

CHAPTER FIVE

REMOVING CHILD OR ADULT FROM HOME

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CHAPTER FIVE

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I.DCS PRIORITY IS CARE OF CHILD

The department of child services must have as the department's first priority the immediate needs of the child for medical care, shelter, food, or other crisis services. Ind. Code § 31-34-3-5.

II. WHEN A CHILD MAY BE REMOVED FROM THE HOME

A. DETENTION WITHOUT A COURT ORDER

Pursuant to Ind. Code § 31-34-4-4(1), if a child is taken into custody without an order of the court, the person taking the child into custody may: (A) release the child or (B) deliver the child to a placed designated by the juvenile court.

1. DCS Investigation to Determine if Continued Detention is Necessary

Pursuant to Ind. Code § 31-34-4-5, if the child was not taken into custody under an order of the court, the intake officer shall investigate the reasons for the child's detention. The intake officer shall release the child to the child's parent, guardian, or custodian upon the person's written promise to bring the child before the juvenile court at a time specified. However, the intake officer may place the child in detention if the intake officer reasonably believes that the child is a child in need of services and that:

- (1) Detention is necessary to protect the child;
- (2) The child is unlikely to appear before the juvenile court for subsequent proceedings;
- (3) The child has a reasonable basis for requesting that the child not be released; or
- (4) The parent, guardian, or custodian: (A) Cannot be located; or (B) Is unable or unwilling to take custody of the child.

2. Child Held at Hospital During Assessment Until DCS Authorizes Release

Pursuant to Ind. Code § 31-33-11-1(a), whenever:

- (1) A child is subject to assessment by the department for reported child abuse or neglect;
- (2) The child is a patient in a hospital; and
- (3) The hospital has reported or has been informed of the report and assessment;

the hospital may not release the child to the child's parent, guardian, custodian, or to a court approved placement until the hospital receives authorization or a copy of a court order from the department indicating that the child may be released to the child's parent, guardian, custodian, or court approved placement.

a. Authorization for Release Must be Confirmed in Writing

If the authorization that is granted under Ind. Code § 31-33-11-1(a) is verbal, the department shall send a letter to the hospital confirming that the department has granted authorization for the child's release. Ind. Code § 31-33-11-1(b).

b. Payment Responsibility

The individual or third party payer responsible financially for the hospital stay of the child remains responsible for any extended stay under Ind. Code § 31-33-11-1(a). If no party is responsible for the extended stay, the department shall pay the expenses for the extended hospital stay. Ind. Code § 31-33-11-1(c).

3. Voluntary Abandonment of Child at Emergency Room

a. Child Must Be Less Than 30 Days Old

Pursuant to Ind. Code § 31-34-2.5-1(a), an emergency medical services provider shall, without a court order, take custody of a child who is, or who appears to be, not more than thirty (30) days of age if:

(1) The child is voluntarily left

(A) with the provider by the child's parent;

(B) in a newborn safety device that:

(i) has been approved by a hospital licensed under Ind. Code § 16-21;

(ii) is physically located inside a hospital that is staffed continuously on a twenty-four (24) hour basis every day to provide care to patients in an emergency; and

(iii) is located in an area that is conspicuous and visible to hospital staff; or

(C) in a newborn safety device that was installed on or before January 1, 2017, and is located at a site that is staffed by an emergency medical services provider (as defined in Ind. Code § 16-41-10-1); or

(D) in a newborn safety device that:

(i) is located at a fire department, including a volunteer fire department, that is staffed by an emergency medical services provider (as defined in Ind. Code § 16-41-10-1) on a twenty-four (24) hour seven (7) day a week basis;

(ii) is located in an area that is conspicuous and visible to staff; and

(iii) includes an adequate dual alarm system connected to the site that is tested at least one (1) time per month to ensure the alarm system is in working order; and

(2) The parent does not express an intent to return for the child.

b. Medical Staff Authorized to Provide Treatment

An emergency medical services provider who takes custody of a child under Ind. Code § 31-34-2.5 shall perform any act necessary to protect the child's physical health or safety. Ind. Code § 31-34-2.5-1(b).

c. No Requirement to Disclose Name

Any person who in good faith voluntarily leaves a child with an emergency medical services provider is not obligated to disclose the parent's name or the person's name. Ind. Code § 31-34-2.5-1(c).

d. DCS Notified Immediately

Immediately after an emergency medical services provider takes custody of a child under Ind. Code § 31-34-2.5-1, the provider shall notify the department of child services that the provider has taken custody of the child. Ind. Code § 31-34-2.5-2(a).

e. DCS Duties

1. DCS Must Assume Care of Child and Check Missing Children Clearinghouse

Pursuant to Ind. Code § 31-34-2.5-2(b), the department of child services shall:

- (1) Assume the care, control, and custody of the child immediately after receiving notice under Ind. Code § 31-34-2.5-2(a).
- (2) Not later than forty-eight (48) hours after the department of child services has taken custody of the child, contact the Indiana clearinghouse for information on missing children and missing endangered adults established by Ind. Code § 10-13-5-5 to determine if the child has been reported missing.

f. Child Treated as Child Detained Without Court Order

A child for whom the department of child services assumes care, control, and custody under Ind. Code § 31-34-2.5-2 shall be treated as a child taken into custody without a court order, except that efforts to locate the child's parents or reunify the child's family are not necessary, if the court makes a finding to that effect under Ind. Code § 31-34-21-5.6(b)(5). Ind. Code § 31-34-2.5-3.

g. DCS Attorney Must File Request With Court

Pursuant to Ind. Code § 31-34-2.5-4, whenever a child is taken into custody without a court order under Ind. Code § 31-34-2.5, the attorney for the department of child services shall, without unnecessary delay, request the juvenile court to:

- (1) Authorize the filing of a petition alleging that the child is a child in need of services;
- (2) Hold an initial hearing under Ind. Code § 31-34-10 not later than the next business day after the child is taken into custody; and
- (3) Appoint a guardian ad litem or a court appointed special advocate for the child.

