CHAPTER 3
JURISDICTION

Table of Contents

CHAPTER 3
JURISDICTION

I. COURTS WITH JUVENILE JURISDICTION

Counsel should consult Title 33 to determine which courts have juvenile jurisdiction on a county by county basis. Rather than a general grant of juvenile jurisdiction to the circuit courts, IC 33-33 organizes all the courts by county, and divides up jurisdiction within each county. Practitioners should consult IC 33-33 to determine which courts have juvenile jurisdiction on a county by county basis. In many counties, all the trial courts are vested with juvenile jurisdiction, but by local trial rule or practice, juvenile matters are filed in only one court. Some larger counties have designated separate juvenile divisions within the superior or circuit courts.

This Chapter attempts to comprehensively discuss courts' juvenile jurisdiction only regarding CHINS and Termination of the Parent-Child Relationship (TPR) matters. Regarding juvenile jurisdiction in paternity matters, as well as other paternity issues, see Chapter 12; adoption see Chapter 13; guardianship and third party custody; see Chapter 14.

II. SUBJECT MATTER JURISDICTION

Subject matter jurisdiction is the "power of a court to hear and adjudicate cases of a particular kind" and that exclusive jurisdiction is conferred by the legislature upon the state's juvenile courts. See **State ex rel. Camden v. Gibson Circuit Court**, 640 N.E.2d 696, 697 (Ind. 1994). Indiana trial courts possess two types of jurisdiction: subject matter jurisdiction (the power to hear and make determinations on cases of the class to which the particular proceeding belongs); and personal jurisdiction (which requires that appropriate process be obtained over the parties). **K.S. v. State**, 849 N.E.2d 538, 540 (Ind. 2006). Although legal professionals frequently mischaracterize a defect in a procedural process as a jurisdictional error, a trial court's error in procedural process does not mean it necessarily lacked jurisdiction to hear the case. K.S. v. State, 849 N.E.2d at 541.

II. A. Jurisdiction of CHINS Cases

The juvenile court has exclusive original jurisdiction in "[p]roceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services." IC 31-30-1-1(2). The relevant exceptions to this can be found at IC 31-30-1-12 [jurisdiction of child custody, parenting time, or child support proceeding in marriage dissolution; survival of order], and IC 31-30-1-13 [jurisdiction of child custody proceeding in paternity proceeding; paternity of child; survival of order]. These exceptions are highly specific. See this Chapter at II.E.

Juvenile courts also have exclusive original jurisdiction over proceedings of some related matters. See this Chapter at II.B through G.

Juvenile court jurisdiction in CHINS cases tends to preempt other types of custody proceedings involving the same child, but practitioners should consult the specific sections of this Deskbook for the type of case which is pending at the same time as the CHINS case, and should consult the statutes and case law, as these inquiries tend to be fact sensitive. See this Chapter at II.C. through G. for discussion on case law on the exclusive jurisdiction of the juvenile court when the child is also the subject of a divorce custody, guardianship, or adoption proceeding, and for limited legislation that allows concurrent custody and CHINS proceedings.

See also **Reynolds v. Dewees**, 797 N.E.2d 798, 801 n.2 (Ind. Ct. App. 2003) ("IC 31-30-1-1 grants a juvenile court exclusive original jurisdiction in certain enumerated proceedings, including a CHINS proceeding, except as provided in sections 9, 10, 12, and 13 of that chapter"); **Matter of Guardianship of Bramblett**, 495 N.E.2d 798, 798-9 (Ind. Ct. App. 1986) (Bramblett holding, that the juvenile court retains its exclusive jurisdiction over the child alleged to be a CHINS until the child "reaches his twenty-first birthday unless the court discharges the child and his parent, guardian, or custodian at an earlier time," is still good law; however, the portion of Bramblett which indicates that no other Indiana court has jurisdiction to entertain any proceeding regarding a child alleged to be CHINS, became incorrect as to marriage dissolution and paternity cases when IC 31-30-1-1, 12, and 13 were modified)

II. B. Age of Child and Continuing Jurisdiction

The juvenile court has subject matter jurisdiction over a child adjudicated CHINS prior to his/her eighteenth birthday. See IC 31-9-2-13(d) (definition of child); see also **In Re T.G.**, 726 N.E.2d 857 (Ind. Ct. App. 2000) (child must be adjudicated CHINS prior to child's eighteenth birthday).

A juvenile court's jurisdiction continues over the child and the child's, parent, guardian or custodian until the child attains the age of twenty-one, unless the court discharges the child and his parent, guardian, or custodian at an earlier time. IC 31-30-2-1. The juvenile court retains jurisdiction until the parent or guardian of the estate has satisfied the financial obligations ordered by the juvenile court in compliance with IC 31-40. IC 31-30-2-1(c).

A juvenile court can retain jurisdiction over an older youth (defined at IC 31-28-5.8-4) who is a recipient or beneficiary of kinship guardianship assistance under Title IV-E of the federal Social Security Act, or other financial assistance provided for the benefit of a child who was previously adjudicated as a CHINS, is a protected person under a legal guardianship if IC 29-3-3-8-9(f) applies, or is approved for assistance under a rule or published policy of the department. IC 31-30-2-1(g).

In **In Re A.T.**, 889 N.E.2d 365, 368-369, n.4 (Ind. Ct. App. 2008), *trans. denied*, the Court held that the trial court lacked jurisdiction to reinstate the nineteen-year-old child as a ward of DCS**.** The Court found that, pursuant to IC 31-30-2-1(a), although the child could have remained a CHINS until she was twenty-one years old, because the trial court had dismissed the child's wardship, it could not be reinstated when she was nineteen years old. Citing IC 31-34-1-1 et seq., the Court noted that, because the child was nineteen at the time she requested reinstatement, a new CHINS proceeding would have been unavailable to her.

