

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY</b>	
	<b>Chapter 6:</b> Court	<b>Effective Date:</b> September 1, 2020
	<b>Section 1:</b> Detention/Initial Hearing	<b>Version:</b> 6

<b>STATEMENTS OF PURPOSE</b>
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The Indiana Department of Child Services (DCS) will ensure a [Detention Hearing](#) or a [combined Detention/Initial Hearing](#) is held no later than 48 hours (excluding Saturdays, Sundays, and certain legal holidays) following a child’s removal from a parent, guardian, or custodian. The [Detention Hearing](#) and the [Initial Hearing](#) are separate hearings, with separate purposes, but are often combined. If the [Detention Hearing](#) is not held within 48 hours (excluding Saturdays, Sundays, and certain legal holidays) after the removal to determine if DCS has continued authority to detain the child, then DCS will return the child to his or her parent, guardian, or custodian. If the child’s removal was ordered by the court at a [Detention Hearing](#), then an additional [Detention Hearing](#) is not necessary; only an [Initial Hearing](#) is required.

**Exception:** If a child is taken into custody as a safe haven or abandoned infant, DCS will ensure a [Detention/Initial Hearing](#) is held no later than the next business day after the child is taken into custody. See policy [4.34 Safe Haven and Abandoned Infants](#) for additional information.

DCS will request the court hold an [Initial Hearing](#) within 10 business days after filing a [Child In Need of Services \(CHINS\) Petition](#) when an In-Home CHINS is being pursued.

If the court chooses to schedule an additional [Initial Hearing](#) on a [CHINS Petition](#), this hearing must be held within 30 calendar days of the date of the combined [Detention/Initial Hearing](#) or [Initial Hearing](#). The court may issue an order granting an extension for documented extraordinary circumstances.

DCS will ensure that notice of the time, place, and purpose of the [Detention/Initial Hearing](#) is given to the following:

1. The child;

**Note:** If the child has a Guardian Ad Litem (GAL), Court Appointed Special Advocate (CASA), or an attorney for the child, the child may be served “(child’s name) by (name of GAL/CASA/attorney).” If no one has been appointed to represent the child, the custodial parent will be served. If there is no custodial parent, the resource parent will be served. In any event, if the child is 14 years of age or older, the child will be directly served with notice.

2. The child’s parent (including noncustodial, absent, and alleged), guardian, or custodian, if he or she may be located. See policies [5.4 Noncustodial Parents](#) and [5.6 Locating Absent Parents](#) for further guidance;
3. The child’s CASA or GAL, if assigned;
4. The resource parent with whom the child has been placed; and
5. Any other person necessary for the proceedings.

A person who is required to be notified will be given an opportunity to be heard and make recommendations to the court. If the child is too young, or for any other reason, unable to effectively communicate with the court, there should be sufficient information provided to the court by the DCS Staff Attorney detailing any special circumstances (e.g., physical or mental challenges) that may inhibit the child's ability to communicate with the court.

If the child's attendance at a hearing would neither benefit the child nor contribute to the proceedings, DCS will file a request for a court order to exclude the child from the proceedings. See policy [6.14 Children Attending Court Proceedings](#) for additional guidance.

DCS will ensure a summons is issued by the clerk of the court for subsequent hearings. For the [Initial Hearing](#) only, a copy of the [CHINS Petition](#) must accompany each summons. DCS will ensure a copy of the petition and notice of the [Detention/Initial Hearing](#) is personally delivered to a child alleged to be CHINS who is 14 years of age or older and has sufficient mental capacity to read and understand the contents of the document.

When a child is removed from his or her home, DCS will request that the following [required federal language](#) is included in the court order from the [Detention/Initial Hearing](#). See policy [15.1 Eligibility Overview for Field and Legal Staff](#) for additional information:

1. Contrary to the Welfare/Best Interest (CTW/BI);
2. Reasonable Efforts to Prevent Removal (RE); and
3. Responsibility for Placement and Care (PC).

**Note:** DCS will utilize the [Juvenile CHINS Bench Book](#) to ensure the [required federal language](#) is included in the court order.

DCS will request separate hearings for parents if there are safety concerns, if appropriate.