4. When the Child is Endangered or Impaired if the Child Remains in the Home

a. Law Enforcement Officer, Probation Officer, or Caseworker May Detain

Pursuant to Ind. Code § 31-34-2-3(a), if a law enforcement officer's action under Ind. Code § 31-34-2-2 will not adequately protect the safety of the child, the child may be taken into custody by a law enforcement officer, probation officer, or caseworker acting with probable cause to believe the child is a child in need of services if:

- (1) It appears that the child's physical or mental condition will be seriously impaired or seriously endangered if the child is not immediately taken into custody;
- (2) There is not a reasonable opportunity to obtain an order of the court; and
- (3) Consideration for the safety of the child precludes the immediate use of family services to prevent removal of the child.

N.W. v. Madison County Dep't of Public Welfare, 493 N.E.2d 1256 (Ind. Ct. App. 1986) (Welfare department's decision to obtain a court review of its probable cause determination prior to taking custody of children under this section inured to mother's benefit and was not reversible error although mother did not receive notice and an opportunity to be heard prior to the granting of the Department's emergency detention petition.).

b. Circumstances When Probation Officer or Caseworker May Act Alone

A probation officer or caseworker may take a child into custody only if the circumstances make it impracticable to obtain assistance from a law enforcement officer. Ind. Code § 31-34-2-3(b).

c. Written Documentation for Custody Without Court Order

Pursuant to Ind. Code § 31-34-2-6(a), a person taking a child into custody under Ind. Code § 31-34-2-3 shall make written documentation evidencing the following:

- (1) The facts establishing probable cause to believe that the child is a child in need of services.
- (2) Why the child's physical or mental condition will be seriously impaired or seriously endangered if the child is not immediately taken into custody.
- (3) Why the person is unable to obtain a court order and what steps have been taken to obtain a court order.
- (4) Why the department of child services is unable to protect the safety of the child without taking the child into custody.
- (5) Why the person is unable to obtain the assistance of a law enforcement officer if the child is taken into custody by a probation officer or caseworker without the assistance of a law enforcement officer.

A county department of public welfare or court can intervene in parent-child relationship on basis of probable cause determination that child is CHINS. Wardship of Nahrwold v. Dep't of Public Welfare of Allen County, 427 N.E.2d 474, 480 (Ind. Ct. App. 1981).

d. DCS Must Create Forms to be Used

The department of child services shall create forms to be used for documentation under Ind. Code § 31-34-2-6. Ind. Code § 31-34-2-6(b).

DCS's policies can be found in the Indiana Child Welfare Policy Manual, accessible online at: <https://www.in.gov/dcs/2354.htm>

Forms relating to assessment and removal can be accessed through the Indiana Child Welfare Policy Manual, Chapter-4 - Assessment. <https://www.in.gov/dcs/2537.htm>

e. Written Documentation Must be Completed Within 24-hours

If a person takes a child into custody under Ind. Code § 31-34-2-3, the person shall make written documentation not more than twenty-four (24) hours after the child is taken into custody as provided in Ind. Code § 31-34-2-6. Ind. Code § 31-34-2-3(c).

f. Documentation Immediately Forwarded to DCS

The person taking the child into custody shall immediately forward a copy of the documentation to the department of child services to be included in the report required by Ind. Code § 31-33-7-4. Ind. Code § 31-34-2-6(c).

5. If the Child is a Missing Child

A child may be taken into custody by: (1) a law enforcement officer; (2) a probation officer; or (3) a caseworker; acting with probable cause to believe the child is a child in need of services because the child is a missing child (as defined in Ind. Code § 10-13-5-4). Ind. Code § 31-34-2-4.

B. DETENTION BY ORDER OF THE COURT

1. By Law Enforcement Pursuant to Court Order

A child may be taken into custody by a law enforcement officer under an order of the court. Ind. Code § 31-34-2-1.

2. Prior to Completion of Abuse/Neglect Assessment

If, before the assessment of an allegation of abuse and/or neglect is complete, the opinion of the law enforcement agency or the department is that immediate removal is necessary to protect the child from further abuse or neglect, the juvenile court may issue an order under Ind. Code § 31-32-13. Ind. Code § 31-33-8-8(a).