II. C. CHINS and Guardianship Overlap

II. C. 1. Exclusive Original Jurisdiction of Juvenile Court in Certain Types of Guardianships

Juvenile courts have exclusive original jurisdiction in a guardianship proceeding for a child who has been adjudicated as a CHINS, who has a court approved permanency plan that provides for the appointment of a guardian, and who is the subject of a pending CHINS proceeding. IC 31-30-1-1(10). Probate code reflects this as well by providing that a juvenile court has exclusive original jurisdiction over matters related to guardians and guardianships of a minor described in IC 31-30-1-1(10). IC 29-3-2-1(b) and (c).

Courts with probate jurisdiction have exclusive original jurisdiction with respect to minors regarding all other guardianship and protective proceedings under IC 29.

The jurisdiction of a juvenile court over a proceeding set forth in IC 31-30-1-1(10) continues until whichever comes first: the juvenile court terminates the guardianship of the person; or the child turns eighteen years old, unless, at age eighteen, the child is a full-time student in a secondary school or the equivalent level of vocational or career and technical education, in which case, it terminates at age nineteen. IC 31-30-2-1(d). If the guardianship continues after the child reaches this age, the juvenile court should transfer the guardianship proceeding to the court with probate jurisdiction. IC 31-30-2-1(d).

However, the juvenile court may transfer the guardianship proceeding to the court with probate jurisdiction at any time, with the probate court's consent. IC 31-30-2-1(f). While the juvenile court has jurisdiction over the guardianship proceeding, it has the ability to enter, modify, or enforce a support order under IC 31-40-1-5. IC 31-30-2-1(e).

If a juvenile court approves guardianship as a permanency plan for a child, the juvenile court may appoint a guardian of the person and administer a guardianship for the child under IC 29-3. IC 31-34-21-7.7(a). If there is a guardianship proceeding pending in a probate court, the probate court must transfer the proceeding to juvenile court. IC 31-34-21-7.7(b). Juvenile court has the same ability as probate court to include in an order creating a guardianship terms and requirements that a parent must meet before seeking to terminate or modify a guardianship. IC 31-34-21-7.7(c); see also IC 29-3-8-9(a); Chapter 14 at II.B.3. and Chapter 14 at IX.A.1. and 2.

If the juvenile court closes a CHINS case after creating a guardianship, the juvenile court order creating the guardianship survives the closure of the CHINS case. IC 31-34-21-7.7(d). The probate court would then assume or reassume jurisdiction of the guardianship and take further action as necessary. IC 31-34-21-7.7(e).

It is possible for a juvenile court to retain jurisdiction over an older youth as defined in IC 31-28-5.8-4. IC 31-30-2-1(g). In order to qualify for this continuing jurisdiction, the older youth must be a recipient of kinship guardianship assistance under Title IV-E of the federal Social Security Act (42 U.S.C. 673), as amended; or other financial assistance which is listed at IC 31-30-2-1(g).

In **In Re Custody of M.B.**, 51 N.E.3d 230, 231, 233, 236 (Ind. 2016), the Court reversed the circuit court's dismissal of Aunt and Uncle's petition seeking custody of the child, finding the circuit court's determinations that (1) Aunt and Uncle lacked standing to file the custody action; and (2) the circuit court lacked subject matter jurisdiction to hear the custody proceeding, were both incorrect. The Court held that Aunt and Uncle had standing to bring an independent custody action with respect to the child. Citing IC 31-17-2-3(2), the Court observed that any person "other than a parent" has standing to initiate a cause of action for custody, so long as the question of custody over the child is not incidental to dissolution of marriage, legal separation, or an action for child support. Noting that no such action was pending and that neither Aunt nor Uncle was a parent to the child, the Court determined that Aunt and Uncle had statutory standing to bring an independent action for custody of the child. The Court further held that the circuit court had subject matter jurisdiction over Aunt and Uncle's petition for custody, but must stay its jurisdiction pending the conclusion of the CHINS case regarding the child. The Court determined that, although the CHINS and custody proceedings differed in form, they related to the same subject matter, namely custody and care of the child. Noting a possible exception for a motion pursuant to Ind. Tr. R. 12(b)(8), the Court advised that a circuit court "may allow the parties to file an independent custody action while a CHINS proceeding is pending in juvenile court", but that court is required by

law to abstain from the exercise of that jurisdiction until the CHINS proceeding has concluded, absent an applicable exception to the juvenile court's exclusive jurisdiction.

For older case law on the topic of exclusive jurisdiction when it comes to CHINS courts and guardianships, see **Matter of Guardianship of Bramblett**, 495 N.E.2d 798, 799 (Ind. Ct. App. 1986) (Child was adjudicated a CHINS before Relatives sought guardianship, and Relatives' guardianship petition was dismissed and the dismissal was affirmed on appeal; the Court opined that no other Indiana court had jurisdiction to entertain any proceeding which in any way conflicted with the exclusive jurisdiction vested in the juvenile court by the commencement of a CHINS proceeding. *Practice Note*: As it pertains to this specific type of guardianship under these facts, this opinion is still correct; however, it is no longer true that no other courts can hear a case when there is a pending CHINS, pursuant to the newer statutes providing concurrent original jurisdiction of CHINS, dissolution, and paternity cases).

See Chapter 9 at III.F. for discussion of guardianship as a CHINS permanency plan.

II. C. 2. Guardianship Orders With Terms and Conditions Precedent to Termination

When creating a guardianship, a probate or juvenile court can include a requirement that the minor must reside with the guardian until the guardianship is terminated or modified, and any terms and conditions that a parent must meet in order to terminate or modify the guardianship. IC 29-3-8-9(a). This affects the ability of a parent to terminate the guardianship by creating extra legal requirements that a parent must meet, and for details on legal requirements created by an order of this nature, see Chapter 14, at IX.A.

If a guardianship order sets such terms, except as otherwise provided in IC 29-3-12, the juvenile or probate court may modify or terminate the guardianship only if the parent complies with the terms and conditions, and proves, by a preponderance of the evidence, his or her current fitness to assume all parental obligations. IC 29-3-8-9(b).

