

CHAPTER NINE

PETITION AND INITIAL HEARING

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CHAPTER NINE

PETITION AND INITIAL HEARING

I. FACTORS WHEN A CHILD IS A CHILD IN NEED OF SERVICES

A. INADEQUATE FOOD, CLOTHING, SHELTER, MEDICAL CARE, EDUCATION, OR SUPERVISION

1. Inability, Refusal, or Neglect Of Parent, Guardian, Or Custodian To Supply Child With Necessary Food, Clothing, Shelter, Medical Care, Education, Or Supervision

Pursuant to Ind. Code § 31-34-1-1, a child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) The child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and (A) When the parent, guardian, or custodian is financially able to do so; or (B) due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so; and

Runkel v. Miami County Dep't of Child Servs. (In re B.M.), 875 N.E.2d 369, 374-75 (Ind. Ct. App. 2007) (Mother had difficulty controlling child in home and safeguarding other children and mother testified that the child needed more care than she could give.)

- (2) The child needs care, treatment, or rehabilitation that: (A) The child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court.

Abandonment is an emergency that provides the court with jurisdiction under the CHINS statutes. Harrison v. Allen County Div. of Family & Children (In re T.Y.T.), 714 N.E.2d 752, 756 (Ind. Ct. App. 1999).

For example, child was a CHINS where the child was left with a child care provider, father never returned, and mother did not attempt to find the child. Harrison v. Allen County Div. of Family & Children (In re T.Y.T.), 714 N.E.2d 752, 756 (Ind. Ct. App. 1999).

Refusal or inability of a parent to provide adequate supervision or protect their children from harm is adequate grounds for jurisdiction under the CHINS statutes.

For example, child's disclosure that father sexually abused her on multiple occasions was sufficient by a preponderance of the evidence; mother failed to protect child from future abuse after child told mother about the abuse. A.H. v. Bartholomew County Office of Family & Children, (In re A.H.), 751 N.E.2d 690, 698-99 (Ind. Ct. App. 2001).

Refusal of a parent to provide necessary medical treatment for a child may be grounds for removal.

For example, mother's refusal of heart surgery for her child and refusal to take medication for her mental illness was sufficient for a CHINS finding. Matter of K.P.G., 99 N.E.3d 677 (Ind. Ct. App. 2018).

2. Act Or Omission of Parent, Guardian, Or Custodian Seriously Endangering Child's Physical Or Mental Health

Pursuant to Ind. Code § 31-34-1-2(a), a child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) The child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and

Examples:

- Acts or omissions of father and unreasonable corporal punishment, including second-degree burns to girlfriend's daughter. Roark v. Roark, 551 N.E.2d 865, 872 (Ind. Ct. App. 1990).
- CHINS finding reversed where it was based on one spanking incident that resulted in bruising to a child that was unruly and out of control. Matter of E.K., 83 N.E.3d 1256 (Ind. Ct. App. 2017).
- Parents engaged in sex within view of children's bedroom and there were photographs of parents engaging in sexual acts and of the child touching mother's vaginal area. Vega v. Allen County Dep't of Family & Children Servs. (In re J.V.), 875 N.E.2d 395, 403 (Ind. Ct. App. 2007).
- Mother coached child to accuse father of molestation. In re V.C. v. Carlson, 867 N.E.2d 167, 181 (Ind. Ct. App. 2007).

- (2) The child needs care, treatment, or rehabilitation that: (A) The child is not receiving; and (B) Is unlikely to be provided or accepted without the coercive intervention of the court.

Requirements: (1) that the parent's actions or inactions have seriously endangered the child; (2) that the child's needs are unmet; and (3) that those needs are unlikely to be met without State coercion. C.N. v. Ind. Dep't of Child Servs. (In re L.N.), 118 N.E.3d 43 (Ind. Ct. App. 2019). When determining whether a child is a CHINS under this statute, the juvenile court should consider the family's condition not just when the case was filed, but also when it is heard. In re S.D., 2 N.E.3d 1283, 1287 (Ind. 2014).

a. Manufacturing of Drugs or Controlled Substances on Property

Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered under Ind. Code § 31-34-1-2(a). Ind. Code § 31-34-1-2(d).

b. Possession or Use of Drugs

Evidence of one parent's use of marijuana and evidence that marijuana has been found in the family home without more, does not demonstrate that a child has been seriously endangered for purposes of Ind. Code § 31-34-1-1. A.M. v. Ind. Dep't of Child Servs. (In re Ad. M.), 103 N.E.3d 709 (Ind. Ct. App. 2018). Further, a mother's ingestion of marijuana while pregnant and the presence of marijuana in the meconium of the child at birth is not sufficient evidence in itself to demonstrate that a child is seriously impaired or seriously endangered. A.M. v. Ind. Dep't of Child Servs. (In re S.M.), 45 N.E.3d 1252 (Ind. Ct. App. 2015).

