

# **CHAPTER TWO**

## **PROCEDURE RULES, JURISDICTION, VENUE, AND CHANGE OF JUDGE**

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### I. APPLICABLE RULES OF PROCEDURE

In cases when the Indiana Rules of Criminal Procedure do not apply, the Indiana Rules of Trial Procedure apply in all matters not covered by juvenile law. Ind. Code § 31-32-1-3.

### II. JURISDICTION

Jurisdiction is the legal power to entertain any matter or proceeding, and power to act must be derived from Constitution or statute. Twyman v. State, 459 N.E.2d 705, 707 (Ind. 1984).

Jurisdiction embraces three elements: (1) jurisdiction over the subject matter; (2) jurisdiction of the person; and (3) jurisdiction of the particular case. State v. Willis, 773 N.E.2d 808, 812 (Ind. 2002), citing Troxel v. Troxel, 773 N.E.2d 745, 749 (Ind. 2000).

Kent v. U.S., 383 U.S. 541, 554 (1966) (Juvenile law is constructed upon the foundation of the State's *parens patriae* power, rather than the adversarial nature of corpus juris [a body of law – a compendium of all laws, cases, and the varied interpretations of them]. The juvenile court jurisdiction is rooted in social welfare philosophy rather than in the corpus juris.).

#### A. SUBJECT MATTER PERSONAL JURISDICTION

##### 1. Definition

Subject matter jurisdiction concerns whether or not a particular court has jurisdiction over general class of actions to which particular case belongs. Twyman, v. State, 459 N.E.2d 705, 707 (Ind. 1984).

##### 2. Source of Subject Matter Jurisdiction

Subject matter jurisdiction must be derived from the Constitution or statute and cannot be conferred by consent or agreement of parties. State ex rel. Hight v. Marion Superior Court, 547 N.E.2d 267, 269 (Ind. 1989) and Phares v. State, 796 N.E.2d 305, 307 (Ind. Ct. App. 2003).

##### 3. Absence of Subject Matter Jurisdiction Cannot Be Waived By Failure To Object

Absence of subject matter jurisdiction cannot be waived by failure to object. Judgment entered without subject matter jurisdiction is void. Twyman v. State, 459 N.E.2d 705, 707 (Ind. 1984); City of Marion v. Howard, 832 N.E.2d 528, 531 (Ind. Ct. App. 2005) (citing State ex rel. Hight v. Marion Superior Court, 547 N.E.2d 267, 269 (Ind. 1989)).

##### 4. Juvenile Court Exclusive Original Jurisdiction in CHINS/TPR Cases

Pursuant to Ind. Code § 31-30-1-1, a juvenile court has exclusive original jurisdiction, except as provided in Ind. Code § 31-30-1-9, -10, -12, and -13, in the following:

- (1) Proceedings in which a child, including a child of divorced parents, is alleged to be a delinquent child under Ind. Code § 31-37.
- (2) Proceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services under Ind. Code § 31-34.

- (3) Proceedings concerning the paternity of a child under Ind. Code § 31-14.
- (4) Proceedings under the interstate compact on juveniles under Ind. Code § 31-37-23.
- (5) Proceedings governing the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for a child under Ind. Code § 31-34-16 or Ind. Code § 31-37-15.
- (6) Proceedings under Ind. Code § 31-34-4, Ind. Code § 31-34-5, Ind. Code § 31-37-5, and Ind. Code § 31-37-6 governing the detention of a child before a petition has been filed.
- (7) Proceedings to issue a protective order under Ind. Code § 31-32-13.
- (8) Proceedings in which a child less than sixteen (16) years of age is alleged to have committed an act that would be a misdemeanor traffic offense if committed by an adult.
- (9) Proceedings in which a child is alleged to have committed an act that would be an offense under Ind. Code § 9-30-5 if committed by an adult.
- (10) Guardianship of the person proceedings for a child: (A) who has been adjudicated as a child in need of services; (B) for whom a juvenile court has approved a permanency plan under Ind. Code § 31-34-21-7 that provides for the appointment of a guardian of the person; and (C) who is the subject of a pending child in need of services proceeding under Ind. Code § 31-34.
- (11) Proceedings concerning involuntary drug and alcohol treatment under Ind. Code § 31-32-16.
- (12) Proceedings under the interstate compact for juveniles under Ind. Code § 11-13-4.5-1.5.
- (13) Proceedings under Ind. Code § 31-28-5.8.
- (14) Other proceedings specified by law.