If a court created a guardianship order with terms and conditions a parent must meet before the guardianship can be terminated, and a petition to modify or terminate the guardianship is filed before the parent complies with the terms or conditions of that order, and the child was the subject of a CHINS petition or an informal adjustment, the court shall refer the petition to DCS for DCS to determine the placement of the child in accordance with the best interests of the child. IC 29-3-8-9(c).

Upon receiving a petition to terminate or modify a guardianship, a court may need to notify DCS of any hearings on the petition in certain circumstances. If a court appointed a guardian for a child who was the subject of a CHINS petition or an informal adjustment, and subsequently to the appointment of a guardian for that child, a petition to modify or terminate the guardianship is filed, the court shall notify DCS of any hearings related to the petitions. IC 29-3-8-9(d).

II. C. 3. Duty of Court To Notify and Involve DCS

If a court created a guardianship order with terms and conditions a parent must meet before the guardianship can be terminated, and a petition to modify or terminate the guardianship is filed before the parent complies with the terms or conditions of that order, and the child was the subject of a CHINS petition or an informal adjustment, the court shall refer the petition to DCS for DCS to determine the placement of the child in accordance with the best interests of the child. IC 29-3-8-9(c).

Upon receiving a petition to terminate or modify a guardianship, a court may need to notify DCS of any hearings on the petition in certain circumstances. If a court appointed a guardian for a child who was the subject of a CHINS petition or an informal adjustment, and subsequently to the appointment of a guardian for that child, a petition to modify or terminate the guardianship is filed, the court shall notify DCS of any hearings related to the petitions. IC 29-3-8-9(d).

At any hearing on a petition to terminate or modify a guardianship of a child who the subject of a CHINS or informal adjustment, a court must: (1) Consider the position of DCS; (2) If requested by DCS, allow DCS to present evidence regarding: (A) whether the guardianship should be modified or terminated; (B) the fitness of the parent to provide for the care and supervision of the minor at the time of the hearing; (C) the appropriate care and placement of the child; and (D) the best interests of the child. IC 29-3-8-9(e).

II. C. 4. DCS and Proposed Guardian Duties

Either DCS or a proposed guardian must notify the guardianship court if DCS has approved financial assistance to a guardian for the minor "as a component of child services (as defined in IC 31-9-2-17.8(1)(E))." IC 29-3-8-9(f). If the guardian will be provided assistance as a component of child services, the court shall order the guardian to provide financial support to the protected person to the extent the following resources do not fully support the needs of the protected person: (1) The guardianship property of the protected person; (2) Child support or other financial assistance received by the guardian from the protected person's parent or parents; (3) Periodic payments the guardian receives from DCS for support of the protected person as set forth in DCS's rules or the terms of the guardianship assistance agreement. IC 29-3-8-9(f).

IC 31-34-21-4(a) provides that DCS must give notice of a periodic case review, including a case review that is a permanency hearing, to guardians or their attorneys. Guardians also have the right to be heard and make a recommendation in a periodic case review, including a permanency hearing. IC 31-34-21-4(d). This right to be heard and make recommendations includes the right to submit a written statement to the court that may be made a part of the court record; and the right to present oral testimony to the court and cross-examine any of the witnesses at the hearing. IC 31-34-21-4(d).

IC 31-35-2-6.5(c) also provides that a child's custodian, guardian, or their attorney must receive notice of a hearing on a termination petition or motion filed under IC 31-35. Other persons entitled to notice are "Any other suitable relative or person who [DCS] knows has had a significant or caretaking relationship to the child." IC 31-35-2-6.5(c)(5). This could include present or past guardians. However, IC 31-35-2-6.5(g) provides that "A person described in subsection (c)(2) through (c)(5) or subsection (d) does not become a party to a proceeding under this chapter as the result of the person's right to notice and the opportunity to be heard under this section."

II. C. 5. Litigation of Parental Unfitness in Guardianship Cases in Probate Court

Issues of parental unfitness can be raised in a guardianship case if there is not a pending CHINS proceeding. The Indiana Supreme Court has opined that a child is not necessarily a CHINS "every time a custodial problem involving a child arises or by circumstances a child is not with its natural parents or legal guardians." **Matter of Guardianship of Thompson**, 514 N.E.2d 618, 620 (Ind. 1987).

If allegations in a petition for guardianship, or allegations made at the guardianship hearings, indicate that the minor meets the definition of a CHINS under IC 31-34-1, then the probate court must, on its own motion or at the request of a party, (1) send the petition for guardianship or other guardianship records to DCS, and (2) direct DCS to initiate an assessment to determine whether the child is a CHINS. IC 31-30-1-6(b). The probate court retains jurisdiction over the matter until the juvenile court authorizes the filing of a petition under IC 31-34-9. IC 31-30-1-6(c). If CHINS proceedings are not initiated, the probate court can litigate the issues of parental unfitness in determining custody of the child in the guardianship proceeding.

It is important to recognize that even though the probate court can hear allegations of parental unfitness in guardianship proceedings, this does not mean that the probate court has jurisdiction to hear CHINS proceedings or that a guardianship proceeding can go forward if a CHINS case is initiated regarding the child. See this Chapter at II.C.

II. C. 6. Temporary Guardianships at Death of Custodial Parent

A noncustodial parent who was denied visitation or was granted only supervised visitation with his or her child by a dissolution court does not have the right to custody of his child at the death of the custodial parent without legal proceedings. IC 29-3-3-6(a). If these conditions exist, the court on petition by any person, including a temporary custodian named under IC 31-17-2-11, or on the court's own motion, may appoint a temporary guardian for the minor for a specified period not to exceed sixty days. IC 29-3-3-6(b). If a temporary guardian is appointed without notice and the minor requests that the order be terminated or modified, the court must hold a hearing and make a determination on the petition at the earliest possible time. IC 29-3-3-6(d). A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court. IC 29-3-3-6(e). This section also makes provisions for the appointment of a guardian ad litem or court appointed special advocate. IC 29-3-3-6(c).