In re B.V., 110 N.E.3d 437 (Ind. Ct. App. 2018) (CHINS determination reversed where B.V. was born with trace amounts of THC in her blood, but there was no evidence that mother had any difficulty in meeting B.V.'s needs and no finding that B.V. had any unmet needs). See also In re K.S., 78 N.E.3d 740 (Ind. Ct. App. 2017).

c. Domestic Violence

Domestic Violence can support a CHINS determination. In re N.E., 919 N.E.2d 102, 106 (Ind. 2010). A single incident of domestic violence in a child's presence may support a CHINS finding. K.B. v. Ind. Dep't of Child Servs., 24 N.E.3d 997, 1003-4 (Ind. Ct. App. 2015).

K.A.H. v. Ind. Dep't of Child Servs., 119 N.E.3d 1115 (Ind. Ct. app. 2019) (Mother's inability to recognize the effects of domestic violence on her parenting and on her children's well-being warrant the coercive intervention of the CHINS court).

Because a CHINS adjudication cannot be based solely on conditions that no longer exist, when the violent party is no longer living in the home and thus the domestic violence concern is no longer viable, a CHINS adjudication may not be proper. J.S. v. Ind. Dep't of Child Servs. (In re L.S.), 82 N.E.3d 333 (Ind. Ct. App. 2017).

d. Present Situation not Future Concerns

Future concerns, rather than present facts, are not enough to support a CHINS determination. J.J. v. Ind. Dep't of Child Servs. (In re K.S.), 78 N.E.3d 740, 745 (Ind. Ct. App. 2017). An unspecified concern about what might happen in the future is insufficient in itself to carry the State's burden of proof. C.N. v. Ind. Dep't of Child Servs. (In re L.N.), 118 N.E.3d 43 (Ind. Ct. App. 2019).

For example, Mother's mental illness and Father's low intellect may be a cause for concern for DCS, but is insufficient proof in and of itself to support a CHINS finding. C.N. v. Ind. Dep't of Child Servs. (In re L.N.), 118 N.E.3d 43 (Ind. Ct. App. 2019).

3. Child is Victim of Crime

Pursuant to Ind. Code § 31-34-1-2(b), a child is a child in need of services if, before the child becomes eighteen years of age, the child:

- (1) is a victim of:
 - (A) Assisting Suicide [Ind. Code § 35-42-1-2.5];
 - (B) Battery [Ind. Code § 35-42-2-1];
 - (C) Domestic Battery [Ind. Code § 35-42-2-1.3];
 - (D) Aggravated Battery [Ind. Code § 35-42-2-1.5];
 - (E) Strangulation [Ind. Code § 35-42-2-9];
 - (F) Neglect of a Dependent [Ind. Code § 35-46-1-4];
 - (G) an attempt or conspiracy to commit: (i) an offense listed in clauses (A) through (F); or (ii) murder [Ind. Code § 35-42-1-1], causing suicide [Ind. Code § 35-42-1-2], voluntary manslaughter [Ind. Code § 35-42-1-3], involuntary manslaughter [Ind. Code § 35-42-1-4], or reckless homicide [Ind. Code § 35-42-1-5]; or
 - (H) an offense under the law of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (G); and
- (2) The child needs care, treatment, or rehabilitation that: (A) The child is not receiving; and (B) Is unlikely to be provided or accepted without the coercive intervention of the court.

4. Child Living in Home with Another Child Victim and Defendant

Pursuant to Ind. Code § 31-34-1-2(c), a child is a child in need of services if, before the child becomes eighteen years of age, the child:

(1) lives in the same household as an adult who:

(A) committed: (i) an offense described in Ind. Code § 31-34-1-2(b)(1); or (ii) murder [Ind. Code § 35-42-1-1], causing suicide [Ind. Code § 35-42-1-2], voluntary manslaughter [Ind. Code § 35-42-1-3], involuntary manslaughter [Ind. Code § 35-42-1-4], or reckless homicide [Ind. Code § 35-42-1-5]; against another child who lives in the household and the offense resulted in a conviction or a judgement under Ind. Code § 31-34-1-2; or

(B) has been charged with committing an offense described in clause (A) against another child who lives in the household and is awaiting trial; and

(2) The child needs care, treatment, or rehabilitation that: (A) The child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court.

5. Child Substantially Endangering Own Or Another's Health

Pursuant to Ind. Code § 31-34-1-6, a child is a child in need of services if before the child becomes eighteen (18) years of age: (1) The child substantially endangers the child's own health or the health of another individual; and (2) The child needs care, treatment, or rehabilitation that: (A) The child is not receiving; and (B) Is unlikely to be provided or accepted without the coercive intervention of the court.

J.H. v. Ind. Dep't of Child Servs. (In re V.H.), 967 N.E.2d 1066, 1068-70 (Ind. Ct. App. 2012) (Mother's teenage daughter, who was larger than mother, became physically aggressive with the mother. Trial court granted CHINS petition that the mother was failing to provide necessary care. Mother was ordered to participate in services that were unrelated to the CHINS adjudication for a CHINS 1. Mother argued that if any adjudication was appropriate, it should be a CHINS 6. The CHINS 1 adjudication and participation decree were erroneous, as there was no need for the coercive intervention of the court.).