While CHINS proceedings are pending, the juvenile court has exclusive jurisdiction over custody decisions because it determines placement of the child until the parties are discharged or the cause is transferred. E.R. v. Marion County Office of Family and Children, 729 N.E.2d 1052, 1060 (Ind. Ct. App. 2000). See Also Dinson v. Drosta, 80 N.E.2d 33 (Ind. Ct. App. 1907); Harrison v. Allen County Div. of Family & Children (In re T.Y.T.), 714 N.E.2d 752, 755 (Ind. Ct. App. 1999); Summers v. State, 230 N.E.2d 320, 324 (Ind. 1967); State ex rel. Johnson v. White Circuit Court, 77 N.E.2d 298, 301 (Ind. 1948); Sanders v. Sanders, 310 N.E.2d 905, 908 (Ind. Ct. App. 1974); and In re K.B., 793 N.E.2d 1191, 1196 (Ind. Ct. App. 2003).

Court must strictly comply with statutory requirements governing adjudication of child alleged to be a CHINS in order to ensure that court has subject matter jurisdiction. In re T.G., 726 N.E.2d 857, 859 (Ind. Ct. App. 2000).

Juvenile court has jurisdiction to terminate parental rights. In re Munson, 444 N.E.2d 912, 913 (Ind. Ct. App. 1983).

## 5. Concurrent Jurisdiction with Probate Court

Pursuant to Ind. Code § 31-30-1-5, a juvenile court has concurrent original jurisdiction with the probate court in the following proceedings: (1) Proceedings to commit children under Ind. Code § 12-26. (2) Proceedings to terminate the parent-child relationship under Ind. Code § 31-35.

However, the juvenile court's jurisdiction is limited as described in Ind. Code § 12-26-1-4.

A court with probate jurisdiction may adjudicate an adoption matter simultaneously with the juvenile court's adjudication of a CHINS proceeding. In re Adoption of H.N.P.G., 878 N.E.2d 900, 905 (Ind. Ct. App. 2008). A simultaneous CHINS and/or TPR proceeding does not divest the probate court of its exclusive jurisdiction over the adoption case; the probate court and the juvenile court were statutorily required, by Ind. Code § 31-34-21-11, to dismiss the CHINS case after the child had been adopted because the dispositional goal had been met. R.K.H. v. Morgan County Office of Family & Children (In re Infant Girl W.), 845 N.E.2d 229, 240-41 (Ind. Ct. App. 2006).

In re Adoption of J.T.D., 21 N.E.3d 824 (Ind. 2014) (County court system did not have a separate probate court but designated that all adoptions should be filed in the juvenile division. The local rule prescribed venue and did not expand jurisdiction.).

Child Advocates, Inc. v. Clark (In re A.D.), 737 N.E.2d 1214, 1217 (Ind. Ct. App. 2000) (Juvenile court could stay the TPR proceedings pending the hearing on an adoption petition in the interest of judicial economy.).

## **6. Probate Court Jurisdiction for Guardianship of Minor Child**

Subject to Ind. Code § 31-30-1-6(b) and (c), Ind. Code § 31-30 does not prohibit a probate court from exercising its jurisdiction over guardianship of a person who is less than eighteen (18) years of age. Ind. Code 31-30-1-6(a).

In re Adoption of E.B., 733 N.E.2d 4, 5 (Ind. Ct. App. 2000) (Probate court lacked jurisdiction to grant foster parents' petition to adopt child who had a CHINS petition pending in juvenile court, where object of CHINS proceeding was reunification with biological father and father's parental rights had not been terminated.).

### **a. If Child May Be a CHINS, DCS Must be Notified**

Pursuant to Ind. Code § 31-30-1-6(b), if allegations in the petition for guardianship or allegations produced at guardianship proceedings indicate that the person for whom the guardianship is requested meets the definition of a CHINS under Ind. Code § 31-34-1, the probate court on its own motion or at the request of a party shall: (1) Send the petition for guardianship or the record of guardianship to DCS; and (2) Direct DCS to initiate an assessment to determine whether the person for whom the guardianship is requested.