Under IC 31-17-2-11, dissolution courts are required to name a temporary custodian for any child whose noncustodial parent is denied visitation or given only supervised visitation. If the custodial parent dies, this temporary custodian, or any other person may petition the probate court to be named the child's temporary guardian and request a custody hearing to determine permanent guardianship for the child.

A guardian is to be appointed if the court finds at the probate hearing that the "surviving parent is not entitled to the right of custody of the minor." IC 29-3-3-6(g).

Before closing CHINS jurisdiction on a child who is also the subject of a continuing divorce or paternity custody order, practitioners should ascertain if there is a visitation restriction in the custody order and whether a suitable temporary custodian has been named for the child to take effect if the custodial parent should die.

II. C. 7. Standby Guardianship and Effect Upon DCS

A parent or guardian of a child can designate a standby guardian. IC 29-3-3-7(a). There must be a written declaration naming the individual designated to serve as a standby guardian, and naming an alternate standby guardian is possible. IC 29-3-3-7(a). It must be signed by the declarant in the presence of a notary public. IC 29-3-3-7(c). Standby guardianship becomes effective upon the death or incapacity (as defined in IC 29-3-1-7.5) of the parent or guardian and terminate ninety days after the declaration becomes effective. IC 29-3-3-7(d). However, if the standby guardian files a petition for a guardianship of the child during that ninety day

period, the standby guardianship remains in effect until the court rules on the petition. IC 29-3-3-7(d).

A standby guardian has all the powers granted to a guardian under IC 29-3. IC 29-3-3-7(f). The information and statements which are required to be in the standby guardianship is found at IC 29-3-3-7(b).

A standby guardianship document under IC 29-3-3-7 must be considered by DCS, a probation department, or a juvenile court for purposes of determining the placement of a child who is the subject of an allegation of child abuse or neglect, an open CHINS case, or an open delinquency case. IC 29-3-3-7(e). However, the standby guardianship document is not binding on any of these agencies. IC 29-3-3-7(e).

II. D. CHINS and Adoption Overlap

Adoption proceedings are within the probate court's jurisdiction, not juvenile court jurisdiction. IC 31-19-1-2. With some exceptions, CHINS proceedings are almost exclusively within the jurisdiction of the juvenile court. IC 31-30-1-1. However, the probate court and juvenile court have concurrent jurisdiction in proceedings to terminate the parent-child relationship. IC 31-30-1-5(2); IC 31-35-2-3. Termination of the parent-child relationship requires a separate petition in the juvenile court, but happens by operation of law in the adoption proceeding. IC 31-19-15-1.

Attention to detail is required when there are concurrent adoption and CHINS/termination proceedings regarding the same child, and several issues should be considered, including: (1) whether the juvenile and probate courts are in agreement (when different judges are involved) on whether adoptive placement is the appropriate permanency option for the child, and/or which potential adoptive parent is best for the child, though this issue is not dispositive of whether to proceed with an adoption; and (2) whether all persons involved in the CHINS proceeding aware of (or given formal notice of) the adoption proceeding. See **In Re Adoption of I.K.E.W.**, 724 N.E.2d 245, 250 (Ind. Ct. App. 2000) (probate court's failure to notify grandparents of foster parents' adoption petition involving the grandchild who was an adjudicated CHINS deprived grandparents of opportunity to contest adoption and foster parents' adoption was reversed).

To understand how appellate courts have resolved the overlap between CHINS and adoption proceedings, practitioners must look at IC 31-19-9-1, the consent statute. It provides, in relevant part: "(a) Except as otherwise provided in this chapter, a petition to adopt a child who is less than eighteen (18) years of age may be granted only if written consent to adoption has been executed by the following: … (3) Each person, agency, or local office having lawful custody of the child whose adoption is being sought." IC 31-19-9-1(a)(3).

If a child is a ward of DCS, then DCS is specifically empowered to provide or withhold consent to an adoption by this statute. The consent of DCS may be dispensed with if the reasons for withholding its consent are found by the court not to be in the best interests of the child. IC 31-19-9-8(a)(10).

The statute which gives DCS, as a child's legal guardian or lawful custodian, a chance to consent to an adoption, also enables a probate court to retain exclusive jurisdiction over an adoption proceeding, even as it respects the opinion of DCS as a child's legal guardian and the petitioner in the simultaneous TPR proceeding. See **In Re Infant Girl W.**, 845 N.E.2d 229, 238-241 (Ind. Ct. App. 2006), *trans. denied sub nom*. In Re Adoption of M.W., 851 N.E.2d 961 (Ind. 2006) (Dickson, J. dissenting). The mere fact there are pending CHINS and TPR proceedings does not divest a probate court of its exclusive adoption jurisdiction. Id.

For more discussion of DCS's ability to consent or withhold consent, and dispensing with DCS's consent, see Chapter 13 at IV.E.

For case law on circumstances where there is no jurisdiction conflict for CHINS, TPR, and adoption proceedings to proceed concurrently, see:

In **In Re Adoption of H.L.W.**, 931 N.E.2d 400, 407-10 (Ind. Ct. App. 2010), the child was a CHINS, and Foster Parents filed a petition to adopt. Mother's parental rights were terminated, but Father was participating in a reunification program. Neither Father nor DCS consented to the adoption. The probate court, which had jurisdiction over the child's CHINS proceedings and the adoption petition, granted Foster Parents' petition for adoption. DCS argued that the probate court had no jurisdiction to grant the adoption after the court had also approved a CHINS permanency plan for reunification of the child with Father. The Court concluded that the probate court had the ability to simultaneously consider both the CHINS action and Foster Parents' petition for adoption. The Court was persuaded that Indiana's adoption consent statute, IC 31-19-9, enabled the probate court to consider the adoption proceeding despite the pending CHINS action.