6. Disabled Child Deprived Of Necessary Nutrition Or Medical Or Surgical Intervention

Pursuant to Ind. Code § 31-34-1-9, a child in need of services under Ind. Code § 31-34-1-1 through -8 includes a child with a disability who: (1) Is deprived of nutrition that is necessary to sustain life; or (2) Is deprived of medical or surgical intervention that is necessary to remedy or ameliorate a life-threatening medical condition; if the nutrition or medical or surgical intervention is generally provided to similarly situated children with or without disabilities.

7. Exceptions

a. Exception for Failure to Provide Medical Treatment Due to Religious Beliefs

Pursuant to Ind. Code § 31-34-1-14, if a parent, guardian, or custodian fails to provide specific medical treatment for a child because of the legitimate and genuine practice of the religious beliefs of the parent, guardian, or custodian, a rebuttable presumption arises that the child is not a child in need of services because of the failure. However, this presumption does not do any of the following:

(1) Prevent a juvenile court from ordering, when the health of the child requires, medical services from a physician licensed to practice medicine in Indiana.

(2) Apply to situations in which the life or health of a child is in serious danger.

b. Exception for Corporal Punishment

Ind. Code § 31-34-1 does not limit the right of a parent, guardian, or custodian of a child to use reasonable corporal punishment when disciplining the child. Ind. Code § 31-34-1-15(1).

In re E.M., 581 N.E.2d 948, 953-54 (Ind. Ct. App. 1991) (Child was not a CHINS based on parents alleged inappropriate methods of discipline, as parent has fundamental right to raise child without undue state influence and health care professionals disagreed on appropriate method of discipline for the child. Live-in boyfriend was not prevented from imposing discipline with agreement of mother, and he was not the primary disciplinarian.).

c. Exceptions for Religious Practices

Ind. Code § 31-34-1 does not limit the lawful practice or teaching of religious beliefs. Ind. Code § 31-34-1-15(2).

B. SEX OFFENSES

1. Child Is a Victim of a Sex Offense

Pursuant to Ind. Code § 31-34-1-3(a), a child is a child in need of services if, before the child becomes eighteen (18) years of age:

(1) The child is the victim of a sex offense under:

- (A) Ind. Code § 35-42-4-1 [Rape];
- (B) Ind. Code § 35-42-4-2 [Criminal Deviate Conduct] (before its repeal);
- (C) Ind. Code § 35-42-4-3 [Child Molesting];
- (D) Ind. Code § 35-42-4-4 [Child Exploitation, Possession of Child Pornography];
- (E) Ind. Code § 35-42-4-7 [Child Seduction];
- (F) Ind. Code § 35-42-4-9 [Sexual Misconduct with a Minor];
- (G) Ind. Code § 35-45-4-1 [Public Indecency];
- (H) Ind. Code § 35-45-4-2 [Prostitution];
- (I) Ind. Code § 35-46-1-3 [Incest]; or
- (J) The law of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in Ind. Code § 31-34-1-3(a)(1)(A) through (I); and

(2) The child needs care, treatment, or rehabilitation that: (A) The child is not receiving; and (B) Is unlikely to be provided or accepted without the coercive intervention of the court.

(b) A child is a child in need of services if, before the child becomes eighteen (18) years of age, the child:

- (1) lives in the same household as an adult who: (A) committed an offense described in subsection (a)(1) against a child and the offense resulted in a conviction or a judgment under Ind. Code § 31-34-11-2; or (B) has been charged with an offense described in subsection (a)(1) against a child and is awaiting trial; and
- (2) needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court.

(c) A child is a child in need of services if, before the child becomes eighteen (18) years of age:

- (1) the child lives in the same household as another child who is the victim of an offense described in subsection (a)(1);
 - (2) the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court; and
 - (3) a caseworker assigned to provide services to the child: (A) places the child in a program of informal adjustment or other family or rehabilitative services based on the existence of the circumstances described in subdivisions (1) and (2), and the caseworker subsequently determines further intervention is necessary; or (B) determines that a program of informal adjustment or other family or rehabilitative services is inappropriate.
- (d) A child is a child in need of services if, before the child becomes eighteen (18) years of age:
- (1) the child lives in the same household as an adult who: (A) committed a human or sexual trafficking offense under Ind. Code § 35-42-3.5-1 or the law of another jurisdiction, including federal law, that resulted in a conviction or a judgment under Ind. Code § 31-34-11-2; or (B) has been charged with a human or sexual trafficking offense under Ind. Code § 35-42-3.5-1 or the law of another jurisdiction, including federal law, and is awaiting trial; and
 - (2) the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court.

2. Child Lives In the Household With an Adult Sex Offender

Pursuant to Ind. Code § 31-34-1-3(b), a child is a child in need of services if, before the child becomes eighteen (18) years of age:

- (1) lives in the same household as an adult who: (A) committed an offense described in subsection (a)(1) against a child and the offense resulted in a conviction or a judgment under Ind. Code § 31-34-11-2; or (B) has been charged with an offense described in subsection (a)(1) against a child and is awaiting trial; and
- (2) needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court.