#### Code References

1. [IC 31-34-2.5: Emergency Custody of Certain Abandoned Children](#)
2. [IC 31-34-5: Chapter 5. Detention Hearing](#)
3. [IC 31-34-6: Chapter 6. Detention of Alleged Child in Need of Services](#)
4. [IC 31-34-7-1: Preliminary inquiry](#)
5. [IC 31-34-10-2\(h-k\): Initial hearing; service of copy of petition and summons; schedule of initial hearing; notice; petition alleging a child is a child in need of services; additional initial hearings](#)
6. [IC 31-34-10-2: Initial hearing; service of copy of petition and summons; determination of referral for dual status assessment; CHINS petition; additional initial hearings](#)
7. [IC 31-34-10-6: Admission or Denial of Allegations of a Petition](#)
8. [IC 31-34-10-9: Dispositional Hearing; fact finding hearing; consent](#)
9. [IC 31-34-2: Chapter 2. Taking a Child in Need of Services Into Custody](#)

### **PROCEDURE**

The Family Case Manager (FCM) will:

1. Ensure the following forms are completed (if applicable):
  - a. [Taking Custody of a Child Without a Verbal Consent or Written Court Order: Description of Circumstances \(SF 49584\)](#), if the child was removed without a court order,

- b. [Assessment of Alleged Child Abuse or Neglect \(SF 113\)\(311\)](#), when the assessment is completed,
  - c. [Preliminary Inquiry \(PI\)](#), and
  - d. Any other required forms or notices;
2. Discuss the removal with the DCS Staff Attorney and request that a [Detention/Initial Hearing](#) be scheduled;

**Note:** Request separate hearings be held for the parents, guardians, or custodians if safety concerns exist or if there is an active protective order that does not allow the individuals to attend hearings together.

3. Notify the DCS Staff Attorney if a foreign and/or sign language interpreter is needed for the [Detention/Initial Hearing](#);

**Note:** It is not always possible for an interpreter to be present for the [Detention/Initial Hearing](#), since the hearing must be held within 48 hours (excluding Saturdays, Sundays, and certain legal holidays) of removal. See policy [GA-3 Language Services](#) for more information.

4. Obtain the date, time, and location of the [Detention/Initial Hearing](#) from the DCS Staff Attorney and enter it in the case management system;
5. Assist the parent, guardian, or custodian and child (if appropriate) in understanding the allegations in the petition before the [Detention/Initial Hearing](#). See policy [6.14 Children Attending Court Proceedings](#) for additional guidance;
6. Ask the parent, guardian, or custodian to sign the [Summons](#) and the [Advisement of Rights](#). If they refuse to sign, notify the DCS Staff Attorney;

**Note:** These documents are not required to be signed before proceeding with the [Detention/Initial Hearing](#) if the parent, guardian, or custodian does not attend the Detention/Initial Hearing. The FCM will make efforts to ensure these documents are signed.

7. Attend the scheduled [Detention/Initial Hearing](#); and

**Note:** The parent, guardian, or custodian will be given the opportunity to admit or deny the allegations of the petition at a combined [Detention/Initial Hearing](#). See [Tool 6.B: Statutory Definition of CHINS](#).

8. Enter court hearing details and outcome, as well as future hearings scheduled, in the case management system.

The FCM Supervisor will:

1. Determine if it is appropriate for the child to be detained;
2. Assist the FCM, as necessary, to ensure all [Detention/Initial Hearing](#) requirements have been met. See policy [6.4 Providing Notice](#) for further guidance;
3. Review the [\(PI\) for approval](#);
4. Ensure visitation between the child and his or her parent, guardian, or custodian and siblings has been arranged timely. See policy [8.12 Developing the Visitation Plan](#) for additional information; and

5. Ensure appropriate referrals for services are made for the family. See policy [4.26 Determining Service Levels and Transitioning to Permanency Services](#) for more information.

The DCS Staff Attorney will:

1. Staff with the FCM regarding the removal at the earliest possible time;
2. Review the [\(PI\)](#) for legal sufficiency;
3. File the [PI](#) and the [Request for Filing of Petition](#);
4. Prepare and file the [CHINS Petition](#) in a timely manner;
5. File any motion to exclude or other relevant motions in a timely manner;
6. Request that court hearing(s) are scheduled timely;
7. Request a foreign and/or sign language interpreter (if applicable); and

Note: It is not always possible for an interpreter to be present for the [Detention/Initial Hearing](#), since the hearing must be held within 48 hours (excluding Saturdays, Sundays, and certain legal holidays) of removal. If this occurs, ask the court to set it for a continued [Initial Hearing](#) so an interpreter may be present. DCS also has the option of petitioning for the use of telephonic interpretation. See policy [GA-3 Language Services](#) for more information.

