

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 6: Court Involvement	Effective Date: May 1, 2009
	Section 3: Initial/Fact-Finding Hearing	Version: 3

POLICY

If the Detention Hearing is not held at the same time as the Initial Hearing, the Indiana Department of Child Services (DCS) will ensure with the DCS Local Office Attorney that an Initial Hearing is held within seven (7) calendar days, excluding Saturdays, Sundays, and certain legal holidays, from the date of the Detention Order.

Exception: If a child is taken into custody as an abandoned child from an emergency medical services provider, DCS will ensure that an Initial Hearing is held not later than the next business day after the child is taken into custody. See separate policy, [3.13 Safe Haven](#).

DCS must return a child to his or her parent, guardian, or custodian if an Initial Hearing is not scheduled and held within seven (7) calendar days.

[NEW] DCS will request separate hearings for the non-offending parent and alleged domestic violence offender, when appropriate.

[NEW] DCS will protect the confidentiality of information shared during court proceedings and the safety of the non-offending parent. This may include, but is not limited to:

1. Presenting addresses and contact information for the non-offending parent in a sidebar;
2. Requesting that confidential information regarding the non-offending parent not be read aloud in the court room;
3. Requesting that security escort the non-offending parent and/or alleged domestic violence offender in and out of the court room and to their vehicle, if necessary; and/or
4. Requesting that service providers redact their service reports prior to providing a copy to the alleged domestic violence offender.

DCS will ensure the parent, guardian, or custodian is provided a copy of the:

1. Summons;
2. Advisement of Rights; and
3. Child in Need of Services (CHINS) Petition.

Note:

1. The Family Case Manager (FCM) will assist the parent, guardian, or custodian in understanding the allegations in the petition before the Initial Hearing;
2. The Summons and the Advisements of Rights are to be signed by the parent, guardian, or custodian; however, they are not required to proceed with the Initial Hearing. See Procedure and Related Information for further details; and
3. If the parent, guardian, or custodian refuses to sign the Summons and/or Advisement of Rights, the FCM will notify the DCS Local Office Attorney of their refusal to sign.

DCS will ensure a summons is issued by the clerk of the court for the CHINS petition to the following:

1. The child;

Note: If there is a Guardian Ad Litem (GAL), Court Appointed Special Advocate (CASA), or attorney appointed 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 resource parent will be served. In any event, if the child is 14 years of age or over, the child will be directly served with an additional copy.

2. The child's parent, guardian, or custodian;
3. GAL or CASA; and
4. Any other person necessary for the proceedings.

Note: A copy of the CHINS petition must accompany each summons. DCS will personally deliver a copy of the petition and notice of the Initial Hearing to children alleged to be CHINS who have sufficient mental capacity to read and understand the contents of the document.

DCS will ensure that notice of the date, time, place, and purpose of the Initial Hearing and any additional Initial Hearing is given to the following:

1. The child;

Note: 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. To remove the obligation of DCS to provide notice to the child, the order must specifically address the issue.

2. The child's parent, guardian, or custodian;
3. GAL or CASA;
4. Resource parent with whom the child has been placed; and
5. Any other person necessary for the proceedings.

Note:

1. If the person receiving notice is a caretaker of the child and is not a party, DCS may give the person a copy of the petition; and
2. A person who is required to be notified will be given an opportunity to be heard and make recommendations to the court.

Code References

1. [IC 31-34-2.5: Emergency custody of certain abandoned children](#)
2. [IC 31-34-5-1: Time for hearing; notice](#)
3. [IC 31-34-10-2: Initial hearing; service of copy of petition and summons](#)
4. [IC 31-34-10-6: Admission or Denial of Allegations of a Petition](#)
5. [IC 31-34-10-9: Dispositional Hearing, Factfinding Hearing: consent](#)
6. [IC 31-34-11-1: Factfinding Hearing on Child in Need of Services \(CHINS\)](#)

PROCEDURE

The FCM will:

1. Obtain the date, time, and location of the Initial Hearing from the DCS Local Office Attorney;
2. **[NEW]** Request separate hearings be held for the non-offending parent and alleged domestic violence offender, when appropriate.
3. Attend the scheduled hearing:

Note: The parent, guardian, or custodian will be given the opportunity to admit or deny the allegations of the petition at the Initial Hearing. In a CHINS 6, the court must appoint an attorney and GAL or CASA to determine if the child admits or denies the allegations. By statute, a failure to respond constitutes a denial. See [Tool 6.B: Statutory Definition of CHINS](#).