3. Child Lives In the Household With a Child who was the Victim of a Sex Offense.

Pursuant to Ind. Code § 31-34-1-3(c), a child is a child in need of services if, before the child becomes eighteen (18) years of age:

- (1) the child lives in the same household as another child who is the victim of an offense described in subsection (a)(1);
- (2) the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court; and
- (3) a caseworker assigned to provide services to the child: (A) places the child in a program of informal adjustment or other family or rehabilitative services based on the existence of the circumstances described in subdivisions (1) and (2), and the caseworker subsequently determines further intervention is necessary; or (B) determines that a program of informal adjustment or other family or rehabilitative services is inappropriate.

a. Victim must be adjudicated CHINS before other non-victim children may be adjudicated CHINS

Where the DCS presents sufficient evidence of conviction or entry of judgment that a child is a victim of a sex offense by an adult member of the household, the court must adjudicate victim as a CHINS before it may adjudicate siblings as CHINS; however, separate proceedings are not required and adjudications may be in the same dispositional order. Slater v. Marion County Dep't of Child Services, 865 N.E.2d 1043 (Ind. Ct. App. 2007).

4. Child Lives In the Household with an Adult who Committed Human or Sexual Trafficking.

Pursuant to Ind. Code § 31-34-1-3(d), a child is a child in need of services if, before the child becomes eighteen (18) years of age:

- (1) the child lives in the same household as an adult who:
 - (A) committed a human or sexual trafficking offense under Ind. Code § 35-42-3.5-1 through Ind. Code § 35-42-3.5-1.4 or the law of another jurisdiction, including federal law, that resulted in a conviction or a judgment under Ind. Code § 31-34-11-2; or
 - (B) has been charged with a human or sexual trafficking offense under Ind. Code § 35-42-3.5-1 through Ind. Code § 35-42-3.5-1.4 or the law of another jurisdiction, including federal law, and is awaiting trial; and
- (2) the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court.

5. Child Allowed To Participate In Obscene Performance

Pursuant to Ind. Code § 31-34-1-4, a child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) The child's parent, guardian, or custodian allows the child to participate in an obscene performance (as defined by Ind. Code § 35-49-2-2 or Ind. Code § 35-49-3-2); and
- (2) The child needs care, treatment, or rehabilitation that: (A) The child is not receiving; and (B) Is unlikely to be provided or accepted without the coercive intervention of the court.

6. Child Allowed to Commit Sex Offense

Pursuant to Ind. Code § 31-34-1-5, a child is in need of services if before the child becomes eighteen (18) years of age:

- (1) The child's parent, guardian, or custodian allows the child to commit a sex offense prohibited by Ind. Code § 35-45-4 [Public Indecency or Public Nudity]; and
- (2) The child needs care, treatment, or rehabilitation that: (A) The child is not receiving; and (B) Is unlikely to be provided or accepted without the coercive intervention of the court.

C. MISSING CHILD

Pursuant to Ind. Code § 31-34-1-8, a child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) The child is a missing child (as defined in Ind. Code § 10-13-5-4); and
- (2) The child needs care, treatment, or rehabilitation that: (A) The child is not receiving; and (B) Is unlikely to be provided or accepted without the coercive intervention of the court.

D. FETAL ALCOHOL SYNDROME, CONTROLLED SUBSTANCES, OR LEGEND DRUGS

1. Child Born With Fetal Alcohol Syndrome or With Controlled Substance or Legend Drug In Child's Body

Pursuant to Ind. Code § 31-34-1-10, except as provided in Ind. Code § 31-34-1-12 and -13, a child is a child in need of services if:

- (1) the child is born with: (A) fetal alcohol syndrome; or (B) neonatal abstinence syndrome; or (C) any amount, including a trace amount, of a controlled substance, or a legend drug, in the child's body; or a metabolite of a controlled substance or legend drug in the child's body, including the child's blood, urine, umbilical cord tissue, or meconium; and
- (2) the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; or (B) is unlikely to be provided or accepted without the coercive intervention of the court.

2. Risks Or Injuries Arising From Use Of Alcohol, Controlled Substance, Or Legend Drug By Child's Mother During Pregnancy

Pursuant to Ind. Code § 31-34-1-11, except as provided in Ind. Code § 31-34-1-12 and -13, a child is a child in need of services if:

- (1) The child: (A) Has an injury; (B) Has abnormal physical or psychological development; or (C) Is at a substantial risk of a life-threatening condition; that arises or is substantially aggravated because the child's mother used alcohol, a controlled substance, or a legend drug during pregnancy; and
- (2) The child needs care, treatment, or rehabilitation that: (A) The child is not receiving; or (B) Is unlikely to be provided or accepted without the coercive intervention of the court.