In **In Re Adoption of J.D.B.**, 867 N.E.2d 252, 255-58 (Ind. Ct. App. 2007), the Court held that the probate court had jurisdiction to rule on the adoption petition despite the pendency of CHINS and TPR proceedings in juvenile court with regard to the same child. IC 31-19-1-2 gives the probate court exclusive jurisdiction in all adoption matters. IC 31-30-1-1, with some exceptions, gives the juvenile court exclusive original jurisdiction over CHINS cases. IC 31-35-2-3 gives probate courts concurrent original jurisdiction with juvenile courts in proceedings on a petition to terminate the parent-child relationship involving a CHINS. DCS consented to the adoption in this case, and the Court noted that IC 31-19-9-1, the consent statute, allowed biological Father to participate meaningfully and present evidence in the adoption proceedings, and allowed DCS to voice its assessment of the adoption and give its consent.

In **In Re Infant Girl W.**, 845 N.E.2d 229, 238-241 (Ind. Ct. App. 2006), *trans. denied sub nom*. In Re Adoption of M.W., 851 N.E.2d 961 (Ind. 2006) (Dickson, J. dissenting), the Court addressed OFC's jurisdiction argument despite determining that OFC had waived the argument, and concluded that the Probate Court properly exercised jurisdiction over the adoption. Probate courts have exclusive jurisdiction over all adoption matters and the juvenile courts have no authority to create permanent parent-child ties through adoption or to rule on any other adoption matters. The Court was persuaded that the adoption consent statutes, IC 31-19-9-1(a)(3), which gave OFC as the child's legal guardian an opportunity to consent to the adoption, enabled the Probate Court to retain exclusive jurisdiction over an adoption proceeding even as it respected the opinion of OFC as the child's legal guardian and the petitioner in the simultaneous TPR proceeding. The mere fact that there were pending CHINS and TPR proceedings did not divest the Probate Court of its exclusive adoption jurisdiction.

In **Matter of Adoption of T.B.**, 622 N.E.2d 921, 924 (Ind. 1993), the Indiana Supreme Court ruled that a proceeding filed in the probate court to revoke an adoption earlier granted by that court, was not preempted by, or in conflict with, an ongoing CHINS case involving the same child. The Court noted that juvenile courts were given express jurisdiction over CHINS proceedings, and probate courts were given express jurisdiction over adoption matters. "The power to adjudicate either matter does not divest the other court of its respective jurisdiction. Consequently, a court with probate jurisdiction may adjudicate an adoption matter simultaneously with the juvenile court's adjudication of a CHINS proceeding."

See also **Re Adoption of H.N.P.G.**, 878 N.E.2d 900, 904 (Ind. Ct. App. 2008) (probate court had jurisdiction to rule on adoption petition despite pendency of CHINS and TPR proceedings in

juvenile court with regard to same child), *trans. denied*. See also **In Re Adoption of L.M.R.**, 884 N.E.2d 931 (Ind. Ct. App. 2008) (trial court properly determined that DCS failed to act in child's best interest by refusing to consent to Foster Mother's adoption of child).

Although prior case law indicated that an adoption could not proceed if the permanency plan of the CHINS case was reunification with the biological parent or parents, **In Re Adoption of E.B.**, 733 N.E.2d 4 (Ind. Ct. App. 2000), subsequent case law has thoroughly discussed and discarded E.B. Thus, adoption proceedings are not incompatible with CHINS proceedings even where the goal of the CHINS proceeding is reunification. See **In Re Adoption of H.L.W.**, 931 N.E.2d 400, 407-10 (Ind. Ct. App. 2010). For other cases leading up to the negation of E.B., see **In Re Adoption of H.N.P.G.**, 878 N.E.2d 900, 904 (Ind. Ct. App. 2008) (where DCS does not pursue reunification, E.B holding not controlling), *trans. denied*; and **In Re Adoption of J.D.B.**, 867 N.E.2d 252, 256 (Ind. Ct. App. 2007) (factual situation not that presented by E.B., whereas here DCS was not pursuing reunification, had filed petition to terminate biological father's parental right, and had consented to adoption of child), *trans. denied.*

See also **In Re Adoption of C.B.M.**, 992 N.E. 2d 687, 695 (Ind. 2013) (Court concluded that the adoption court abused its discretion by refusing to set aside the Twins' adoption; the adoption was based on the termination judgment and if not for the preclusive effect of the prior termination judgment, the Twins' adoption would have required notice to Natural Mother; accordingly, Natural Mother became entitled to relief from the adoption when the termination judgment was "reversed or otherwise vacated" on appeal).

II. E. Concurrent Original Jurisdiction between CHINS, Dissolution, and Paternity Courts

The juvenile court has exclusive jurisdiction in "[p]roceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services." IC 31-30-1-1(2). However, in some cases, a dissolution court and a paternity court may have concurrent original jurisdiction with a juvenile court.

If a dissolution court or a paternity court has jurisdiction over a child in an establishment or modification of paternity, custody, parenting time, or child support proceeding, that court has concurrent original jurisdiction with a juvenile court for the purpose of establishing or modifying paternity, custody, parenting time, or child support of a child who is under the jurisdiction of the other juvenile court because the child is a CHINS. IC 31-30-1-12(a) and IC 31-30-1-13(a).

If the dissolution or paternity court modifies child custody and there is a juvenile court which has jurisdiction over a child because the child is a CHINS, the modification only becomes effective when the juvenile court (1) enters an order adopting and approving the child custody modification; or (2) terminates the child in need of services proceeding or the juvenile delinquency proceeding. IC 31-30-1-12(b) and IC 31-30-1-13(b). *Practice Note*: IC 31-30-1-12(b) and IC 31-30-1-13(b) both refer to only a modification of child custody, whereas the other sections refer to modifications of other child-related matters as well as custody.

Amendments to IC 31-30-1-12 and IC 31-30-1-13 now provide for the survival of a CHINS custody order after a CHINS case in certain circumstances. An order of a CHINS court which establishes or modifies paternity, custody, child support, or parenting time survives the termination of the CHINS proceeding until the court having concurrent original jurisdiction (either a dissolution court or a paternity court) assumes or reassumes primary jurisdiction of the case to address all other issues. IC 31-30-1-12(c) and IC 31-30-1-13(c).

