1198 (Ind. Ct. App. 2003), which predates the 2005 amendments to **IC 31-34-9-8**, the Court concluded that the ability of DCS to move the court for mandatory dismissal of the CHINS petition ended upon Mother’s admission to the CHINS allegations.

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 juvenile court has jurisdiction over a guardianship of an adjudicated CHINS for whom guardianship is the permanency plan (described in **IC 31-30-1-1(10)**), the guardianship continues until terminated by the juvenile court or when the child reaches nineteen (19) years of age, if the child is at least eighteen (18) years old and is a full-time student **IC 31-30-2-1(d)**. The juvenile court’s guardianship ends when the child is eighteen (18) years old if the child is not attending school. **IC 31-30-2-1(d)**. If the guardianship continues after the child becomes eighteen (18) years old or nineteen (19) years old if a full-time student, juvenile court shall transfer the guardianship to a court having probate jurisdiction in the county. **IC 31-30-2-1(d)**. **IC 31-30-2-1(g)**, added effective March 14, 2012, 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 case pursuant to **IC 31-34-21-11** because the objectives of the child’s dispositional goal of adoption had been met) and **Lake County FCS v. Charlton**, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994) (because adjudicated CHINS child’s special medical needs were being met by father’s and stepfather’s health insurance policies and stepfather’s income, the trial court erred by failing to grant the petition to end FCS wardship).

Legislation in 2011 allows juvenile court orders in CHINS cases that modify dissolution court or paternity court orders to remain in effect until the dissolution court or paternity court modifies the order. **IC 31-30-1-12** was amended, adding subsections (c), (d), and (e). **IC 31-30-1-12(c)** states that if dissolution custody, parenting time, or child support is modified by juvenile court and the CHINS case is terminated, the court having concurrent original jurisdiction shall assume or reassume primary jurisdiction of the case to address all issues. **IC 31-30-1-12(d)** states that a court that assumes or reassumes jurisdiction may modify custody, parenting time, or child support in accordance with the applicable modification statutes. **IC 31-30-1-12(e)** states that a juvenile court order in a CHINS case that modifies custody, child support, or parenting time survives the termination of the CHINS case until the court with concurrent original jurisdiction assumes primary jurisdiction and modifies the order.

IC 31-30-1-13(a) states that a court having jurisdiction of a paternity custody proceeding under **IC 31-14** has concurrent original jurisdiction with another juvenile court for the purpose of modifying custody of a child who is under juvenile court jurisdiction due to a CHINS proceeding. **IC 31-30-1-13** was amended effective July 1, 2011, adding subsections (c) and (d). **IC 31-30-1-13(c)** states that if a juvenile court establishes or modifies paternity of a child and terminates the CHINS proceeding, the court having concurrent original jurisdiction shall assume or reassume primary jurisdiction of the case to address all other issues. **IC 31-30-1-13(d)** states that a juvenile court order establishing or modifying paternity of a child survives the termination of a CHINS proceeding.

VI. CHINS Detention and Initial Hearings

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 case may be assigned to a juvenile court in the county of the child's residence at any time before the dispositional hearing. **IC 31-32-7-3(a)**. Supervision of a child may be assigned to a court in the county of the child's residence. **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 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 caretaker 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, 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)**, added effective July 1, 2014, 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)**, also added effective July 1, 2014, 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 DCS attorney or a prosecuting attorney (effective July 1, 2013) makes the decision to proceed with the CHINS petition, but must also request the court's permission to file the CHINS petition. **IC 31-34-7-3, IC 31-34-9-1**. The court will decide whether there is probable cause to believe the child is a CHINS. **IC 31-34-9-2**. If the court does not authorize the filing of the CHINS petition, the case cannot proceed and the child must be returned to the parents, guardian, or custodian. The CHINS petition must contain, inter alia, 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. **But see 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).

The DCS attorney or a prosecuting attorney (effective July 1, 2013) may file a motion to dismiss the CHINS petition, which includes the reasons for requesting dismissal. **IC 31-34-9-8(a), (b)**. The court may set a hearing on the motion to dismiss and appoint a Guardian ad Litem or Court Appointment Special Advocate for the child. **IC 31-34-9-8(c), (d)**.