3. Exceptions/Defenses

a. Prescription for Legend Drug

Pursuant to Ind. Code § 31-34-1-12, a child is not a child in need of services under Ind. Code § 31-34-1-10 or -11 if:

- (1) A drug detected in the body of the child under Ind. Code § 31-34-1-10(1) or the condition described in Ind. Code § 31-34-1-11(1) was caused by a legend drug; and
- (2) During pregnancy the child's mother: (A) Possessed a valid prescription for the legend drug; (B) Was not in violation of Ind. Code § 16-42-19 (the Indiana legend drug act); and (C) Made a good faith attempt to use the legend drug according to the prescription instructions.

b. Prescription for Controlled Substance

Pursuant to Ind. Code § 31-34-1-13, a child is not a child in need of services under Ind. Code § 31-34-1-10 or -11 if:

- (1) A drug detected in the body of the child under Ind. Code § 31-34-1-10(1) or the

condition described in Ind. Code § 31-34-1-11(1) was caused by a controlled substance; and

- (2) During pregnancy the child's mother: (A) Possessed a valid prescription for the controlled substance; and (C) Made a good faith attempt to use the controlled substance according to the prescription instructions.

II. FILING A PETITION ALLEGING THE CHILD IS A CHINS

A. REQUESTING AUTHORIZATION TO FILE PETITION

The person representing the interests of the State and receiving the preliminary inquiry and recommendations shall decide whether to request authorization to file a petition. This decision is final only as to the office of the person making the decision. Ind. Code § 31-34-7-3.

Gilmore v. Kitson, 74 N.E. 1083, 1084 (Ind. 1905) (The state may, in the interest of a child, make application to a court to deprive a parent of its custody, where such parent has abandoned or forfeited parental rights by reason of moral turpitude, vicious habits, cruel or inhuman treatment, or other conduct forbidden by statute.).

1. DCS Attorney May Represent the Interests of the State

The attorney for the department: (1) may request the juvenile court to authorize the filing of a petition alleging that a child is a child in need of services; and (2) shall represent the interests of the state at this proceeding and at all subsequent proceedings on the petition. Ind. Code § 31-34-9-1(a).

2. Prosecutor May Represent the Interests of the State

A prosecuting attorney: (1) may request the juvenile court to authorize the filing of a petition alleging that a child is a child in need of services under Ind. Code § 31-34-1; and (2) shall represent the interests of the state at this proceeding and at all subsequent proceedings on the petition, unless the prosecuting attorney and the department agree that the department shall represent the interests of the state at this proceeding and at all subsequent proceedings on the petition. Ind. Code § 31-34-9-1(b).

a. All Deadlines and Procedures Apply to Prosecutor

If a prosecuting attorney is representing the interests of the state at a subsequent proceeding after a petition is filed under Ind. Code § 31-34-9-1, all deadlines and procedures concerning children in need of services under Ind. Code § 31-34 apply to the prosecuting attorney to the same extent as they apply to the department. Ind. Code § 31-34-9-1(c).

B. CONTENTS OF PETITION

1. Mandatory Contents of Petition

Pursuant to Ind. Code § 31-34-9-3, a petition must:

- (1) Be verified;
- (2) Be entitled "In the Matter of _____, a Child Alleged to be a Child in Need of Services";
- (3) Be signed and filed by the person representing the interests of the state; and
- (4) Contain the following information:
 - (A) A citation to the provision of the juvenile law that gives the juvenile court jurisdiction in the proceeding.

- (B) A citation to the provision of the juvenile law that defines a child in need of services.
- (C) A concise statement of the facts upon which the allegations are based, including the date and location at which the alleged facts occurred.
- (D) The child's: (i) name; (ii) birth date; and (iii) residence address; if known.
- (E) The name and residence address of the child's parent, guardian, or custodian if known.
- (F) The name and title of the person signing the petition.
- (G) A statement indicating whether the child has been removed from the child's parent, guardian, or custodian and, if so, a description of the following:
 - (i) Efforts made to provide the child or the child's parent, guardian, or custodian with services before the removal.
 - (ii) Reasons why family services were not provided before the removal of the child if family services were not provided.

Factors, including an unsigned and unverified CHINS petition, resulted in a denial of due process in termination of parental rights proceeding. A.P. v. Porter County Office of Family & Children, 734 N.E.2d 1107, 1117-18 (Ind. Ct. App. 2000).

In re Rosenbarger, 153 N.E.2d 619, 620 (Ind. Ct. App. 1957) (Petition to have an infant made a ward of the juvenile court not signed by the probation officer of the court was insufficient and formal jurisdiction of the subject matter was not acquired by the juvenile court.).

McCormack v. Lemond (In re Lemond), 413 N.E.2d 228, 248-49 (Ind. 1980) (the requirement that the petition shall contain concise statements of facts on which the allegations are based contemplates a substantial recitation of specific facts which demonstrate that a child may be in need of services and requires that substantial, non-conclusory, non-self-serving facts be alleged.).

2. Effects of Error in or Omission of Citation

Error in a citation or the omission of a citation is ground for: (1) dismissal of the petition; or (2) reversal of the adjudication; only if the error or omission misleads the child or the child's parent, guardian, or custodian to the child's parent's, guardian's, or custodian's prejudice. Ind. Code § 31-34-9-4.

