

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 6: Court	Effective Date: July 1, 2021
	Section 01: Detention/Initial Hearing	Version: 7

POLICY OVERVIEW

The purpose of the Detention/Initial Hearing is for the court to determine whether Indiana Department of Child Services (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. The purpose of an Initial Hearing is to advise the parent, guardian, or custodian of rights, present the allegations in the CHINS Petition, and provide the opportunity to admit or deny the allegations. A Detention Hearing and Initial Hearing are separate hearings, with separate purposes, but are often as a Detention/Initial Hearing. The hearings must be held within required timeframes, per Indiana statute.

PROCEDURE

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 the child's parent, guardian, or custodian. 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 the child's 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 Abandoned Infants and 4.49 Safe Haven Infants).

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 Detention/Initial Hearing or Initial Hearing. The court may issue an order granting an extension for documented extraordinary circumstances.

During the Initial Hearing, if the parent, guardian, or custodian 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 parent, guardian, or custodian 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 6.07 Dispositional Hearing).

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, 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 able to be located. See policies 5.04 Locating and Engaging Noncustodial Parents and 5.06 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.

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, if the child was removed without a court order,
 - b. Assessment of Alleged Child Abuse or Neglect (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 a Detention/Initial Hearing be scheduled;

Note: DCS will request separate hearings be held for the child’s parent, guardian, or custodian if safety concerns exist or if there is an active protective order that does not allow the individuals to attend hearings together.

3. Ensure visitation between the child and the child’s parent, guardian, or custodian and siblings is arranged timely (see policy 8.12 Developing the Visitation Plan);
4. Ensure appropriate referrals for services are made for the family (see policy 4.26 Determining Service Levels and Transitioning to Permanency Services), and ask if the parent, guardian, custodian or the child needs a reasonable accommodation due to a disability;
5. Notify the DCS Staff Attorney if a foreign and/or sign language interpreter is needed for the Detention/Initial Hearing;
6. Obtain the date, time, and location of the Detention/Initial Hearing from the DCS Staff Attorney and notify all required parties (see policy 6.04 Providing Notice);

Note: 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.

7. Assist the parent, guardian, or custodian and child (if appropriate) in understanding the allegations in the petition before the Detention/Initial Hearing;

Note: 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).

8. 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: If the parent, guardian, or custodian does not attend the Detention/Initial Hearing, the Summons and Advisement of Rights are not required to be signed before proceeding with the Detention/Initial Hearing.

9. 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 the Detention/Initial Hearing (see Tool 6.B: Statutory Definition of CHINS).

10. Enter court hearing details, the outcome, and future scheduled hearings 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 6.04 Providing Notice);
3. Review the PI for approval;
4. Ensure visitation between the child and the child's parent, guardian, or custodian and siblings has been arranged timely (see policy 8.12 Developing the Visitation Plan); and
5. Ensure appropriate referrals for services and any necessary reasonable accommodations are made for the family (see policy 4.26 Determining Service Levels and Transitioning to Permanency Services).

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 hearings 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 required court order findings of Contrary to the Welfare or Best Interest (CTW/BI), Reasonable Efforts to Prevent Removal (RE), and Responsibility for Placement and Care (PC) are issued; and

Note: If the court fails to issue RE and 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) (see policy 15.01 Eligibility Overview for Field and Legal Staff).

9. Ensure a summons is issued by the clerk of the court for subsequent hearings.

Note: For the Initial Hearing only, a copy of the CHINS Petition must accompany each summons.

RELEVANT INFORMATION

Definitions

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.

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.

Detention

A Detention is an action taken by DCS that:

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

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 for DCS involvement in both CHINS and Informal Adjustment (IA) cases.

Reasonable Efforts - Detention/Initial Hearing

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

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.

Forms and Tools

- [6.A Tool: Legal Process Overview](#)
- [Advisement of Legal Rights Upon Taking Custody of/Filing a Petition on Behalf of a Child Alleged to be a Child in Need of Services \(SF 47114\)](#)
- Assessment of Alleged Child Abuse or Neglect (311) (SF 113) – available in the case management system
- Preliminary Inquiry (PI) – available in the case management system
- Preliminary Report of Alleged Child Abuse or Neglect (310) (SF 114) – available in the case management system
- Request for Filing of Petition- available in the case management system
- [Taking Custody of a Child Without a Verbal Consent or Written Court Order: Description of Circumstances \(SF49584\)](#)

Related Policies

- [GA-3 Language Services](#)
- [4.26 Determining Service Levels and Transitioning to Permanency Services](#)
- [4.34 Abandoned Infants](#)
- [4.49 Safe Haven Infants](#)
- [5.04 Locating and Engaging Noncustodial Parents](#)
- [5.06 Locating Absent Parents](#)
- [6.04 Providing Notice](#)
- [6.07 Dispositional Hearing](#)
- [6.14 Children Attending Court Proceedings](#)
- [8.12 Developing the Visitation Plan](#)
- [15.01 Title IV-E Eligibility Overview for Field and Legal Staff](#)

LEGAL REFERENCES

- [IC 31-10-2-3: Rights of persons with a disability](#)
- [IC 31-17-2-8.1: "Disability"; custody](#)
- [IC 31-34-2: Chapter 2. Taking a Child in Need of Services Into Custody](#)
- [IC 31-34-2.5: Chapter 2.5. Emergency Custody of Certain Abandoned Children](#)
- [IC 31-34-5: Chapter 5. Detention Hearing](#)
- [IC 31-34-6: Chapter 6. Detention of Alleged Child in Need of Services](#)
- [IC 31-34-7-1: Preliminary inquiry](#)
- [IC 31-34-10-2: Initial hearing; service of petition and summons; determination of referral for dual status assessment; CHINS petition; additional initial hearings](#)
- [IC 31-34-10-6: Admission or denial of allegations by parent, guardian, or custodian](#)
- [IC 31-34-10-9: Dispositional hearing; factfinding hearing; consent](#)
- [42 USC 12102: Definition of disability](#)