3. DCS May Request Detention Order After Petition is Authorized

If a petition is authorized, the person filing may request in writing that the child be taken into custody. Ind. Code § 31-34-9-5(a).

a. Detention Petition Must be Supported by Testimony or Affidavit

The person requesting detention following the petition authorization must support the request for detention with sworn testimony or affidavit. Ind. Code § 31-34-9-5(b).

b. Detention Hearing Must be Held

If the juvenile court grants the request to have the child taken into custody, the court shall proceed under Ind. Code § 31-34-5-1 and Ind. Code § 31-34-5-2. Ind. Code § 31-34-9-6.

4. Missing Child Taken By Court Order

Pursuant to Ind. Code § 31-34-2-5, if a child in need of services is a missing child and is taken into custody under a court order, the person taking the child into custody shall do the following:

- (1) Take the child to a place designated in the order.
- (2) Give notice to the following that the child has been taken into custody: (A) The child's legal custodian; and (B) The clearinghouse for information on missing children and missing endangered adults established by Ind. Code § 10-13-5.

III. NOTICE OF REMOVAL OF THE CHILD

A. NOTICE TO CUSTODIAL PERSON

1. Notice Within 2 Hours If Custody as Result of CHINS Allegation

If a child is taken into custody under Ind. Code § 31-34-2, the department of child services shall notify the child's custodial parent, guardian, or custodian not more than two (2) hours after the child has been taken into custody that the child has been taken into custody as the result of the alleged child abuse or neglect. Ind. Code § 31-34-3-1.

N.W. v. Madison County Dep't of Public Welfare, 493 N.E.2d 1256, 1258-59 (Ind. Ct. App. 1986) (Emergency detention of children allegedly in need of services did not require pre-detention notice and hearing and was accompanied by procedures that adequately protected due process rights and that complied with statutes. The welfare department sought unnecessary review of its probable cause determination, which was followed by notice to mother and opportunity for mother to be heard at hearing on mother's habeas corpus petition, followed by notice to mother and opportunity to be heard at detention hearing.).

There is no due process violation when child is temporarily removed if there is a reasonable basis to believe that the child is a CHINS. Wardship of Nahrwold v. Dep't of Public Welfare of Allen County, 427 N.E.2d 474, 480 (Ind. Ct. App. 1981).

2. Prompt Notice if Custody Is Without Court Order

Pursuant to Ind. Code § 31-34-4-4(2), if a child is taken into custody without an order of the court, the person taking the child into custody if the child is detained, shall promptly notify the child's parent, guardian, or custodian and an intake officer: (A) that the child is being held; and (B) of the reasons for the child's detention.

3. Written Notice Within Six Hours, If Custodial Person Can't Be Located

Subject to Ind. Code § 31-34-3-3, if after making a reasonable effort the child's custodial parent, guardian, or custodian cannot be located, the department of child services shall make a good faith effort, not more than six (6) hours after the child has been taken into custody, to leave written notice at the last known address of the child's custodial parent, guardian, or custodian that the child has been taken into custody. Ind. Code § 31-34-3-2.

4. Notice to Custodial Person Residing Outside Indiana

If the custodial parent, guardian, or custodian is believed to reside outside Indiana, the department of child services shall send written notice by certified mail to the last known address of the noncustodial parent, guardian, or custodian on the same date that the child is taken into custody. However, if the child is not taken into custody on a business day, the department of child services shall send notice by certified mail on the next business day after the child is taken into custody. Ind. Code § 31-34-3-3.

B. NOTICE TO ADULT RELATIVES AND SIBLINGS

Pursuant to Ind. Code § 31-34-3-4.5(a), if a child is removed from the child's parents under Ind. Code § 31-34-3, within thirty (30) days after the removal of the child from the parents the department shall exercise due diligence to identify and provide notice of the removal to:

- (1) All adult relatives (as defined in Ind. Code § 31-9-2-107) of the child, including relatives suggested by either parent as required under 42 U.S.C. § 671(a)(29); and
- (2) All the child's siblings who are at least eighteen (18) years of age.

1. No Notice to Perpetrator Required

The department may not provide notice to a person under Ind. Code § 31-34-3-4.5(a) if the department knows or suspects that the person has caused family or domestic violence. Ind. Code § 31-34-3-4.5(b).

C. CONTENTS OF NOTICE

1. Contents of Notice to Parent, Guardian, or Custodian

a. Identity of Contact Person

Pursuant to Ind. Code § 31-34-3-4, the notice to the parent, guardian, or custodian required by Ind. Code § 31-34-3 must:

- (1) Identify a person or an entity that the parent, guardian, or custodian may contact to obtain more information regarding the child's removal from the child's residence; and
- (2) Be given to each of the child's parents as described in Ind. Code § 31-34-3-1 through -3.

b. Legal Rights of Parent, Guardian, or Custodian

For further discussion of rights, see Ch. 4 – Constitutional and Statutory Rights.