A dissolution or paternity court that assumes or reassumes jurisdiction of a case under either

IC 31-30-1-12(c) or IC 31-30-1-13(c) may modify child custody, child support, or parenting time in accordance with applicable modification statutes. IC 31-30-1-12(d) and IC 31-30-1-13(d).

Just prior to these statutes being amended, **In Re J.B.**, 61 N.E.3d 308, 311-3 (Ind. Ct. App. 2016) was issued. The Court declined to guess what the legislature meant when it said in IC 31-30-1-13(d) that "[a]n order establishing or modifying *paternity* of a child by a juvenile court survives the termination of the [CHINS] proceeding". (Emphasis in original.) The Court asked the legislature to take a deeper look at IC 31-30-1-12 and IC 31-30-1-13. DCS argued that according to IC 31-30-1-13(d), the CHINS court's custody modification order survived the termination of the CHINS proceedings. The Court found two ways to read what "[a]n order establishing or modifying the paternity of a child" means, and since both were valid, needed clarification from the legislature. The Court ultimately reversed that part of the CHINS court's order which discharged the parties and terminated the CHINS case because the goal of the CHINS statutory scheme was not furthered in this case.

In **In Re Custody of M.B.**, 51 N.E.3d 230, 231, 233, 236 (Ind. 2016), the Court reversed the circuit court's dismissal of Aunt and Uncle's petition seeking custody of the child, finding the circuit court's determinations that (1) Aunt and Uncle lacked standing to file the custody action; and (2) the circuit court lacked subject matter jurisdiction to hear the custody proceeding, were both incorrect. The child was the subject of a pending CHINS action, and the juvenile court denied Aunt and Uncle's motion to intervene in the CHINS case. Aunt and Uncle then filed a petition for emergency custody of the child in circuit court pursuant to IC 31-17-2-3(2). The circuit court dismissed Aunt and Uncle's petition, reasoning that Aunt and Uncle lacked standing to petition for custody and that the pending CHINS case divested the circuit court of subject matter jurisdiction. The Court held that Aunt and Uncle had standing to bring an independent custody action with respect to the child. Citing IC 31-17-2-3(2), the Court observed that any person "other than a parent" has standing to initiate a cause of action for custody, so long as the question of custody over the child is not incidental to dissolution of marriage, legal separation, or an action for child support. The Court held that the circuit court had subject matter jurisdiction over Aunt and Uncle's petition for custody, but must stay its jurisdiction pending the conclusion of the CHINS case regarding the child. *Practice Note*: This was an independent action for custody, not as part of a dissolution or paternity case.

See also **Reynolds v. Dewees**, 797 N.E.2d 798, 800-802 (Ind. Ct. App. 2003) ("To the extent that [Fox v. Arthur, 714 N.E.2d 305 (Ind.Ct.App.1999)] stands for the general proposition that once a CHINS petition is filed all other courts lose jurisdiction to act in custody matters, we decline to follow it in light of IC 31-30-1-12 and -13, which became effective just weeks prior to the Fox decision").

See Chapter 9 at III.C. for discussion of reunification with a noncustodial parent as a permanency plan for children in need of services.

For information on a paternity or dissolution court's ability to award custody to a non-parent, whether that non-parent is a defacto custodian or otherwise, see this Chapter at II.C. and Chapter 14 at II.B.1, and X.B. For paternity cases involving third-party custody and de facto custodians, see Chapter 12 at IV.R.2 and 6.

II. F. Other Concurrent Jurisdiction Matters

II. F. 1. Criminal Offenses

A juvenile court has concurrent jurisdiction with the criminal court in cases involving adults charged with: neglect of a dependent (IC 35-46-1-4); contributing to delinquency (IC 35-46-1-8); violating the compulsory school attendance law (IC 20-33-2); criminal confinement of a child (IC 35-42-3-3); or interference with custody (IC 35-42-3-4).

The acts underlying these criminal offenses may also give rise to a CHINS action. For example, a child's attendance problem could be charged as neglect of education in a CHINS petition or as a violation of the compulsory attendance law or neglect of a dependent in a criminal action. The criminal and CHINS actions each have advantages and disadvantages in regard to effectively treating or resolving the incident of abuse or neglect.

See Chapter 4 at IV.D.1. for comparison between criminal and CHINS litigation of child abuse and neglect.

II. F. 2. Termination of the Parent-Child Relationship

The juvenile court has concurrent jurisdiction with the probate court in proceedings for the termination of the parent-child relationship. IC 31-30-1-5(2). Upon terminating parental rights, the juvenile court may refer the matter to the probate court for adoption proceedings or retain juvenile jurisdiction and make appropriate disposition orders. IC 31-35-6-1.

With limited exceptions, juvenile court has no jurisdiction over adoptions. See Chapter 13 at II.A. and II.B.

II. F. 3. Mental Health Civil Commitment

IC 31-30-1-5(1) gives the juvenile court concurrent original jurisdiction with the probate court in "[p]roceedings to commit children under IC 12-26 [voluntary and involuntary treatment of mentally ill individuals]. However, the juvenile court's jurisdiction is limited as described in IC 12-26-1-4." IC 12-26-1-4(a) provides that a juvenile court has concurrent jurisdiction over proceedings under IC 12-26 that involve a child. The juvenile court cannot commit or temporarily place a child under this article in a facility other than a child caring institution. IC 12-26-1-4(b). If the juvenile court determines that commitment or temporary placement of a child in another facility is necessary, the juvenile court shall transfer the proceeding to a court having probate jurisdiction. IC 12-26-1-4(b).

See Chapter 8 at X. for further discussion on mental health commitments.

In Re R.L.H., 831 N.E.2d 250, 256 (Ind. Ct. App. 2005) (acting under its juvenile jurisdiction, the St. Joseph Probate Court had the limited authority to commit or place a child in a "child caring institution" but did not have the authority to commit a child to a state mental hospital).