C. DECISION TO AUTHORIZE THE PETITION

Pursuant to Ind. Code § 31-34-9-2, the juvenile court shall do the following:

- (1) Consider the preliminary inquiry and the evidence of probable cause that is contained in the report of the preliminary inquiry or an affidavit of probable cause.
- (2) Authorize the filing of a petition if the court finds probable cause to believe that the child is a child in need of services.

Sufficient for jurisdiction:

Bradburn v. Bradburn, 197 N.E. 905, 908 (Ind. 1935) (An affidavit alleging that a dependent or neglected child was without proper parental care and supervision was sufficient to give the court subject matter jurisdiction.).

Hallberg v. Hendricks County Office of Family & Children, 622 N.E.2d 639, 645 (Ind. Ct. App. 1996) (It was sufficient for jurisdictional requirements that sworn testimony of witnesses supported the CHINS allegations and the court order following the hearing found

probable cause, despite DCS failure to file a preliminary inquiry and the court not specifically authorizing the filing of a CHINS petition.).

Insufficient for jurisdiction:

McCormack v. Lemond (In re Lemond), 413 N.E.2d 228, 249 (Ind. 1980) (When there was no preliminary inquiry submitted by DCS, the prosecutor did not initially seek the necessary authorization to file the petition, and no finding of probable cause was made, the juvenile court did not have jurisdiction.).

D. MOTION TO DISMISS THE PETITION BY DCS

1. State May File Motion to Dismiss

A person representing the interests of the state may file a motion to dismiss any petition that the person has filed. Ind. Code § 31-34-9-8(a).

2. Statement of Reasons Must Be Included with Motion to Dismiss

If a person files a motion to dismiss under Ind. Code § 31-34-9-8(a), the person must provide to the court a statement that sets forth the reasons the person is requesting that the petition be dismissed. Ind. Code § 31-34-9-8(b).

3. Court Shall Rule Within Ten (10) Days

Pursuant to Ind. Code § 31-34-9-8(c), not later than ten (10) days after the motion to dismiss is filed under Ind. Code § 31-34-9-8(a), the court shall: (1) Summarily grant the motion to dismiss; or (2) Set a date for a hearing on the motion to dismiss.

In re K.B., 793 N.E.2d 1191, 1197-98 (Ind. Ct. App. 2003) (Mandatory dismissal of petition for CHINS upon motion of the State was limited to time contemporaneous with that person's filing of CHINS petition; ability of DCS to move juvenile court for mandatory dismissal of petition ended upon mother's admission to allegations of petition.).

4. Court May Appoint GAL/CASA for Hearing

If the court sets a hearing on the motion to dismiss under Ind. Code § 31-34-9-8(c)(2), the court may appoint: (1) a guardian ad litem; (2) a court appointed special advocate; or (3) both a guardian ad litem and a court appointed special advocate; to represent and protect the best interests of the child. Ind. Code § 31-34-9-8(d).

III. CHINS INITIAL HEARING

A. PURPOSE OF CHINS PROCEEDINGS

The purpose of CHINS proceedings is to enable the parent and child to receive government services, with the ultimate goal of reunification of the parent and child. In re C.M., 675 N.E.2d 1134, 1138 (Ind. Ct. App. 1997).

B. INITIAL HEARING REQUIRED FOR EACH PETITION WITHIN TEN DAYS

The juvenile court shall hold an initial hearing on each petition within ten (10) days after the hearing on the petition. Ind. Code § 31-34-10-2(a).

C. COURT SETS HEARING TIME

The juvenile court shall set a time for the initial hearing. Ind. Code § 31-34-10-2(b).

1. If Detention is Requested, Detention and Initial Hearing Held Simultaneously

If a detention hearing is held under Ind. Code § 31-34-5, the initial hearing on the child in

need of services petition shall be held at the same time as the detention hearing. Ind. Code § 31-34-10-2(i).

2. If Not Timely Held, Child Must Be Released

If the initial hearing is not scheduled and held within the specified time as described in Ind. Code § 31-34-10, the child shall be released to the child's parent, guardian, or custodian. Ind. Code § 31-34-10-2(d).

D. NOTICE OF INITIAL HEARING

1. Summons Issued

For further information on notice process and due process issues, *see* IPDC CHINS/TPR Manual, Ch. 4 – *Constitutional and Statutory Rights*.

A summons shall be issued for the following: (1) the child; (2) the child's parent, guardian, custodian, guardian ad litem, or court appointed special advocate; (3) any other person necessary for the proceedings. Ind. Code § 31-34-10-2(b).

The clerk shall issue the summons under Rule 4 of the Indiana Rules of Trial Procedure. Ind. Code § 31-34-10-2(c).

Bradburn v. Bradburn, 197 N.E. 905, 907 (Ind. 1935) (In juvenile court proceeding to have child declared a public ward, service of notice on mother and father of child was sufficient to give court jurisdiction of child.).