Pursuant to Ind. Code § 31-34-4-6(a), the department shall submit written information to a parent, custodian, or guardian of a child who is alleged to be abused or neglected regarding the following legal rights of the parent, custodian, or guardian:

- (1) The right to have a detention hearing held by a court within forty-eight (48) hours after the child's removal from the home and to request return of the child at the hearing.
- (2) The right to: (a) Be represented by an attorney; (b) Cross examine witnesses; and (c) Present evidence on the parent's, custodian's, or guardian's own behalf; at each court proceeding on a petition alleging that the child is a child in need of services. The parent, guardian, or custodian has the right to be represented by a court appointed attorney under clause (A) upon the request of the parent, guardian, or custodian if the court finds that the parent, guardian, or custodian does not have sufficient financial means for obtaining representation as described in Ind. Code § 34-10-1.
- (3) The right not to make statements that incriminate the parent, custodian, or guardian and that an incriminating statement may be used during a court proceeding on a petition alleging that the child is a child in need of services.
- (4) The right to request to have the case reviewed by the child protection team under Ind. Code § 31-33-3-6.
- (5) The right to be advised that after July 1, 1999, a petition to terminate the parent-child relationship must be filed whenever a child has been removed from the child's parent and has been under the supervision of the department for at least fifteen (15) months of the most recent twenty-two (22) months.

Indigent parent has a right to appointed counsel in CHINS proceedings if requested; Pursuant to Ind. Code § 31-34-4-6(a)(2), a parent has the right to be represented by court-appointed counsel upon the request of the parent if the court finds that the parent does not have sufficient financial means for obtaining representation as described in Ind. Code § 34-10-1; indigent parent is entitled to the assistance of appointed counsel not only in the parental termination proceedings, but also in dependency and neglect proceedings as well. In re G.P., 4 N.E.3d 1158, 1163-65 (Ind. 2014).

Although there are several Court of Appeals cases that state the appointment in a CHINS case is discretionary, in In re GP, the Supreme Court held "to the extent any case law hold that a trial court has discretion to appoint counsel for an indigent parent in a CHINS proceeding, those cases are not correct on that point." In re GP, 4 N.E.3d 1158 at 1163 (Ind. 2014). The parent must request counsel and the court must be satisfied that the parent is indigent, after which the court "shall assign him an attorney." Dunn v. E.P. v. Marion County Office of Family & Children (In re E.P.), 653 N.E.2d 1026, 1034 (Ind. Ct. App. 1995).

c. Legal Rights Given When Child Taken Into Custody or When Petition Filed

Pursuant to Ind. Code § 31-34-4-6(b), the department shall submit the written information under Ind. Code § 31-34-4-6(a) to the child's parent, guardian, or custodian at the time:

- (1) The child is taken into custody; or
- (2) The department files a petition alleging that the child is a child in need of services; whichever occurs earlier.

2. Contents of Notice to Adult Relatives and Siblings

Pursuant to Ind. Code § 31-34-3-4.5(c), a notice under Ind. Code § 31-34-3-4.5(a) must:

- (1) State that the child has been removed from the parents by the department;
- (2) Set forth the options the relative may have under federal, state, or local laws, including the care and placement of the child and other options that may be lost if the relative fails to respond to the notice;
- (3) Describe the requirements for the relative to become a foster parent;
- (4) Describe additional services available to the child placed in foster care; and
- (5) Describe how a relative guardian of a child may subsequently enter into an agreement with the department to receive financial assistance through the adoption assistance program or guardianship assistance program.

IV. PLACEMENT OF CHINS CHILD

A. DCS AND COURT MUST CONSIDER “FAMILY” BEFORE OUT-OF-HOME PLACEMENTS

A juvenile court or the department shall consider placing a child alleged to be a child in need of services with a suitable and willing relative or de facto custodian of the child before considering any other placement for the child. Ind. Code § 31-34-6-2(a).

A juvenile court or the department shall consider placing a child described in Ind. Code § 31-34-6-2(a) with a relative related by blood, marriage, or adoption before considering any other placement of the child. Ind. Code § 31-34-6-2(b).

Pursuant to Ind. Code § 31-34-4-2(a), if a child alleged to be a child in need of services is taken into custody under an order of the court under Ind. Code § 31-34-4 and the court orders out-of-home placement, the department is responsible for that placement and care and must consider placing the child with a: (1) Suitable and willing relative; or (2) De facto custodian; before considering any other out-of-home placement.

The department shall consider placing a child described in Ind. Code § 31-34-4-2(a) with a relative related by blood, marriage, or adoption before considering any other placement of the child. Ind. Code § 31-34-4-2(b).

Miles v. Miami County Division of Family & Children (In re C.W.), 723 N.E.2d 956, 962 (Ind. Ct. App. 2000) (Grandparents had standing to file for placement during CHINS proceeding.).

V.C. v. Ind. Dep’t of Child Servs. (In re V.C.), 967 N.E.2d 50, 53-54 (Ind. Ct. App. 2012) (During the initial DCS contact, the mother informed DCS that the father was incarcerated, and family members may be willing to take custody of the child, but refused to give the family member’s names. Father requested that a subpoena be issued to the child’s maternal aunt because he believed the aunt may be willing to take custody, but gave no address or contact information. Father did not demonstrate that his incarceration prevented him from getting the information. No subpoena was issued. DCS later indicated a willingness to investigate whether the maternal aunt would be a suitable placement for the child. But, a CHINS finding was necessary because at the time of the CHINS proceedings, there was no approved relative placement.).

Shipley v. Marion County Div. of Family & Children (In re T.S.), 881 N.E.2d 1110, 1114 (Ind. Ct. App. 2008) (Trial court had no option but to declare the child a CHINS where there was no evidence for finding that grandmother would be a viable placement option.).