### **b. Probate Court Retains Jurisdiction until CHINS Petition Authorized**

The probate court retains jurisdiction over the matter until the juvenile court authorizes the filing of a petition under Ind. Code § 31-34-9. Ind. Code § 31-30-1-6(c).

### **c. Probate Court May Conduct Additional Proceedings**

Pursuant to Ind. Code § 31-30-1-6(d), if a juvenile court: (1) Issues an order establishing or modifying a guardianship of a minor; and (2) Requests additional proceedings regarding the guardianship of the minor; the probate court that retains jurisdiction over the case or another appropriate court shall conduct additional proceedings.

## **7. Concurrent Original Jurisdiction with Child Custody Court**

Pursuant to Ind. Code § 31-30-1-12(a), and subject to Ind. Code § 31-30-1-12(b), a court having jurisdiction under Ind. Code § 31-17-2 of a child custody, parenting time, or child support proceeding in a marriage dissolution has concurrent original jurisdiction with the juvenile court for the purpose of modifying custody of a child who is under the jurisdiction of the juvenile court because: (1) The child is the subject of a child in need of services

proceedings; (2) The child is the subject of a juvenile delinquency proceeding that does not involve an act described in Ind. Code § 31-37-1-2; or (3) The child is the subject of a paternity proceeding.

**a. Modification by Child Custody Court Subject to Juvenile Court Action**

Pursuant to Ind. Code § 31-30-1-12(b), whenever the court having child custody jurisdiction under Ind. Code § 31-17-2 in a marriage dissolution modifies child custody as provided by this section, the modification is effective only when the juvenile court: (1) Enters an order approving the child custody modification; or (2) Terminates the child in need of services proceeding, the juvenile delinquency proceeding, or the paternity proceeding.

In re Adoption of E.B., 733 N.E.2d 4, 5 (Ind. Ct. App. 2000) (Initiation of CHINS proceedings places subject matter of child custody exclusively within the juvenile court's jurisdiction and no other court may exercise such jurisdiction while that CHINS proceeding is pending.).

**b. Child Custody Court Assumes/Reassumes Primary Jurisdiction When Juvenile Court Case Terminated**

Pursuant to Ind. Code § 31-30-1-12(c), if a juvenile court: (1) Modifies child custody, child support, or parenting time; and (2) Terminates a child in need of services proceeding or a juvenile delinquency proceeding regarding the child; the court having concurrent original jurisdiction under Ind. Code § 31-30-1-12(a) shall assume or reassume primary jurisdiction of the case to address all issues.

**c. Court May Modify Orders**

A court that assumes or reassumes jurisdiction of a case under Ind. Code § 31-30-1-12(c) may modify child custody, child support, or parenting time in accordance with applicable modification statutes. Ind. Code § 31-30-1-12(d).

**d. Modification Order Survives Termination of CHINS Proceeding**

An order modifying child custody, child support, or parenting time issued under Ind. Code § 31-30-1-12 survives the termination of the child in need of services proceeding or the juvenile delinquency proceeding until the court having concurrent or original jurisdiction assumes primary jurisdiction and modifies the order. Ind. Code § 31-30-1-12(e).

**8. Concurrent Jurisdiction with Paternity Court**

Pursuant to Ind. Code § 31-30-1-13(a), and subject to Ind. Code § 31-30-1-13(b), a court having jurisdiction under Ind. Code § 31-14 of a paternity proceeding has concurrent original jurisdiction with another juvenile court for the purpose of modifying custody of a child who is under the jurisdiction of the other juvenile court because: (1) The child is the subject of a child in need of services proceedings; (2) The child is the subject of a juvenile delinquency proceeding that does not involve an act described in Ind. Code § 31-37-1-2.

**a. Modification by Child Custody Court Subject to Juvenile Court Action**

Pursuant to Ind. Code § 31-30-1-13(b), whenever the court having child custody jurisdiction under Ind. Code § 31-14 in a paternity proceeding modifies child custody as provided by this section, the modification is effective only when the juvenile court with jurisdiction over the child in need of services proceeding or juvenile delinquency proceeding: (1) Enters an order approving the child custody modification; or (2) Terminates the child in need of services proceeding or the juvenile delinquency proceeding.