- a. If the party admits to the allegations, the court will proceed to Agreed Entry (if appropriate), or issue a court order finding CHINS; then, the Dispositional Hearing will be set. See separate policy, [6.7 Dispositional Hearing](#), or
- b. If the party denies the allegations, the FCM will attend the Fact-Finding Hearing, which is to be held not more than 60 calendar days from the date the CHINS Petition is filed.

Note: A pretrial conference may be ordered by the court, and under some limited circumstances an additional 60 calendar days is allowed. See Related Information for further details.

Note: If the court determines that the child is a CHINS, they will proceed to the appropriate hearing. If the court determines that the child is not a CHINS, the case will be dismissed.

4. Enter court hearing data in the Indiana Child Welfare Information System (ICWIS). If Reasonable Efforts to prevent placement or Placement and Care responsibility findings are issued for the first time at this hearing, assure that this is entered in ICWIS.

The Supervisor will:

1. Ensure the CHINS petition is filed in a timely manner; and
2. Assist the FCM, whenever necessary, to ensure that all Initial Hearing guidelines have been met. See separate policy, [6.4 Providing Notice](#).
3. **[NEW]** Assist the FCM if the request to hold separate hearings is denied for the non-offending parent and alleged domestic violence offender, when appropriate.

PRACTICE GUIDANCE

N/A

FORMS AND TOOLS

1. [Intake Officer's Report of Preliminary Inquiry and Assessment \(Investigation\)\(PIR1070108\)](#) - Available in ICWIS
2. [Assessment of Alleged Child Abuse or Neglect \(SF 113/CW311\)](#) – Available in ICWIS
3. [Tool 6.B: Statutory Definition of CHINS](#)
4. [Affidavit of Diligent Inquiry \(ADI\) \(SEARCH100801ADI\)](#) – Available in ICWIS

RELATED INFORMATION

Initial Hearing

This hearing represents the first of several steps in the adjudication and disposition of a CHINS case. The purpose of the Initial Hearing is for the court to determine whether the parent, guardian, or custodian admits or denies the allegations set forth in the CHINS petition, and, if required, whether the child admits or denies the allegations.

Note: If an additional Initial Hearing on the CHINS petition is necessary, it shall be held not more than 30 calendar days after the date of the first Initial Hearing on the CHINS petition; unless, the court has granted an extension of time for extraordinary circumstances, and stated the extraordinary circumstance in a written court order.

[NEW] Sidebar

A conference between the judge, the lawyers, and sometimes the parties to a case that the jury does not hear.

Agreed Entry

A document that the parties agreed to, which has been ordered by the court.

Fact-Finding Hearing Requirements

The juvenile court will complete a Fact-Finding Hearing not more than 60 calendar days after a petition alleging that a CHINS is filed. The juvenile court may extend the time to complete a Fact-Finding Hearing for an additional 60 calendar days if all parties in the action consent to the additional time.

If the Fact-Finding Hearing is not held immediately after the Initial Hearing, the department will provide notice of any Fact-Finding Hearing to each party and resource parent or other caretaker with whom the child has been placed for temporary care, unless the court gave face-to-face notice at a previous hearing. The court will provide a person who is required to be notified an opportunity to be heard at the Factfinding Hearing.

As mentioned in [6.2 Filing a CHINS Petition](#), the Initial Hearing should have federal regulated language included in the order for IV-E eligibility determination. The court order language includes Best Interest/Contrary to the Welfare, Reasonable Efforts, and Placement and Care for criteria purposes. The Initial Hearing also allows the FCM to gather pertinent information for the IV-E eligibility criteria that may have been previously missed or not available.

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 responsibility – 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.

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