C. Initial Hearing

The court's first step at the initial hearing is to verify that each parent has received a copy of the CHINS petition and summons. **IC 31-34-10-2**. Effective July 1, 2012, the court shall hold an initial hearing within ten (10) days of the filing of the CHINS petition if the child is not detained. **IC 31-34-10-2(a)**. 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 **J.T. v. Marion County OFC**, 740 N.E.2d 1261, 1264 (Ind. Ct. App. 2000); **Tillotson v. Clay County Dep't of Family and Children**, 777 N.E.2d 741, 746 (Ind. Ct. App. 2002); **S.L. v. Indiana Dept. of Child Services**, 997 N.E.2d 1114, 1121 (Ind. St. App. 2013); and **In Re C.G.**, 954 N.E.2d 910, 912-22 (Ind. 2011). 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**, 777 N.E.2d at 746. 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 failure to locate Mother, who was incarcerated on federal charges in the Henderson, Kentucky Jail, to notify her of the CHINS petition did not violate Mother's due process rights.

If a parent's address remains unknown, after a diligent inquiry has been made, DCS may publish a legal notice to the parent in a newspaper about the CHINS proceeding. **IC 31-34-10-2(j)** 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(k)** states that the court may extend the additional initial hearing past thirty (30) days due to extraordinary circumstances.

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.

- 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**.
- 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**.

See In Re G.P., 4 N.E.3d 1158, 1163 (Ind. 2014), in which the 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 Court reversed the CHINS adjudication, where Mother had admitted the allegations of the CHINS petition but Stepfather requested a factfinding hearing which was not held. The Supreme 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. **See also In Re T.N.**, 963 N.E.2d 467, 469 (Ind. 2012) in which the Court held that the 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(a),(b)**. 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(a), (b)**. Effective July 1, 2012, **IC 31-34-11-1(d)** provides that if a CHINS factfinding hearing is not held within sixty (60) days, or within one hundred twenty (120) days if all parties consent to the extra time, the court shall dismiss the case without prejudice, if asked to do so by motion. Case law previously addressed the penalty for not holding the factfinding hearing within the statutory time limits.

In **In Re R.P.**, 949 N.E.2d 395, 404 (Ind. Ct. App. 2011), the Court concluded that the trial court had jurisdiction to decide the case even though the trial court failed to conduct a factfinding hearing within the sixty day time limit. The Court opined that its decision in **Parmeter v. Cass Cnty Dept. of Child Services**, 878 N.E.2d 444 (Ind. Ct. App. 2007), is directly on point for this issue. **R.P.** at 399. In **Parmeter**, 878 N.E.2d 448, the Court opined that “shall” may be construed as directory instead of mandatory “to prevent the defeat of the legislative intent.” The **Parmeter** Court further opined that the term “shall” is directory when the statute fails to specify adverse consequences, the provision does not go to the essence of the statutory purpose, and a mandatory construction would thwart the legislative purpose. **Id.** at 448. It is unclear whether the **R.P.** and **Parmeter** decisions will apply after July 1, 2012, in light of the new legislation. 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. **See 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 Supreme Court, reversing the CHINS adjudication of a two-year-old child who had special medical needs, said that 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).

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.*

The italicized language was added effective July 1, 2012. **IC 31-34-12-4.5** states that there is a rebuttable presumption that a child is a child in need of services if the state establishes that: (1) another child in the same household is the victim of a sex offense described in **IC 31-34-1-3** [child sexual abuse category for CHINS]; (2) the sex offense described in **IC 31-34-1-3** was committed by an adult who lives in the household with the child; and (3) resulted in a conviction of the adult or a judgment under **IC 31-34-11-2** [CHINS adjudication] as it relates to the child against whom the sex offense was committed. **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.

The italicized language was added effective July 1, 2012. 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.

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 or, effective July 1, 2012, 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 the 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. Also, the Court found that 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 31-34-13-13-2**. See In Re J.O., 836 N.E.2d 961, 965 (Ind. Ct. App. 2005) and Townesley 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, 860 (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.

