

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 6: Court	Effective Date: July 1, 2017
	Section 1: Detention/Initial Hearing	Version: 5

STATEMENTS OF PURPOSE

When a child is removed from the home of the parent, guardian, or custodian, a combined [Detention/Initial Hearing](#) will be held no later than 48 hours after the removal, excluding Saturdays, Sundays, and certain legal holidays, to determine if the Indiana Department of Child Services (DCS) has continued authority to detain the child. The combined [Detention/Initial Hearing](#) will take place after a removal when there was no prior court approval. The [Detention/Initial Hearing](#) will always be combined unless DCS requests a [Detention Hearing](#) to obtain a court order prior to taking custody of a child.

If the combined [Detention/Initial Hearing](#) is not held within 48 hours after the removal, DCS will return the child to his or her parent, guardian, or custodian.

Exception: If a child is taken into custody as a safe haven or abandoned infant, DCS will ensure that 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 & Abandoned Infants](#) for additional information.

DCS will 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 there has been a Guardian Ad Litem (GAL)/Court Appointed Special Advocate (CASA)/attorney for the child, the child can 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 foster parent will be served. In any event, if the child is 14 years of age or over, the child will be directly served with notice.

2. The child's parent (including noncustodial, absent, and alleged), guardian, or custodian, if the person can be located. See policies, [5.4 Noncustodial Parents](#) and [5.6 Locating Absent Parents](#);

Note: The Family Case Manager (FCM) must be prepared to submit an [Affidavit of Diligent Inquiry \(SF 54778\) \(ADI\)](#) or advise the court regarding the efforts to complete the [ADI](#) at the time of the [Detention/Initial Hearing](#) if a parent (including noncustodial and absent), guardian, or custodian are unable to be located.

3. The child's CASA or GAL, if assigned;
4. The foster parent with whom the child has been placed; and
5. Any other person necessary for the proceedings.

Note: If a person receiving notice is a custodian of the child and is not a party to the case, DCS will give that person notice and a copy of the petition.

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 local office attorney detailing any special circumstance (e.g., physical or mental challenges) that may inhibit the child's ability to communicate with the court.

If the child's attendance at the hearings 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.

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 personally deliver a copy of the petition and notice of the [Detention/Initial Hearing](#) to children alleged to be CHINS who have sufficient mental capacity to read and understand the contents of the document.

When a child is removed from his or her home, DCS will ensure that the following required federal language is included in the court order from the [Detention/Initial Hearing](#):

1. It is in the child's best interest to be removed from the home and that remaining in the home environment would be contrary to the health and welfare of the child;
2. Reasonable efforts were made or were not required to prevent or eliminate the removal; and
3. DCS has responsibility for the placement and care of the child.

Note: DCS staff attorneys should refer to the [Juvenile Bench Book](#) forms for guidance on ensuring the required federal language is included in the court order.

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

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](#)
7. [IC 31-34-10-6 Admission or Denial of Allegations of a Petition](#)
8. [IC 31-34-10-9 Dispositional Hearing; factfinding 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 \(SF 113\) \(311\)](#), if the assessment was completed,
 - c. [Preliminary Inquiry](#) and
 - d. Any other required forms or notices.
3. Obtain the date, time, and location of the [Detention/Initial Hearing](#) from the DCS Staff Attorney;
4. Request separate hearings be held for the parents if safety concerns exist;
5. Assist the parent, guardian or custodian and child (if appropriate) in understanding the allegations in the petition before the [Detention/Initial Hearing](#);
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](#).

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

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

- a. If the party admits the allegations, the court will proceed to Agreed Entry (if appropriate), and issue a court order adjudicating the child a CHINS; then, the Dispositional Hearing will be set. See policy, [6.7 Dispositional Hearing](#), or
- b. If the party denies the allegations, the court will set the matter for a Fact-Finding Hearing and the FCM is required to attend the Fact-Finding Hearing. See policy, [6.3 Fact-Finding Hearing](#) for additional information.

Note: An Agreed Entry should not indicate an agreement that a child needs services without a factual basis.

8. Enter court hearing data in the case management system and document whether Best Interest/Contrary to the Welfare, Reasonable Efforts to prevent placement, and Placement and Care responsibility were included in the detention order.

The FCM Supervisor will:

1. Determine if it is appropriate for the child to be detained;
2. Ensure the [CHINS Petition](#) is filed in a timely manner;

3. Assist the FCM, whenever necessary, to ensure that all [Detention/Initial Hearing](#) guidelines have been met. See policy, [6.4 Providing Notice](#) for additional information; and
4. Assist the FCM in consulting with DCS Staff Attorney if the request to hold separate hearings is denied for the parents when appropriate.

PRACTICE GUIDANCE

N/A

FORMS AND TOOLS

1. [Affidavit of Diligent Inquiry \(SF 54778\) \(ADI\)](#)
2. [Juvenile Bench Book](#)
3. [Preliminary Report of Alleged Child Abuse or Neglect \(SF 114\) \(310\)](#) – Available in the case management system
4. [Assessment of Alleged Child Abuse or Neglect \(SF 113\) \(311\)](#) – Available in the case management system
5. [Taking Custody of a Child Without a Verbal Consent or Written Court Order: Description of Circumstances \(SF49584\)](#)
6. [Preliminary Inquiry](#) – Available in the [CHINS Benchbook Forms](#)
7. [6B Tool - Statutory Definition of CHINS](#)
8. [6A Tool - Legal Process Overview](#)

RELATED INFORMATION

CHINS Petition

A written document alleging that the child is a child in need of services, and requesting the court to adjudicate the child as such. See [Code References](#) for further information.

Summons

A document notifying a person of the filing of a lawsuit against the person. In CHINS cases, a summons is served upon the parent, guardian, or custodian of the child alleged to be a CHINS.

Preliminary Inquiry

A written report prepared by a FCM, including the child's background, current status, and school performance. The report relates facts and circumstances establishing reason to believe the child is a CHINS.

Detention

An action taken by DCS that:

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

Initial Hearing

A court hearing where the parent, guardian or custodian is advised of their rights, presented with the allegations in the [CHINS Petition](#) and given the opportunity to admit or deny the allegations. The hearing is required within 10 days of filing a [CHINS Petition](#) unless the child is detained and a [Detention/Initial Hearing](#) is held within 48 hours of removal.

Combined Detention/Initial Hearing

A court hearing required within 48 hours of removal. 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 an additional [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

The exercise of ordinary diligence and care by DCS to utilize all family preservation services available to:

1. Enable the child to live at home safely;
2. Effect the safe reunification of the child and family when it has been necessary to remove a child from the home to ensure immediate safety; or
3. Make and finalize the second Permanency Plan, concurrent planning, in a timely manner when reunification is not appropriate or possible.

Interpreter at Court

If a sign or other foreign language interpreter is needed, then the FCM should communicate with the court so that appropriate arrangements for an interpreter can be made. 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 of removal. If this occurs, ask the court to set it for a continued Initial Hearing so an interpreter can be present. DCS also has the option of petitioning for the use of telephonic testimony

Agreed Entry

An agreement by the child's parents, based on factual information that a child is a CHINS.

Required Court Order Language

During the first hearing when the child is removed from the home, required court order findings Best Interest/Contrary to the Welfare, Reasonable Efforts to prevent placement, and Placement and Care responsibilities are issued. If, however, the court failed to issue Reasonable Efforts or Placement and Care 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. DCS staff attorneys should refer to the Juvenile Bench Book forms for guidance on ensuring the required federal language is included in the court order. For further information about court order language please see the [Juvenile Benchbook](#).