8. Refer to the [Juvenile CHINS Bench Book](#) and ensure the [required federal language](#) is included in the court order.

#### **PRACTICE GUIDANCE**

N/A

#### **FORMS AND TOOLS**

1. [Preliminary Report of Alleged Child Abuse or Neglect \(310\) \(SF 114\)](#) – available in the case management system
2. [Assessment of Alleged Child Abuse or Neglect \(311\) \(SF 113\)](#) – available in the case management system
3. [Taking Custody of a Child Without a Verbal Consent or Written Court Order: Description of Circumstances \(SF49584\)](#) – available in the case management system
4. [Preliminary Inquiry \(PI\)](#) -available in [CHINS Benchbook Forms](#)
5. [Advisement of Rights](#) – available in the case management system
6. [6.B Tool: Statutory Definition of CHINS](#)
7. [6.A Tool: Legal Process Overview](#)
8. [Request for Filing of Petition](#)- available in [CHINS Benchbook Forms](#)

#### **RELATED INFORMATION**

##### **CHINS Petition**

A CHINS petition is a written document that alleges a child is a CHINS and requests the court to adjudicate the child as such. See [Code References](#) for further information.

##### **Summons**

A summons is a document notifying a person of the filing of a court case against the person.

In CHINS cases, a summons is served to the parent, guardian, or custodian of the child alleged to be a CHINS if that parent, guardian, or custodian is named in the petition.

### **Preliminary Inquiry (PI)**

A PI is a written report prepared by DCS, which includes the child's background, current status, and school performance. The report relates the facts and circumstances that establish the reason DCS believes the child is a CHINS.

### **Detention**

A Detention is an action taken by DCS that:

1. Restricts a parent's access to his or her child;
2. Removes a child from his or her parent, guardian or custodian; or
3. Alters the composition household of a child for more than five (5) days.

### **Initial Hearing**

An Initial Hearing is a court hearing during which the parent, guardian or custodian is advised of his or her rights, presented with the allegations in the [CHINS Petition](#), and given the opportunity to admit or deny the allegations. The hearing is required to be held within 10 days of the filing of a [CHINS Petition](#), unless the child is detained and a [Combined Detention/Initial Hearing](#) is held within 48 hours (excluding Saturdays, Sundays, and certain legal holidays) of removal.

If the party admits to the allegations, the court will either take the admission under advisement or issue an order adjudicating the child to be a CHINS. However, if the court adjudicates the child to be a CHINS, a Dispositional Hearing will be set. If the party denies the allegations, the court will set the matter for further hearings as appropriate. Alternatively, the court may dismiss the proceedings if the court does not find that there is probable cause to support the filing of the [CHINS Petition](#). See policy [6.7 Dispositional Hearing](#) for additional information.

### **Combined Detention/Initial Hearing**

A Detention Hearing is required within 48 hours (excluding Saturdays, Sundays, and certain legal holidays) of removal and may be scheduled as a Combined Detention/Initial Hearing. This hearing represents the first of several steps in the adjudication and disposition of a CHINS case. The purpose of the combined Detention/Initial Hearing is for the court to determine whether DCS has probable cause to detain the child and to determine if the parent, guardian, or custodian admits or denies allegations set forth in the [CHINS Petition](#), and, if required, whether the child admits or denies the allegations.

**Note:** If the court chooses to schedule a Continued [Initial Hearing](#) on a [CHINS Petition](#), this hearing must be held within 30 calendar days of the date of the Detention/Initial Hearing. The court may issue an order granting an extension for documented extraordinary circumstances.

### **Reasonable Efforts - Detention/Initial Hearing**

Reasonable Efforts is the exercise of ordinary diligence and care by DCS to utilize all family preservation services available to enable the child to live at home safely.

### **Agreed Entry**

An agreed entry is an agreement by a child's parent, based on factual information that a child is a CHINS. An Agreed Entry should not indicate an agreement that a child needs services without a factual basis.

### **Required Court Order Language**

During the first hearing when the child is removed from the home, required court order findings of CTW/BI, RE, and PC are issued. If, however, the court fails to issue RE or PC findings during the first hearing, it must be issued at the time of the Initial CHINS Hearing in order to meet required state and federal statutes for Title IV-E Foster Care Funding (Title IV-E). DCS Staff Attorneys should refer to the [CHINS Benchbook Forms](#) for guidance on ensuring the required federal language is included in the court order. For further information about required court order language, see policy [15.1 Eligibility Overview for Field and Legal Staff](#).

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