In Mafnas v. Owen County Office of Family, 699 N.E.2d 1210, 1213 (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.

Child Neglect

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). 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.

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 of Mother's fifteen-year-old son on 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; (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. 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. The Court reiterated that each CHINS determination is very specific to the condition of that particular child. *Id.* at 984-85.

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. 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. 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.

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 until September 2016.

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 on the part of the parents, in that 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 her 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 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, 417-20 (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. *Id.* at 418. 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 to help locate the children. The Court opined that the courts and the welfare department are not required to wait until a tragedy occurs to intervene.

In **Matter of M.R.**, 452 N.E.2d 1085, 1089 (Ind. Ct. App. 1983), the Court affirmed the CHINS adjudication, finding that leaving the children with a babysitter could constitute neglect of supervision if Mother did not make provision for the children’s food, clothing, and care, even though the children were adequately cared for through the actions of friends and relatives who served as babysitters.

Injury by Act or Omission

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, 1270-71 (Ind. Ct. App. 2007), the Court reversed the CHINS adjudication, finding that 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.

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.

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

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.

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, 1025 (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 father. The Court opined that DCS had not met the burden required by **IC 31-34-1-1**.

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. Mother essentially abandoned the child without any responsible adult supervision.

In **Perrine v. Marion County Office of Child Services**, 866 N.E.2d 269, 276-277 (Ind. Ct. App. 2007), the Court reversed the juvenile court’s CHINS adjudication on evidence 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 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.

Mental Endangerment

In **In Re R.P.**, 949 N.E.2d 395, 401, 404 (Ind. Ct. App. 2011), the Court affirmed the CHINS adjudication, finding that a parent or guardian can endanger a child’s mental condition by making multiple false sexual abuse allegations. The Court said this principle is especially relevant in the instant 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 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 exams 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 V.C.**, 867 N.E.2d 167, 178-82 (Ind. Ct. App. 2007), the Court affirmed the juvenile court's CHINS adjudication on evidence that: (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, have caused psychological, emotional, and mental harm to the child.

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, 1047-48 (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. In **Slater**, the juvenile court 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.

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 her stepfather who lived in the home and of neglect by her 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, 695-99 (Ind. Ct. App. 2001), the Court affirmed the CHINS adjudication on 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.

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.

IX. CHINS Dispositional Hearings

The court must hold the dispositional hearing within thirty (30) 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 found the allegations true after the factfinding hearing, and the court 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 parents (including visitation), parental participation, protective orders, and the parents' ability to pay child support and to reimburse DCS for the cost of services. Legislation effective July 1, 2012, 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(b)**.

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 J.V.**, 875 N.E.2d

395, 399 (Ind. Ct. App. 2007), in which the Court opined that only after a dispositional hearing has been held is there a final, appealable order because the disposition finally determines the rights of the parties. On occasion, the Court of Appeals has made an exception to this rule. See M.K. v. Indiana Dept. of Child Services, 964 N.E.2d 240, 244 (Ind. Ct. App. 2012) (although parents had filed their notices of appeal before trial court issued its final dispositional order, Court decided to address the CHINS appeal on the merits) and Hallberg v. Hendricks Cty. Office, 662 N.E.2d 639, 643 (Ind. Ct. App. 1996) (Court noted that trial court had determined after fact-finding hearing that children were to remain in Mother's custody and receive services recommended by OFC; therefore, trial court's order finally determined rights of the parties and Court addressed merits of Father's appeal).

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. The report will include the child's needs for care, treatment, rehabilitation, and placement and the DCS recommendations for the child. **IC 31-34-18-1(a)**. 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 the child's care, treatment, or rehabilitation, and recommendations for participation by parents, guardians, or custodians in care, treatment, or rehabilitation programs. **IC 31-34-18-2(a)**. 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 an act listed in **IC 31-27-4-13(a)**, 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)**. **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.