In re A.B., 332 N.E.2d 226, 228 (Ind. Ct. App. 1975) (Section providing that summons could issue requiring the appearance of any person whose presence, in the opinion of the judge, was necessary, was intended to permit court latitude in admitting additional parties to the proceeding where necessary to secure substantial justice and accomplish the goals set out in the section.).

Hallberg v. Hendricks County Office of Family and Children, 662 N.E.2d 639, 645 (Ind. Ct. App. 1996) (Failure of circuit court to serve divorced father with summons or copy of petition by DCS did not deny father his right to due process or opportunity to be heard because father was served a copy of the protective order that notified him of the date of the emergency hearing on CHINS petition.).

Ford v. State, 104 N.E.2d 406, 407 (Ind. Ct. App. 1952) (Juvenile court cannot acquire jurisdiction of action to have child made ward of court unless summons is issued and served as provided by statute.).

S.O. v. Ind. Dep't of Child Servs. (In re J.S.O.), 938 N.E.2d 271, 277 (Ind. Ct. App. 2010) (The trial court's and DCS' failure to notify father of CHINS proceedings violated father's due process rights; DCS had actual knowledge of father's name and whereabouts, and statutory law mandated that father be notified of the CHINS proceedings and orders.).

2. Petition Must Accompany Summons

A copy of the petition must accompany each summons. Ind. Code § 31-34-10-2(c).

3. DCS Must Provide Notice to Foster Parent or Caregiver

The department shall provide notice of the date, time, place, and purpose of the initial hearing and any additional initial hearing scheduled under Ind. Code § 31-34-10-2 to each foster parent or other caretaker with whom the child has been temporarily placed under Ind. Code § 31-34-2.5, Ind. Code § 31-34-4, or Ind. Code § 31-34-5. Ind. Code § 31-34-10-2(g).

E. ADDITIONAL INITIAL HEARING MAY BE HELD

The court may schedule an additional initial hearing on the child in need of services petition if necessary, to comply with the procedures and requirements of Ind. Code § 31-34-10 with respect to any person whom a summons has been issued under Ind. Code § 31-34-10-2. Ind. Code § 31-34-10-2(e) and Ind. Code § 31-34-10-2(j).

1. Additional Initial Hearing Usually Within 30 Days of First Initial Hearing

An additional initial hearing on the child in need of services petition shall be held not more than thirty (30) calendar days after the date of the first initial hearing on the child in need of services petition, unless the court has: (1) granted an extension of time for extraordinary circumstances; and (2) stated the extraordinary circumstances in a written court order. Ind. Code § 31-34-10-2(f).

An additional initial hearing under Ind. Code § 31-34-10-2(j) shall be held not more than thirty (30) calendar days after the date of the first initial hearing on the child in need of services petition, unless the court: (1) grants an extension of time for extraordinary circumstances; and (2) states the extraordinary circumstances in a written court order. Ind. Code § 31-34-10-2(k).

F. INITIAL HEARING PROCEDURE

1. Special Judge

McCormack v. Lemond (In re Lemond), 413 N.E.2d 228, 244 (Ind. 1980) (In a CHINS proceeding in which an adversary relationship is present and it is necessary to use the procedure set forth in Trial Rule 79 relating to striking names in order to obtain a special judge, the custodial parent, if available, is, for purposes of striking, to stand in the shoes of defendant and the prosecutor or county attorney stands in shoes of plaintiff.).

2. Guardian Ad Litem/CASA

a. Court Must First Determine if GAL or CASA Appointment Required

Pursuant to Ind. Code § 31-34-10-3, before complying with the other requirements of Ind. Code § 31-34-10, the juvenile court shall first determine whether the following conditions make it appropriate to appoint a guardian ad litem or a court appointed special advocate, or both, for the child:

- (1) If the child is alleged to be a child in need of services: (A) Under Ind. Code § 31-34-1-6; (B) Under Ind. Code § 31-34-10-10 or Ind. Code § 31-34-1-11; (C) Due to the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with the necessary medical care; the court shall appoint a guardian ad litem or court appointed special advocate or both, for the child.
- (2) If the child is alleged to be a child in need of services under: (A) Ind. Code § 31-34-1-1; (B) Ind. Code § 31-34-1-2; (C) Ind. Code § 31-34-1-3; (D) Ind. Code § 31-34-1-4; (E) Ind. Code § 31-34-1-5; (F) Ind. Code § 31-34-1-7; or (G) Ind. Code § 31-34-1-8; the court shall appoint a guardian ad litem, court appointed special advocate, or both for the child.
- (3) If the parent, guardian, or custodian of a child denies the allegation under Ind. Code § 31-34-10-6, the court shall appoint a guardian ad litem, court appointed special advocate, or both, for the child.

b. Court May Appoint GAL/CASA at Any Time

The juvenile court may appoint a guardian ad litem or a court appointed special advocate, or both, for the child at any time. Ind. Code § 31-32-3-1.

In every judicial proceeding under Ind. Code § 31-33 [Reporting and Investigating Abuse or Neglect], the court may appoint for the child a guardian ad litem or a court appointed special advocate, or both, under Ind. Code § 31-32-3. Ind. Code § 31-33-15-1.