II. G. Jurisdiction of Related Matters

The juvenile court has exclusive original jurisdiction in proceedings that are related to, and often essential to, the CHINS proceeding. These related proceedings include, but are not necessarily limited to, the interstate compact on juveniles; pre-petition detention; protective orders; parental, guardian, or custodian participation orders; delinquency; paternity, and certain types of guardianships.

I. G. 1. Interstate Compact on Juveniles

A juvenile court has exclusive original jurisdiction in proceedings under the interstate compact on juveniles under IC 31-37-23. IC 31-30-1-1(4). The interstate compact on juveniles provides for the return of children who have run away or absconded from Indiana.

While no CHINS category specifically mentions runaway children, these children may come to the attention of the Department of Child Services as children who are endangering their own health as defined in CHINS category IC 31-34-1-6, or as missing children defined in CHINS category IC 31-34-1-8. A parent, guardian, legal custodian, or the court, can utilize the interstate compact to locate, detain, and return a child to Indiana. A CHINS action is not a prerequisite to utilizing the interstate compact.

II. G. 2. Interstate Compact on the Interstate Placement of Children

The Interstate Compact on the Placement of Children (ICPC) statutes may be found at IC 31-28-4. The purpose of the ICPC is to have the states who are parties to the agreement cooperate in the placement of children, so that (IC 31-28-4-1):

- Each child receives the "maximum opportunity to be placed in a suitable environment and with a person or an institution having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care";
- The authorities in the state where a child is to be placed have full opportunities to learn the circumstances of the proposed placement, which promotes full compliance with requirements for the child's protection;
- The authorities in the state from which the placement is made have access to the most complete information that is needed to evaluate a projected placement before it is made; and
- Appropriate jurisdictional arrangements for the care of children will be promoted.

Definitions of the various terms used in the ICPC are found at IC 31-28-4-1, Article II. Conditions and requirements for placement are found at are found at IC 31-28-4-1, Article III. Retention of jurisdiction is covered at IC 31-28-4-1, Article V.

In **In Re D.B.**, 43 N.E.3d 599, 604 (Ind. Ct. App. 2015) (Brown, J. dissenting), a CHINS case, the Court held that the Interstate Compact on the Placement of Children (ICPC) (IC 31-28-4-1) does not apply to placement with an out-of-state parent. The Court noted that: (1) an interstate compact is "an agreement between two or more states, entered into for the purpose of dealing with a problem that transcends state lines"; (2) all fifty states are current members of the ICPC; (3) the broad purpose of the ICPC is to facilitate "cooperation between states in the placement and monitoring of dependent children." The Court cited Article III of the ICPC, which states that "a sending agency may not send, bring, or cause to be sent or brought into any other party state a child for placement in foster care or as a preliminary to a possible adoption unless the sending agency complies with each requirement under Article III and with the receiving state's laws governing the placement of children." The Court applied the ICPC version found at IC 31-28-4 to the instant case, because the newer, substantively different version of the ICPC at IC 31-28-6-1 will not be effective until it has been ratified by thirty-five states. The Court observed that IC 31-28-4 "quite plainly provides that it applies only to placement in foster care or a preadoptive home." To the extent that the juvenile court's CHINS determination rested on the fact that the ICPC process for Father had not yet been completed, the Court discounted that basis of the CHINS adjudication.

In **In Re the Adoption of J.L.J.**, 4 N.E.3d 1189, 1198 (Ind. Ct. App. 2014), the Court held, *inter alia*, that the trial court did not err in appointing Guardian as guardian of the Twins because the ICPC does not govern Mother's placement of the Twins' with Guardian. The Court noted that Article VIII of the ICPC provides that the ICPC does not apply in situations where a parent takes her child into a different state and leaves the child with a relative or a nonagency guardian in that state. Both parties made arguments about the resident state of the Twins, but the Court opined that the domicile state of the Twins and the length of time they lived with Grandmother or Guardian was irrelevant because Mother, "without agency involvement, nor as the result of a court order", moved the children herself to another state, and authorized Guardian to take charge of the Twins.

In **In Re the Adoption of S.A.**, 919 N.E.2d 736, 739, 744 (Ind. Ct. App. 2009), the Court affirmed the trial court's grant of Adoptive Mother's petition for adoption and the trial court's denial of Foster Parents' petition for adoption. The Court found that Adoptive Mother established by clear and convincing evidence that all requirements of the ICPC were satisfied. The ICPC is "among the most important safeguards for children whom it is contemplated will be sent to live with adoptive parents in another state." The conditions for placement set forth in the ICPC are meant to provide complete and accurate information to the sending state to ensure that children are placed in a safe environment. The Court noted that the trial court issued a subsequent order directing Adoptive Mother to obtain an updated home study and to comply with all requirements of the ICPC after determining that it was in the child's best interests to grant Adoptive Mother's petition for adoption. The Court stated that the Illinois Department of Children & Family Services had completed two positive home studies on Adoptive Mother and recommended that the child should be placed with Adoptive Mother. The Court opined that the IDCFS's written report filed in the trial court clearly satisfied the requirements that the receiving state (Illinois) notify the sending state "that the proposed placement does not appear to be contrary to the interest of the child."

The Supreme Court in **In Re Adoption of Infants H.**, 904 N.E.2d 203, 207-09 (Ind. 2009) *reh'g denied*, reversed the final order of adoption for want of compliance with the Interstate Compact and remanded with directions to comply with the Compact, and thereafter to issue further judgment accordingly. The Court noted that (1) the most important safeguard for children in this case is the ICPC; (2) DCS contends and Petitioner does not dispute that the adoption court did not comply with the Compact; (3) both Indiana and New Jersey are parties to the Compact; (4) two of the large objectives of the Compact which Indiana has embraced are ensuring that the appropriate authorities in a state where a child is to be placed "have full opportunity to ascertain the circumstances of the proposed placement" and providing the sending state with "the most complete information on the basis of which to evaluate a projected placement before the placement is made"; and (5) the Compact's conditions for placement are designed to provide complete and accurate information regarding children and potential adoptive parents from a sending state to a receiving state and to involve public authorities in the process in order to ensure children have the opportunity to be place in a suitable environment. The trial court was initially correct in indicating it would not grant the adoption without complete Compact compliance. DCS notified Indiana's central Compact office, which requested New Jersey's Compact office to evaluate Petitioner's suitability as an adoptive parent, but Petitioner declined to cooperate. There was nothing in the record that the trial court was notified in writing by New Jersey state authorities that the "proposed placement does not appear to be contrary to the interests of the child."