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. 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)**. 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. **IC 31-34-18-6(b)**. 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 the dispositional report that included information about Mother's positive drug test at the time of the birth of Mother's second child, which occurred three months after the removal of her first child who was adjudicated CHINS. The court shall give the child, parents, guardians, custodians, 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**. 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**, amended effective July 1, 2014, 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)**, added effective July 1, 2014, 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. Effective July 1, 2014, **IC 31-9-2-107(c)** defines "relative" for purposes of IC31-34-19 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 place the child with a 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 that 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 out-of-home placement, which includes foster care, relative placement, a group home, a residential treatment center, or placement with the noncustodial parent;
- 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.

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 offered or provided to the child or parents, guardians, or custodians; and (5) the court’s reasons for the disposition. **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. The Indiana Parenting Time Guidelines usually will not apply due to the adjudication of abuse and/or neglect, but exceptions could be made for non-offending parents, guardians, and relatives. 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 on the pending termination case. See also **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); **Matter of A.C.B.**, 598 N.E.2d 570-72 (Ind. Ct. App. 1981) (visitation between child and incarcerated alleged father denied because it was not in best interests of child); and **Matter of Joseph**, 416 N.E.2d 857 (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 that: (1) the respondent is the child’s parent, guardian, or custodian; (2) the child has been adjudicated a CHINS; (3) the parent, guardian, or custodian should: (A) obtain assistance in fulfilling obligations as a parent, guardian, or custodian; (B) provide specified care, treatment or supervision for the child; (C) work with a person providing care, treatment, or rehabilitation for the child; or (D) refrain from direct or indirect contact with the child. **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 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. 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 is, in fact, a parent. In **In Re A.C.**, 905 N.E.2d 456, 464-65 (Ind. Ct. App. 2009), the Court held that there was sufficient evidence to support the CHINS adjudication, but 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 the trial court's findings of fact did not support the participation decree order that Mother establish paternity for the child. Consequently, these requirements must be vacated. The Court noted that (1) the trial court's findings of fact found that "[Mother] agreed that she needed the services being proposed by the [DCS] but disagreed that she needed any substance evaluation services," and determined that paternity had been established on August 2, 2007; (2) the judgment of paternity and support was entered into evidence; (3) there is no other reference to any alleged substance abuse in the findings of fact or conclusions of law; and (4) a review of the record disclosed no allegation or even an indication that Mother has a substance abuse problem. In **Mikel v. Elkhart County DPW**, 622 N.E.2d 225 (Ind. Ct. App. 1993), the Court concluded that the parental participation petition statutes mandate certain procedures be followed before the court can affirmatively order the participation of a parent in a dispositional decree, and prior to that time the court does not have jurisdictional authority over a parent and may not order parental action. The Court did not "believe that the juvenile code grants jurisdiction over parents so that they may be found in contempt of court, simply by the filing of a CHINS petition, or by a court's finding that children are CHINS." *Id.* at 229.

Because DCS is the funding source for child welfare placements and services for children and parents, new statutes were 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 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*, [italicized language added effective July 1, 2012] 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(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* [italicized language added after July 1, 2012] 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 "[t]he juvenile court shall accept each final recommendation of the department 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* [italicized language added effective July 1, 2012], 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.

The expedited appeal process for DCS to appeal court orders contrary to DCS recommendations is delineated at Ind. Appellate Rule 14.1, effective on January 1, 2009.

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. Effective July 1, 2012, **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 costs. In **In Re M.L.K.**, 751 N.E.2d 293 (Ind. Ct. App. 2001), the Court reversed the reimbursement order to OFC [now DCS] 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. **See also J.W. v. Hendricks County Office**, 697 N.E.2d 480, 482 (Ind. Ct. App. 1998) (Court ruled that parents must plead the exception to mandatory reimbursement, i.e. inability to pay or justice would not be served by reimbursement, as an affirmative defense under Trial Rule 8(c), and carry the burden on the defense by a preponderance of the evidence) and **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 into a child caring institution, 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 or not 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: (1) 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 (2) DCS does not make foster care 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

DCS is required by both federal law and Indiana law to make reasonable efforts to preserve and reunify families. Since 1980, the federal Adoption Assistance and Child Welfare Act, 42 U.S.C. 620-627, 670-679, has required state child welfare departments do the following as a precondition to receiving federal reimbursement for children in placement:

- Exert reasonable efforts to avoid removing children from their homes and to reunite children who were removed from their homes
- Maintain current case plans for all children
- Review cases on a set timetable
- Obtain permanency for children

In 1997 the federal Adoption and Safe Families Act, 42 U.S.C. 620-628b, 670-679(b), clarified that the paramount goal of the child welfare system is safety and permanence for the child. The Adoption and Safe Families Act continued the requirement that states must exert reasonable efforts to provide parents with services to avoid removal of children or facilitate reunification of child and parent, but created exceptions when reasonable efforts toward preservation and reunification are not required.

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. **IC 31-34-21-5.6(b)(4).**
- The child is a CHINS and is also an abandoned infant under the age of twelve months. **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 child less than twelve months old 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 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, child molesting, child exploitation, sexual misconduct with a minor, or incest (or a comparable offense in another state, territory, or country), and the victim was less than sixteen years of age and either the convicted parent's biological, adopted, or stepchild, or a 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, adopted, 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 *or Level 2*, Class B *or Level 3*, or Class C *or Level 5* felony battery, aggravated battery, Class B *or Level 1 or Level 3* felony neglect of a dependent, or Class C *or Level 5* felony criminal recklessness (or a comparable offense in another state, territory, or country), and the victim was the biological, adopted, or stepchild (no age requirement for the child victim) of the convicted person. The italicized language was added effective July 1, 2014. **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 30 days. **IC 31-34-21-5.7(a),(b)**. **IC 31-34-21-7(a)(1)**. Effective July 1, 2012, 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 31-34-21-5.6 (b)(3)**.

In **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. 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. 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. 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 Hearings

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 temporary caretaker. **See Matter of C.B.**, 616 N.E.2d 763, 769

(Ind. Ct. App. 1993), in which the Court reversed the court ordered modification of the dispositional decree which required the return of the child to Indiana from Tennessee. The juvenile court's order was invalid because notice of the modification hearing had not been given to the child's uncle (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 hearing is required, **IC 31-34-18** [predispositional report] and **IC 31-34-19** [dispositional hearing] apply to the preparation and use of the 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 modification reports. In **In Re T.S.**, 906 N.E.2d 801, 803 (Ind. 2009), the Indiana Supreme 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 modifications. **IC 31-34-19-6.1(a)** was amended, effective July 1, 2012, adding that the statute applies to modifications to dispositional decrees as well as to dispositional decrees. 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, and 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 and custodian, DCS attorney, and 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 dispositional order is the final appealable judgment. **In Re J.V.**, 875 N.E.2d 395, 399 (Ind. Ct. App. 2007) (Court opined that only after dispositional hearing has been held is there a final, appealable order because the disposition finally determines the rights of parties). **See Matter of J.L.V., Jr.**, 667 N.E.2d 186, 189 (Ind. Ct. App. 1996) (entry of dispositional decree following dispositional hearing constitutes final appealable judgment); **T.Y.T v. Allen County Div. of Family**, 714 N.E.2d 752, 756 n.3 (Ind. Ct. App. 1999) (Court acknowledged that dispositional order rather than factfinding judgment is final appealable order, but since dispositional hearing was conducted eight days after factfinding hearing, Court properly proceeded to hear appeal on merits). **But see M.K. v. Indiana Dept. of Child Services**, 964 N.E.2d 240, 244 (Ind. Ct. App. 2012) (Court decided to address CHINS appeal on its merits despite Parents' premature filing of notices of appeal before trial court issued its final dispositional order) and **Hallberg v. Hendricks Cty. Office**, 662 N.E.2d 639, 643 (Ind. Ct. App. 1996) (although trial court did not hold a separate dispositional hearing, Court believed trial court's order finally determined rights of the parties and Court accordingly addressed Father's appeal). In **E.R. v. Office of Family and Children**, 729 N.E.2d 1052, 1060 (Ind. Ct. App. 2000), the Court opined that CHINS placement decisions were reviewable on an interlocutory appeal. In **In Re K.F.**, 797 N.E.2d 310, 314-15 (Ind. Ct. App. 2003) the Court found that a permanency hearing order is not a final judgment as defined by Appellate Rule 2(H), and dismissed Parents' appeal, concluding that the permanency plan order was not an appealable final judgment.