**b. Child Custody Court Assumes/Reassumes Primary Jurisdiction When Juvenile Court Case Terminated**

Pursuant to Ind. Code § 31-30-1-13(c), if a juvenile court: (1) Establishes or modifies paternity of a child; and (2) Terminates a child in need of services proceeding or a juvenile delinquency proceeding regarding the child; the court having concurrent original jurisdiction under Ind. Code § 31-30-1-13(a) shall assume or reassume primary jurisdiction of the case to address all other issues.

**c. Modification Order Survives Termination of CHINS Proceeding**

An order establishing or modifying paternity of the child by a juvenile court survives the termination of the child in need of services proceeding or the juvenile delinquency proceeding. Ind. Code § 31-30-1-13(d).

**9. Concurrent Jurisdiction under the Uniform Child Custody Jurisdiction Act**

Although a CHINS case is not a custody dispute per se, when considering a CHINS case, a juvenile court must exercise its jurisdiction within the framework and policy considerations of the Uniform Child Custody Jurisdiction Act (“UCCJA”). Alexander v. Foy (In re R.A.F.), 766 N.E.2d 718, 724-25 (Ind. Ct. App. 2002).

When confronted with the existence of a valid foreign custody-visitation determination, the CHINS court must proceed under the provisions of the UCCJA and that, pursuant to a then-existing emergency provision in the UCCJA, the Indiana CHINS court may be allowed to exercise temporary jurisdiction for the duration of the emergency but should terminate its jurisdiction after the emergency has passed. E.H. v. Marion County Dep’t of Pub. Welfare, 612 N.E.2d 174 (Ind. Ct. App. 1993).

**B. PERSONAL JURISDICTION**

Jurisdiction of the person refers to particular parties who are brought before the court and the right of that particular court to exercise jurisdiction over those parties. Twyman v. State, 459 N.E.2d 705, 707 (Ind. 1984).

**1. Personal Jurisdiction Requires Appropriate Process**

Personal jurisdiction requires that appropriate process be affected over the parties. K.S. v. State, 849 N.E.2d 538, 540 (Ind. 2006). In juvenile court proceeding to have child declared a public ward, service of notice provided by statute on mother and father of child was sufficient to give court jurisdiction over child. Bradburn v. Bradburn, 197 N.E.2d 905, 907 (Ind. 1935).

**2. Adjudication Required Before Child Turns 18**

The juvenile “court has subject matter jurisdiction to determine whether [the child] was a CHINS only until the time that [the child] reached eighteen years of age;” the court loses jurisdiction to adjudicate a child as a CHINS once he turned 18, even if proceedings were initiated before the child turns 18. Mafnas v. Owen County Office of Family & Children, 699 N.E.2d 1210, 1213 (1998). An adjudication prior to the child’s 18<sup>th</sup> birthday is required for the court to maintain jurisdiction after the child’s 18<sup>th</sup> birthday. Western v. State (In re T.G.), 726 N.E.2d 857, 859 (Ind. Ct. App. 2000).

**3. Objections to Personal Jurisdiction May Be Waived**

Objections to personal jurisdiction may be waived by a failure to assert them in a timely manner. Ind. Trial Rule 12(H).

### **C. CONTINUING JURISDICTION**

Pursuant to Ind. Code § 31-30-2-1(a), except as provided by Ind. Code § 31-30-2-1(b) and (c), the juvenile court's jurisdiction over a CHINS and over the child's parent, guardian, or custodian continues until: (1) The child becomes twenty-one (21) years of age, unless the court discharges the child and the child's parent, guardian, or custodian at an earlier time; or (2) Guardianship of the child is awarded to the department of correction.

Lake County Dep't of Child Servs. v. A.T. (In re A.T.), 889 N.E.2d 365, 368 (Ind. Ct. App. 2008) (The court dismissed the child's wardship when the child was 18 year's old. The appellate courts have treated a motion to dismiss wardship as a motion to discharge CHINS status. The court lacked jurisdiction to reinstate the child as a ward of the State later.).