1. Home Evaluation Required

Before the department places a child in need of services with a relative or de facto custodian, the department shall complete an evaluation based on a home visit of the relative's home. Ind. Code § 31-34-4-2(c).

Before a child is placed with a relative or de facto custodian, a home evaluation and background checks described in Ind. Code § 31-34-4-2 are required. Ind. Code § 31-34-6-2(c).

Miles v. Miami County Division of Family & Children (In re C.W.), 723 N.E.2d 956, 962 (Ind. Ct. App. 2000) (Evidence supported decision to keep child in foster care rather than placement with grandparents where child had recurrent bronchitis and grandparents did not maintain a smoke-free environment.).

2. Criminal History Check Required of All Residents

Except as provided in Ind. Code § 31-34-4-2(f), before placing a child in need of services in an out-of-home placement, the department shall conduct a criminal history check of each person who is currently residing in the location designated as the out-of-home placement. Ind. Code § 31-34-4-2(d).

a. No Criminal History Check Required for Non-Residence or Licensed Entity

The department is not required to conduct a criminal history check under Ind. Code § 31-34-4-2(d) if the department makes an out-of-home placement to an entity or a facility that is not a residence (as defined in Ind. Code § 3-5-2-42.5) or that is licensed by the state. Ind. Code § 31-34-4-2(f).

b. Certain Convictions or Adjudications Prevent Placement

Pursuant to Ind. Code § 31-34-4-2(e), and except as provided in Ind. Code § 31-34-4-2(g), the department may not make an out-of-home placement if a person described in Ind. Code § 31-34-4-2(d) has:

- (1) Committed an act resulting in a substantiated report of child abuse or neglect; or
- (2) Been convicted of a felony listed in Ind. Code § 31-27-4-13 or had a juvenile adjudication for an act that would be a felony listed in Ind. Code § 31-27-4-13 if committed by an adult.

c. Placement Still Possible Under Certain Circumstances

Pursuant to Ind. Code § 31-34-4-2(g), a court may order or the department may approve an out-of-home placement if:

- (1) A person described in Ind. Code § 31-34-4-2(d) has:
 - (A) Committed an act resulting in substantiated report of child abuse or neglect; or
 - (B) Been convicted of: (i) Battery (Ind. Code § 35-42-2-1) as a felony; (ii) Criminal recklessness (Ind. Code § 35-42-2-2) as a felony; (iii) Criminal Confinement (Ind. Code § 35-42-3-3) as a felony; (iv) Arson (Ind. Code § 35-43-1-1) as a felony; (v) Non-support of a dependent child (Ind. Code § 35-46-1-5); (vi) Operating a motorboat while intoxicated (Ind. Code § 35-46-9-6) as a felony; (vii) A felony involving a weapon under Ind. Code § 35-47 or Ind. Code § 35-47.5; (viii) A felony relating to controlled substances under Ind. Code § 35-48-4; (ix) A felony under Ind. Code § 9-30-5; or (x) attempt to commit a felony listed in items (i) through (ix); or (xi) A felony

that is substantially equivalent to a felony listed in this clause for which the conviction was entered in another jurisdiction; if the conviction did not occur within the past five (5) years; or

(C) Had a juvenile adjudication for an act listed in Ind. Code § 31-27-4-13(a) that, if committed by an adult, would be a felony; and

(2) The person's commission of the offense, delinquent act, or act of abuse or neglect described in subsection (1) is not relevant to the person's present ability to care for a child, and the placement is in the best interests of the child.

However, a court or the department may not make an out-of-home placement if the person has been convicted of a nonwaivable offense, as defined in Ind. Code § 31-9-2-84.8 that is not specifically excluded under subdivision (1)(B).

3. Court's and DCS Considerations for Placement

Pursuant to Ind. Code § 31-34-4-2(h), in considering the placement under Ind. Code § 31-34-4-2(g), the court or the department shall consider the following:

- (1) The length of time since the person committed the offense, delinquent act, or abuse or neglect.
- (2) The severity of the offense, delinquent act, or abuse or neglect.
- (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

B. CERTAIN FACILITIES PROHIBITED

Pursuant to Ind. Code § 31-34-6-1, a child alleged to be a child in need of services may not be held in:

- (1) A secure detention facility;
- (2) A community based correctional facility for children;
- (3) A juvenile detention facility; or
- (4) A shelter care facility that houses person charged with, imprisoned for, or incarcerated for crimes.

The policy of the Juvenile Code is to "keep youth out of detention whenever possible." In re L.J.M., 473 N.E.2d 637, 640 (Ind. Ct. App. 1985).

C. PLACEMENT OUTSIDE COUNTY OF RESIDENCE

Pursuant to Ind. Code § 31-34-6-3, a juvenile court or the department may not place a child in:

A shelter care facility that is located outside the child's county of residence unless placement of the child in a comparable facility with adequate services located in the child's county of residence is unavailable or the child's county of residence does not have an appropriate comparable facility with adequate services.

D. COURT ORDER MAY DESIGNATE PLACEMENT

If a child is taken into custody under an order of the court, the law enforcement officer shall take the child to a place designated in the order to await a detention hearing. Ind. Code § 31-34-4-3.