The Indiana Supreme Court and Appellate Courts have declined to dismiss CHINS appeals due to mootness. **See 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); **Mikel v. Elkhart County DPW**, 622 N.E.2d 225, 227 (Ind. Ct. App. 1993) (CHINS contempt ruling not moot even though Father had served contempt sentence).

In reviewing the sufficiency of the evidence in CHINS appeals, the Appellate Court will not reweigh the evidence or judge the credibility of witnesses. **In Re C.W.**, 723 N.E.2d 956, 960 (Ind. Ct. App. 2000). 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). 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). 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, 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, effective January 1, 2009, 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 2012 amendments to **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. DCS shall serve notice of the appeal on the following: (1) trial court judge; (2) court clerk; (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 shall 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).

See In Re T.S., 906 N.E.2d 801, 803-05 (Ind. 2009), in which the Court affirmed the juvenile court's determination that the DCS placement recommendations were "contrary to the welfare and best interests of the child and are unreasonable based on the facts and circumstances." The Court declined to find that the juvenile court's determination was clearly erroneous. Id. at 805.

XIII. CHINS Periodic Case Review Hearings

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.

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); (4) the Guardian ad Litem or Court Appointed Special Advocate; (5) other parties; (6) the child's foster parent; (7) any other person who DCS knows is currently caring for the child and who is not required to be licensed; and (8) any other suitable relative or person who 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 report DCS shall consult with the foster parents about the child's progress made while in the foster parents' 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, the foster parents or 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, 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 felony which requires denial of a foster care license 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)**.

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 opportunity 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
- whether the parents, guardian, or custodian need additional services and the nature of those services
- the extent to which the child has been rehabilitated

- 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 parents, guardian, or custodian have participated in or been given the opportunity to participate in case planning, hearings, placement, 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 (6) month periodic case review order. **See A.P. v. P.C.O.F.C.**, 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)**.

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 describes the expedited appeal process for DCS to appeal court orders which are contrary to DCS 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. **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 (30) 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 occurs first
- 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); the Guardian ad Litem or Court Appointed Special Advocate; other parties; the child's foster parent; any other person who DCS knows is currently caring for the child and who is not required to be licensed; and any other suitable relative or person who 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 transitioning from foster care to independent living, 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 who is transitioning to independent living, 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 opportunity 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. A foster parent who has been the subject of a substantiated child abuse or neglect report or who has been convicted of a felony which requires denial of a foster care license 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(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 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 the foster parents on the child's progress while in the care of the foster parents. **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 attorneys for the 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, 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 insure that copies of the permanency hearing reports have been provided to those who received notice of the hearing. The court will 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)**. 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.

The most important determination which the court will make at the permanency hearing is to consider and approve the child's permanency plan. **IC 31-34-21-7.5(c)** lists the following options for permanency plans:

- Return to or continuation of existing custodial care by the parent, guardian, or custodian, including placement with the child's noncustodial parent. An amendment to **IC 31-34-21-5.5** effective July 1, 2012, 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)**.
- Initiation of a termination of the parent-child relationship case under **IC 31-35**.
- 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**).
- 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 certain specific felonies listed at **IC 31-27-4-13** 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. Legislation in 2012 amended the list of felonies which may not prevent the child's permanency placement 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 that approval of the permanency plan is in the child's best interests. Effective July 1, 2012, 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 amended statute also allows the permanency plan to include placement in the residence of a person who had a juvenile adjudication for an act listed in **IC 31-27-4-13(a)**, that, if committed by an adult, would be a felony. **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)**. 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.

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 (12) months after the date of the dispositional decree or twelve (12) 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 (30) 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 when 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 “[p]eriodic 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.

In **In Re K.F.**, 797 N.E. 2d 310, 315 (Ind. Ct. Ap. 2003), the 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.