

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL</b>	
	<b>Chapter 6:</b> Court	<b>Effective Date:</b> January 1, 2009
	<b>Section 1:</b> Detention Hearing	<b>Version:</b> 2

<b>POLICY</b>
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When a child is removed from the home of the parent/guardian/custodian, a Detention Hearing will be held no later than 48 hours after the removal, excluding Saturdays, Sundays, and certain legal holidays, to determine if the Department of Child Services (DCS) has continued authority to detain the child.

**Note:** DCS will return a child to his/her parent/guardian/custodian if the Detention Hearing is not held within the 48 hour time frame.

The DCS Local Office Attorney will file the [Intake Officer's Report of Preliminary Inquiry and Assessment \(Investigation\)](#) with the court to initiate a Detention Hearing and Initial Hearing<sup>1</sup>.

**Note:** DCS will request that the Detention and Initial Hearing be held at the same time.

DCS will ensure that notice of the time, place, and purpose of the Detention 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 an additional copy.

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

**Note:** The FCM must be prepared to present his/her findings with respect to the absent parent to the court.

4. The resource parent with whom the child has been placed.

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 Judicial Officer of any special circumstance that makes communication by the child difficult or

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<sup>1</sup> An Initial Hearing refers to a CHINS.

impossible. The inability to communicate because of some physical or mental health challenge must be disclosed to the Judicial Officer.

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.

When a child is removed from his/her home, DCS will ensure that the following required federal language is included in the court order from the Detention Hearing:

1. That 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.

#### Code References

1. [IC 31-34-2.5: Emergency Custody of Certain Abandoned Children](#)
2. [IC 31-34-5: Time for hearing; notice](#)
3. [IC 31-34-6: Detention of Alleged Child in Need of Services](#)
4. [IC 31-34-7-1: Preliminary Inquiry](#)

### **PROCEDURE**

The Family Case Manager (FCM) will:

1. Ensure that Indiana Child Welfare Information System's (ICWIS) Assessment Matrix supports the filing of a CHINS. See separate policies, [4.18 Safety Assessment](#) and [6.2 Filing a CHINS Petition](#);
2. Ensure the following forms are completed (if applicable):
  - a. [Taking Custody of a Child without Verbal Consent or Written Court Order: Description of Circumstances \(SF 49584/CW 0018\)](#), if the child was removed without a court order;
  - b. [Preliminary Report of Alleged Child Abuse or Neglect \(SF 114/CW 310\)](#);
  - c. [Assessment of Alleged Child Abuse or Neglect \(SF 113/CW311\)](#), if the assessment was completed;
  - d. [Intake Officer's Report of Preliminary Inquiry and Assessment \(Investigation\)](#); and
  - e. Any other forms or notices in ICWIS that are required.
3. Obtain the date, time, and location of the Detention Hearing from the DCS Local Office Attorney;
4. Recommend to the DCS Local Office Attorney that the Initial and Detention Hearing be held at the same time;
5. Attend the scheduled Detention Hearing; and
6. **[REVISED]** Enter court hearing data in ICWIS 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 Supervisor will:

1. Determine if it is appropriate for the child to be detained; and
2. Assist the FCM, whenever necessary, to ensure that all Detention Hearing guidelines have been met. See separate policy, [6.4 Providing Notice](#).

## PRACTICE GUIDANCE

N/A

## FORMS AND TOOLS

1. [Taking Custody of a Child without Verbal Consent or Written Court Order: Description of Circumstances \(SF 49584/CW 0018\)](#)
2. [Intake Officer's Report of Preliminary Inquiry and Assessment \(Investigation\)- available in ICWIS](#)
3. [Preliminary Report of Alleged Child Abuse or Neglect \(SF 114/CW 310\)](#)
4. [Assessment of Alleged Child Abuse or Neglect \(SF 113/CW311\)](#)
5. [Tool 6.B: Statutory Definition of CHINS](#)
6. [Tool 6.A: Legal Process Overview](#)
7. [Affidavit of Diligent Inquiry \(ADI\)](#)

## RELATED INFORMATION

### **Petition**

A written request or plea in which a specific court action is requested.

### **Summons**

A document notifying a person of the filing of a lawsuit against the person. In CHINS cases, a summons is sent to the parent/guardian/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**

Removal of a child from his/her home who is or appears to be a CHINS.

### **Detention Hearing**

A court hearing required within 48 hours of removal.

### **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 alternate permanency plans 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 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.