

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL</b>	
	<b>Chapter 6: Court</b>	<b>Effective Date: July 1, 2012</b>
	<b>Section 1: Detention/Initial Hearing</b>	<b>Version: 4</b>

**POLICY [REVISED]**

**[REVISED]** 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.

**[REVISED] 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 separate policy [4.34 Safe Haven & Abandoned Infants](#).

**[NEW]** 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.

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

**[REVISED] Note:** The Family Case Manager (FCM) must be prepared to submit an [Affidavit of Diligent Inquiry \(SF 54778\)](#) 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.

**[REVISED] 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 (i.e. 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.

**[REVISED]** 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. 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.

**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 <https://www.in.gov/judiciary/center/2383.htm>.

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: 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](#)
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: Taking a Child In Need of Services into Custody](#)

<b>PROCEDURE</b>
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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 \(SF 113/CW 311\)](#), if the assessment was completed,
  - c. [Intake Officer's Report of Preliminary Inquiry and Assessment \(Investigation\) \(PIR1070108\)](#), and
  - d. Any other required forms or notices.
3. Obtain the date, time, and location of the Detention/Initial Hearing from the DCS Local Office 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 Local Office 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](#).

- a. If the party admits to the allegations, the court will proceed to Agreed Entry (if appropriate), or issue a court order adjudicating the child a CHINS; then, the Dispositional Hearing will be set. See separate 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 separate policy, [6.3 Fact-Finding Hearing](#).

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

8. **[REVISED]** Enter court hearing data in the Management Gateway for Indiana's Kids (MaGIK) 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 separate policy, [6.4 Providing Notice](#); and
4. Assist the FCM in consulting with DCS Local Office Attorney if the request to hold separate hearings is denied for the parents when appropriate.

## PRACTICE GUIDANCE

N/A

## FORMS AND TOOLS

1. [Preliminary Report of Alleged Child Abuse or Neglect \(SF 114/CW310\)](#) – Available in MaGIK
2. [Assessment of Alleged Child Abuse or Neglect \(SF 113/CW311\)](#) – Available in MaGIK
3. [Taking Custody of a Child Without a Verbal Consent or Written Court Order: Description of Circumstances \(SF 49584\)](#)
4. [Intake Officer's Report of Preliminary Inquiry and Assessment \(Investigation\) \(PIR1070108\)](#)
5. [Affidavit of Diligent Inquiry \(SF 54778\)](#)
6. [6B Tool - Statutory Definition of CHINS](#)
7. [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.

### **[REVISED] 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.

### **[NEW] 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.

### **[REVISED] 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.

**[REVISED] 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 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, when 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

### **[REVISED] Agreed Entry**

An agreement by the child's parents, based on factual information that a child(ren) 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 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. 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 <http://www.in.gov/judiciary/center/2383.htm>.