#### **1. Jurisdiction Continues Until Adults Pay Financial Obligations**

The juvenile court's jurisdiction over a parent or guardian of the estate of a child continues until the parent or guardian of the estate has satisfied the financial obligation of the parent or guardian of the estate that is imposed under Ind. Code § 31-40. Ind. Code § 31-30-2-1(c).

### **D. JURISDICTION PRESUMED TO END AT 12 MONTHS**

There is a rebuttable presumption that jurisdiction over the child in a child in need of services proceeding continues for not longer than twelve (12) months after the date of the original dispositional decree or twelve (12) months after the child in need of services was removed from the child's parent, guardian, or custodian, whichever comes first. Ind. Code § 31-34-21-7(d).

#### **1. DCS May Rebut the Presumption that Jurisdiction Ends**

The State may rebut the presumption and show that jurisdiction should continue by proving that the objectives of the dispositional decree have not been accomplished, that a continuation of the decree with or without any modifications is necessary, and that it is in the child's best interests for the court to maintain its jurisdiction over the child. Ind. Code § 31-34-21-7(d).

#### **2. If DCS Does not Sustain Burden for Continued Jurisdiction**

If the department does not sustain its burden for continued jurisdiction, the court shall: (1) direct the department to establish a permanency plan within thirty (30) days; or (2) discharge the child and the child's parent, guardian or custodian. Ind. Code § 31-34-21-7(d).

#### **3. Court May Retain Jurisdiction To Carry Out Permanency Plan**

The court may retain jurisdiction to the extent necessary to carry out any orders under Ind. Code § 31-34-21-7(d)(1) [permanency plan]. Ind. Code § 31-34-21-7(d).

## **III. VENUE**

Pursuant to Ind. Code § 31-32-7-1, if a child is a CHINS, proceedings under the juvenile law may be commenced in the county: (1) Where the child resides; (2) Where the act occurred; or (3) Where the condition exists.

### **A. CHANGE OF VENUE**

A change of venue from the county may not be granted except under Ind. Code § 31-32-7-3. Ind. Code § 31-32-7-2.

State ex rel. Dunn v. Lake Juvenile Court, 228 N.E.2d 16, 19 (1967) (Right to change of venue extends to child neglect cases in juvenile court).

### **B. ASSIGNMENT OF CASE TO COUNTY OF CHILD'S RESIDENCE**

Upon (1) the juvenile court's own motion; (2) the motion of the child; or (3) the motion of the



child's parent, guardian, or custodian; the juvenile court may assign a case to a juvenile court in the county of a child's residence at any time before the dispositional hearing. Ind. Code § 31-32-7-3(a).

**1. Supervision May Be Assigned to County of Residence**

Supervision of a child may be assigned to a juvenile court in the county of the child's residence. Ind. Code § 31-32-7-3(b).

**2. Assigning Court Must Send All Documents**

The assigning court shall send to the receiving court certified copies of all documents pertaining to the case. Ind. Code § 31-32-7-3(c).

**IV. CHANGE OF JUDGE**

Except as provided by Ind. Code § 31-32-8-2, a change of judge may be granted only for good cause shown by affidavit filed at least twenty-four (24) hours before the fact-finding hearing. Ind. Code § 31-32-8-1.

McCormack v. Lemond (In re Lemond), 413 N.E.2d 228, 244 (Ind. 1980) (Indiana Rules of Trial Procedure apply to procedural matters not covered by the Juvenile Code, including procedures in Trial Rule 79 related to obtaining a special judge. When an adversarial relationship is present and a change of judge is necessary, the custodial parent, if available, is a party for the purpose of striking and stands in the shoes of the defendant, while the DCS attorney stands in the shoes of the plaintiff.).

**A. JUDGE WHO PRESIDED OVER CONVICTION MAY NOT PRESIDE IN TPR CASE**

The judge who presided over the trial at which an individual was convicted of an offense listed in Ind. Code § 31-35-3-4 may not be the judge who presides over the proceedings in an action filed under Ind. Code § 31-35-3 with respect to that individual. Ind. Code § 31-32-8-2.