V. FINANCIAL CONSIDERATIONS AND CONSTRAINTS

Pursuant to Ind. Code § 31-34-4-7(a), this section applies to services and programs provided to or on

behalf of a child alleged to be a child in need of services at any time before:

- (1) Entry of a dispositional decree under Ind. Code § 31-34-20; or
- (2) Approval of a program of informal adjustment under Ind. Code § 31-34-8.

A. DCS MUST BE CONSULTED

Before a juvenile court orders or approves a service, a program, or an out-of-home placement for a child that has not been recommended by the department, the court shall submit the proposed service, program, or placement to the department for consideration. The department shall within three (3) business days after receipt of the court's proposal, submit to the court a report stating whether the department approves or disapproves the proposed service, program, or placement. Ind. Code § 31-34-4-7(b).

1. If DCS Approves, Court May Order Services or Placement

If the department approves the service, program, or placement recommended by the juvenile court, the court may enter an appropriate order to implement the approved proposal. Ind. Code § 31-34-4-7(c).

2. If DCS Does Not Approve, DCS May Recommend Alternative

If the department does not approve a service, program, or placement proposed by the juvenile court, the department may recommend an alternative service, program, or placement for the child. Ind. Code § 31-34-4-7(c).

B. COURT MUST GENERALLY ACCEPT DCS RECOMMENDATION

Pursuant to Ind. Code § 31-34-4-7(d), the juvenile court shall accept the recommendations of the department regarding any pre-dispositional services, programs, or placement of the child, unless the juvenile court finds a recommendation is:

- (1) Unreasonable, based on the facts and circumstances of the case; or
- (2) Contrary to the welfare and best interests of the child.

1. If Court Orders Non-DCS Placement, Specific Findings Required

Pursuant to Ind. Code § 31-34-4-7(e), if the juvenile court does not accept the recommendations of the department in the report submitted under Ind. Code § 31-34-4-7(b), the court may enter an order that:

- (1) Requires the department to provide a specified service, program, or placement until entry of a dispositional decree or until the order is otherwise modified or terminated; and
- (2) Specifically states the reasons why the juvenile court is not accepting the recommendations of the department, including the court's findings under Ind. Code § 31-34-4-7(d).

a. If No Emergency, County Responsible for Payment

If the court has not made written findings that the placement is an emergency, the department shall file a notice with the Indiana judicial center. Ind. Code § 31-34-4-7(g).

2. DCS May Appeal Court Order

If the juvenile court enters its findings and order under Ind. Code § 31-34-4-7(e), the department may appeal the juvenile court's order under any available procedure provided by the Indiana Rules of Trial Procedure or the Indiana Rules of Appellate Procedure to allow any

disputes arising under this section to be decided in an expeditious manner. Ind. Code § 31-34-4-7(f).

a. Even If DCS Wins Appeal, DCS Responsible for Certain Costs

Pursuant to Ind. Code § 31-34-4-7(g), if the department prevails on appeal, the department shall pay the following costs and expenses incurred by or on behalf of the child before the date of the final decision:

- (1) Any programs or services implemented during the appeal initiated under Ind. Code § 31-34-4-7(f), other than the cost of an out-of-home placement ordered by the juvenile court.
- (2) Any out-of-home placement ordered by the juvenile court and implemented after entry of the court order of placement, if the juvenile court order includes written findings that the placement is an emergency required to protect the health and welfare of the child.

VI. DETENTION HEARING AND REVIEW

If the juvenile court grants the request to have the child taken into custody following the petition authorization, the court shall proceed under Ind. Code § 31-34-5-1 and Ind. Code § 31-34-5-2. Ind. Code § 31-34-9-6.

A. STATUS REVIEW BY COURT

The juvenile court shall review the status of a child removed from the child's family under Ind. Code § 31-33 according to Ind. Code § 31-34-21. Ind. Code § 31-33-16-1.

B. PETITION REQUIRED BEFORE DETENTION HEARING

For factors when child is a CHINS and petition requirements, see *Ch. 9 – Initial Hearing*.

A petition alleging a child is a child in need of services shall be filed before a detention hearing concerning the child is held. Ind. Code § 31-34-10-2(h); Ind. Code § 31-34-5-1(c); and Ind. Code § 31-34-5-1.5(b).

C. TIMEFRAME FOR DETENTION HEARING

If a child taken into custody under Ind. Code § 31-34-2 or Ind. Code § 31-34-2.5 is not released, a detention hearing shall be held not later than forty-eight (48) hours, excluding Saturdays, Sundays, and any day on which a legal holiday is observed for state employees as provided under Ind. Code § 1-1-9, after the child is taken into custody. Ind. Code § 31-34-5-1(a); Ind. Code § 31-34-5-1.5(b).

1. If No Detention Hearing, Child is Released

If the detention hearing is not held, the child shall be released. Ind. Code § 31-34-5-1(a).

D. NOTICE OF DETENTION HEARING

For further discussion of notice requirements and due process rights, see *Ch. 4 – Constitutional and Statutory Rights*.

1. Notice If Child Taken Into Custody Under Ind. Code 31-34-2 (General CHINS)

Pursuant to Ind. Code § 31-34-5-1(a), notice of the time, place, and purpose of the detention hearing shall be given to the following:

- (1) The child.
- (2) The child's parent, guardian, or custodian if the person can be located.

- (3) Each foster parent or other caretaker with whom the child has been placed for temporary care under Ind. Code § 31-34-4.