D.T. v. Ind. Dep’t of Child Servs. (In re D.T.), 981 N.E.2d 1221, 1226 (Ind. Ct. App. 2013) (Trial Rule 17 requires appointment of a GAL: “[i]f an infant or incompetent person is not represented, or is not adequately represented, the court shall appoint a guardian ad litem for him.” A GAL was appointed for both the mother and the child. Father was 17 and was represented by counsel throughout almost all of the cases (part of one hearing F was represented by M’s attorney due to absence of F’s attorney). Ind. Code § 31-32-3-1 applied to both the CHINS and TPR proceedings, but appointment of a GAL was discretionary. Father never requested a GAL. Therefore, appointment of a GAL was not required because counsel had been appointed, and there was no due process violation.).

PRACTICE POINTER: Counsel should object to the court’s failure to appoint a GAL/CASA to preserve the issue for appeal.

3. Notice of Allegations and Dispositional Alternatives

Pursuant to Ind. Code § 31-34-10-4, the court shall next inform the child, if the child is at an age of understanding, and the child’s parent, guardian, or custodian, if the person is present, of the following: (1) The nature of the allegations of the petition. (2) The dispositional alternatives available to the court if the child is adjudicated a child in need of services.

4. Notice of Effect of Adjudication

Pursuant to Ind. Code § 31-34-10-5, the juvenile court shall inform the parent or guardian of the estate that if the child is adjudicated a child in need of services:

- (1) The parent, guardian, or custodian of the child may be required to participate in a program of care, treatment or rehabilitation for the child;
- (2) The parent or guardian may be held financially responsible for services provided for the parent, guardian, or child; and
- (3) The parent, guardian or custodian of the child may controvert the following: (A) Allegations made at the child’s dispositional or other hearing concerning the parent’s guardian’s, or custodian’s participation. (B) Allegations concerning the parent’s, or guardian’s financial responsibility for services that would be provided.

5. Admission or Denial of Allegations

a. By Parent, Guardian, or Custodian

Except if a petition is filed under Ind. Code § 31-34-1-6, the juvenile court shall determine whether the parent, guardian, or custodian admits or denies the allegations of the petition. Ind. Code § 31-34-10-6.

b. By Child

If a petition alleges that the child is a child in need of services under Ind. Code § 31-34-1-6, the juvenile court shall determine whether the child admits or denies the allegations. Ind. Code § 31-34-10-7.

c. Failure to Respond is Denial

A failure to respond constitutes a denial. Ind. Code § 31-34-10-6 and Ind. Code § 31-34-10-7.

6. Opportunity to Be Heard and Make Recommendations

Pursuant to Ind. Code § 31-34-10-2(g), the court shall: (1) Provide a: (A) person for whom a summons is required to be issued under Ind. Code § 31-34-10-2(b); and (B) a person who is required to be notified under Ind. Code § 31-34-10-2(g) [foster parent or caretaker]; an opportunity to be heard; and (2) Allow a person [the parties and foster parent or caretaker] to make recommendations to the court; at the initial hearing.

In re A.B., 332 N.E.2d 226 (Ind. Ct. App. 1975) (Where natural father of child born out of wedlock went to hearing on petition to have child declared to be a dependent and neglected child, and although father's paternity was not legally established, it was not disputed, so it was an abuse of discretion to deny father any opportunity to be heard.).

7. Following Admission, Court Enters Judgment and Schedules Dispositional Hearing

If the parent, guardian or custodian admits the allegations under Ind. Code § 31-34-10-6, the juvenile court shall do the following: (1) Enter judgment accordingly. (2) Schedule a dispositional hearing. Ind. Code 31-34-10-8.

a. Dispositional Hearing May Be Immediately Held

If the allegations of a petition have been admitted, the juvenile court may hold a dispositional hearing immediately after the initial hearing. Ind. Code § 31-34-10-9(a).

b. Parties Must Consent to Immediate Dispositional Hearing

The following persons must consent to holding a dispositional hearing under Ind. Code § 31-34-10-9(a) immediately after the initial hearing: (1) The child, if competent to do so. (2) The child's: (A) counsel; (B) guardian ad litem; (C) court appointed special advocate; (D) parent; (E) guardian; or (F) custodian. (3) The person representing the interests of the state.

8. Following Denial, Fact-finding Hearing May Be Held Immediately

If the allegations have been denied, the juvenile court may hold the fact-finding hearing immediately after the initial hearing. Ind. Code § 31-34-10-9(b).

a. Parties Must Consent to Immediate Fact-finding Hearing

Pursuant to Ind. Code § 31-34-10-9(c), the following persons must consent to holding a fact finding or dispositional hearing under Ind. Code § 31-34-10-9(a) immediately after the initial hearing:

- (1) The child, if competent to do so.
- (2) The child's: (A) counsel; (B) guardian ad litem; (C) court appointed special advocate; (D) parent; (E) guardian; or (F) custodian.
- (3) The person representing the interests of the state.