In re J.S.O., 938 N.E.2d 271 (Ind. Ct. App. 2010) (Failure to notify father of CHINS proceedings violated father's due process rights where DCS had actual notice of father's name and whereabouts).

2. Notice If Child Taken Into Custody by Emergency Medical Service Provider Under Ind. Code 31-34-2.5

a. Emergency Medical Provider May Be Notified

The department may notify the emergency medical services provider that has taken custody of a child under Ind. Code § 31-34-2.5 of the detention hearing. Ind. Code § 31-34-5-1.5(c).

b. Foster Parent or Other Caretaker Must Be Notified

The department shall notify each foster parent or other caretaker with whom the child has been temporarily placed under Ind. Code § 31-34-2.5 of the detention hearing. Ind. Code § 31-34-5-1.5(d).

E. DETENTION HEARING PROCEDURES

1. Right to be Heard and/or Make Recommendations

a. In General CHINS Proceedings

Pursuant to Ind. Code § 31-34-5-1(b), the court shall: (1) Provide a person who is required to be notified under Ind. Code § 31-34-5-1(a)(2) or (a)(3) an opportunity to be heard; and (2) Allow a person described in subdivision (1) to make recommendations to the court; at the detention hearing.

Wardship of Nahrwold v. Dep't of Public Welfare of Allen County, 427 N.E.2d 474, 480 (Ind. Ct. App. 1981) (Due process did not require that mother be allowed to call character witnesses; it was sufficient that she be present with counsel and be given the opportunity to give her version of events that led to the removal.).

b. For Detention by Emergency Medical Services Provider

c. Emergency Medical Provider

The emergency medical services provider may be heard at the detention hearing. Ind. Code § 31-34-5-1.5(c).

d. Foster Parent or Caretaker

Pursuant to Ind. Code § 31-34-5-1.5(d), the court shall: (1) Provide a person who is required to be notified under this subsection an opportunity to be heard; and (2) Allow a person described in subdivision (1) to make recommendations to the court; at the detention hearing.

F. WRITTEN FINDINGS BY COURT

1. Presumption is for Release from Detention

Pursuant to Ind. Code § 31-34-5-3(a), the juvenile court shall release the child to the child's parent, guardian or custodian. However, the court may order the child detained if the court makes written findings of fact upon the record of probable cause to believe that the child is a child in need of services and that:

- (1) Detention is necessary to protect the child;
- (2) The child is unlikely to appear before the juvenile court for subsequent proceedings;
- (3) The child has a reasonable basis for requesting that the child not be released;
- (4) The parent, guardian, or custodian: (A) Cannot be located; or (B) Is unable or unwilling to take custody of the child; or
- (5) Consideration for the safety of the child precludes the use of family services to prevent removal of the child.

a. If Child Released, Caregiver May Have Conditions Imposed

If the juvenile court releases a child to the child's parent, guardian, or custodian under Ind. Code § 31-34-5-3, the court may impose conditions on the child or the child's parent, guardian, or custodian to ensure the safety of the child's physical or mental health. Ind. Code § 31-34-5-3.5.

2. Findings and Conclusions

The court may grant the request for detention following the petition authorization if the court makes written findings of fact upon the record that a ground for detention exists under Ind. Code § 31-34-5-3. Ind. Code § 31-34-9-5(b).

a. General Requirements

Pursuant to Ind. Code § 31-34-5-2, if a child has been removed from the child's parent, guardian, or custodian under Ind. Code § 31-34-2-3 or Ind. Code § 31-34-2-4, then, in accordance with federal law, at the detention hearing the court shall make written findings and conclusions that state the following:

- (1) Whether removal of the child authorized by Ind. Code § 31-34-2-3 or Ind. Code § 31-34-2-4 was necessary to protect the child.
- (2) A description of the family services available before removal of the child.
- (3) Efforts made to provide family services before removal of the child.
- (4) Why the efforts made to provide family services did not prevent removal of the child.
- (5) Whether the efforts made to prevent removal of the child were reasonable.

b. Specific Federal Requirements

Pursuant to Ind. Code § 31-34-5-3(b), the juvenile court shall include in any order approving or requiring detention of a child all findings and conclusions required under: (1) Applicable provisions of Title IV-E of the federal Social Security Act (42 U.S.C. § 670 et seq); or (2) Any applicable federal regulation, including 45 CFR § 1356.21; as a condition of eligibility of a child in need of services for assistance under Title IV-E or any other federal law.

c. Judicial Conference Language

Pursuant to Ind. Code § 31-34-5-3(c), inclusion in a juvenile court order of language approved and recommended by the judicial conference of Indiana in relation to: (1) Removal from the child's home; or (2) Detention; of a child who is alleged to be, or adjudicated as, a child in need of services constitutes compliance with Ind. Code § 31-34-5-3(b).

G. ADDITIONAL DETENTION HEARINGS

1. Court and State May Request Additional Detention Hearing

Upon the juvenile court's own motion or upon the motion of the person representing the interests of the state, the parent, guardian, or custodian of a child who has been released may be ordered to appear with the child for an additional detention hearing. Ind. Code § 31-34-5-4.

2. Child or Parent/Guardian/Custodian May Request Additional Detention Hearing

A child detained under Ind. Code § 31-34-5-3 or -4 or the child's parent, guardian, or custodian may petition the juvenile court for additional detention hearings. Ind. Code § 31-34-5-5.

VII. REMOVING ADULT FROM HOME

A. REMOVAL BY LAW ENFORCEMENT WITHOUT COURT ORDER

The law enforcement officer may take the alleged perpetrator into custody under Ind. Code § 31-34-2-2 only for the purpose of removing the alleged perpetrator from the residence where the child believed to be in need of services resides. Ind. Code § 31-34-2-2(a).

1. Probable Cause Required

A law enforcement officer may take a person into custody if the law enforcement officer has probable cause to believe that the person is the alleged perpetrator of an act against a child who the law enforcement officer believes to be a child in need of services as a result of the alleged perpetrator's act. Ind. Code § 31-34-2-2(a).

2. Law enforcement Must Contact DCS for Protective Order

The law enforcement officer shall immediately contact the attorney for the county department or another authorized person for the purpose of initiating a protective order under Ind. Code § 31-34-25 that will require the alleged perpetrator to refrain from having direct or indirect contact with the child. Ind. Code § 31-34-2-2(b).

B. PROTECTIVE ORDER TO REMOVE ALLEGED PERPETRATOR

1. Temporary Protective Order

a. DCS Petition to Remove Adult

Pursuant to Ind. Code § 31-34-2.3-1, if, after an investigation, the department determines that: (1) There is probable cause to believe that a child is a child in need of services; and (2) The child would be protected in the child's residence by the removal of the alleged perpetrator of child abuse or neglect: the department may file a petition to remove the alleged perpetrator from the child's residence instead of attempting to remove the child from the child's residence.

b. Temporary Protective Order Circumstances

Pursuant to Ind. Code § 31-34-2.3-2, a court may issue a temporary child protective order in an action by the department for the removal of an alleged perpetrator of child abuse or neglect under Ind. Code § 31-34-2.3-1 without a hearing if the department's petition to remove the alleged perpetrator states facts sufficient to satisfy the court of all of the following:

- (1) There is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse.

- (2) There is not time for an adversary hearing given the immediate danger to the physical health or safety of the child.
- (3) The child is not in danger of child abuse or neglect from a parent or other adult with whom the child will continue to reside in the child's residence.
- (4) The issuance of a temporary child protective order is in the best interests of the child.

c. Serving Temporary Protective Order

Pursuant to Ind. Code § 31-34-2.3-3, the department shall serve a temporary child protective order issued under Ind. Code § 31-34-2.3-2 on:

- (1) The alleged perpetrator of child abuse or neglect; and
- (2) The parent or other adult with whom the child will continue to reside.

d. Duties of Parent or Custodian to Monitor Child

Pursuant to Ind. Code § 31-34-2.3-6, a temporary child protection order issued under Ind. Code § 31-34-2.3 or any other order that requires the removal of an alleged perpetrator of child abuse or neglect from the residence of a child must require that the parent or other adult with whom the child will continue to reside in the child's residence makes reasonable efforts:

- (1) To monitor the residence; and
- (2) To report to the department and the appropriate law enforcement agency any attempt by the alleged perpetrator of child abuse or neglect to return to the child's residence.

e. Hearing on Temporary Protective Order Within 48 Hours

A juvenile court shall hold a hearing on the temporary child protective order issued under Ind. Code § 31-34-2.3 not more than forty-eight (48) hours (excluding Saturdays, Sundays, and any day on which a legal holiday is observed for state employees as provided in Ind. Code § 1-1-9) after the temporary child protective order is issued. Ind. Code § 31-34-2.3-4(a).

f. DCS Shall Provide Notice

Pursuant to Ind. Code § 31-34-2.3-4(b), the department shall provide notice of the time, place, and purpose of the hearing to the following:

- (1) The child.
- (2) The child's parent, guardian, or custodian if the person can be located.
- (3) Any adult with whom the child is residing.
- (4) The alleged perpetrator of child abuse or neglect.

2. Long-Term Child Protective Order

a. Circumstances for Issuing Protective Order

Pursuant to Ind. Code § 31-34-2.3-5(a), after notice and a hearing, the court may issue a child protective order if the department's petition to remove the alleged perpetrator states facts sufficient to satisfy the court that:

- (1) The child is not in danger of child abuse or neglect from a parent or other adult

with whom the child will continue to reside in the child's residence; and

(2) One (1) or more of the following exist:

- (A) The presence of the alleged perpetrator of child abuse or neglect in the child's residence constitutes a continuing danger to the physical health or safety of the child.
- (B) The child has been the victim of sexual abuse, and there is a substantial risk that the child will be the victim of sexual abuse in the future if the alleged perpetrator of child abuse or neglect remains in the child's residence.

b. Other Relief May Be Granted

If the court issues a child protective order under this section, the court may grant any other relief as provided under Ind. Code § 34-26-5-9. Ind. Code § 31-34-2.3-5(b).

c. Protective Order Expiration

Pursuant to Ind. Code § 31-34-2.3-5(c), a child protective order issued under this section is valid until one (1) of the following occurs:

- (1) The child determines the child is not a child in need of services.
- (2) The child is adjudicated a child in need of services and the court enters a dispositional decree.