In **Bester v. Lake County Office of Family**, 839 N.E.2d 143, 153 (Ind. 2005), which involved a referral under the ICPC for a home study, the Court reversed the trial court's

judgment terminating the parent-child relationship of Father. The Court found that the trial court's conclusion that there was reasonable probability that the continuation of the parent-child relationship with Father posed a threat to Child's well-being had not been demonstrated by clear and convincing evidence and thus was clearly erroneous. In its discussion and analysis, the Court discussed the import of the determination of the Illinois authorities that Child could not be placed with Father in Illinois at that time. According to the Court, this determination addressed the placement of the child in Illinois, but was not relevant to the question of whether continuation of the parent-child relationship posed a threat to Child's well-being. The Court observed that the ICPC expressly defines its purpose and policy as facilitating cooperation between states in the placement and monitoring of dependent children. IC 12-17-8-1, Art. I [recodified at IC 31-28-4]. By its terms, the ICPC addresses "placement" and says nothing one way or the other about whether a parent's parental rights should be terminated. Further, according to the Court, the ICPC does not apply to the sending or bringing of a child into a receiving state when it is done by a parent, stepparent, grandparent, adult brother, sister, uncle or aunt who is leaving the child with a relative or non-agency guardian in the receiving state. IC 12-17-8-1, Art. VIII [recodified at IC 31-28-4].

In **In Re Term. of Parent-Child Relat. of A.B.**, 888 N.E.2d 231, 235 & n.3 (Ind. Ct. App. 2008), *trans. denied*, the Court saved for another day the question of whether the Interstate Compact on the Placement of Children, (ICPC) IC 31-28-4-1, applies to the interstate reunification of children with their natural parents, because, as in Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 145 n.2 (Ind. 2005), neither party placed the issue before the Court. The Court cited the Indiana Supreme Court's observations in Bester that (1) no Indiana court had addressed the question of whether the ICPC applied to the interstate reunification of children with their natural parents; and (2) while many jurisdictions across the nation have concluded that the ICPC does apply under these circumstances, other jurisdiction have taken the contrary position.

See also **In Re Adoption of M.L.L.**, 810 N.E.2d 1088 (Ind. Ct. App. 2004) (ICPC did not apply because Mother sent child to Indiana to live with relatives whom she designated as guardians).

II. G. 3. Uniform Child Custody Jurisdiction Act

When a child is the subject of a custody or visitation order from another state, the juvenile court should determine the applicability of the Uniform Child Custody Jurisdiction Act (UCCJA) at IC 31-21, which was enacted in August 2007. See **Steward v. Vulliet**, 888 N.E.2d 761, 763-69 & n.1 (Ind. 2008) (discussing the repeal of the prior act and implementation of the UCCJA).

The UCCJA does not apply to an adoption proceeding, or to a proceeding pertaining to the authorization of emergency medical care for a child. IC 31-21-1-1. A child custody proceeding pertaining to an Indian child, as defined in the Indian Child Welfare Act (25 U.S.C.A. 1902 et seq.), is not subject to the UCCJA to the extent that it is governed by the Indian Child Welfare Act. IC 31-21-1-2(a). A tribe is to be treated as if it were a state for the purposes of applying the procedural, communication and cooperation, and jurisdiction chapters of the UCCJA, IC 31-21-3 through IC 31-21-5. IC 31-21-1-2(b). A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional stands of the UCCJA must be recognized and enforced under IC 31-21-6. IC 31-21-1-2(c).

A foreign country is treated as if it were a state for the purposes of applying the procedural, communication and cooperation, and jurisdiction chapters of the UCCJA, IC 31-21-3 through IC 31-21-5. IC 31-21-1-3(a). A child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standard of the UCCJA must be recognized and enforced under IC 31-21-6, except that an Indiana court need not apply the UCCJA if the child custody law of the foreign country violates the fundamental principles of human rights. IC 31-21-1-3(b) and (c).

"Child custody determination" means a judgment, decree, or other court order providing for legal custody, physical custody, or visitation with respect to a child, but does not include an order relating to child support or other monetary obligation of a person. IC 31-21-2-4. "Child custody proceeding" is a proceeding that deals with the issues of legal custody, physical custody, or visitation; it also states that the term includes the following proceedings where issues of custody or visitation may arise: dissolution of marriage or legal separation; child abuse or neglect; guardianship; paternity; termination of parental rights; and protection from domestic violence. IC 31-21-2-5. This does not include juvenile delinquency proceedings, contractual emancipation, or enforcement of child custody under IC 31-21-6.

In **Steward v. Vulliet**, 888 N.E.2d 761, 763-69, n.1 (Ind. 2008), the Court held that the trial court did not err in dismissing the child custody proceeding, and determining Washington State was a more convenient forum. Mother and Father were married in Washington and later relocated to Indiana. The Indiana trial court initially had jurisdiction over the child because (1) Mother filed the petition for dissolution in Indiana before the child's birth; (2) the child did not have a home state, and no other state had jurisdiction over the child, because Mother filed the petition for dissolution before the child's birth; (3) since the child did not have a home state, IC 31-17-3-3(a)(4) gave Indiana jurisdiction over the custody case; and (4) Mother and Father both resided in Indiana and information about them and other family members was available in Indiana. The Court opined the Indiana trial court could have continued hearing evidence and issuing orders on the custody case; the Washington court could not exercise its jurisdiction unless the proceeding in Indiana had been terminated because Washington was a more convenient forum. The Court also held that Mother had not waived her right to claim forum inconvenience. The trial court had the discretion to decline to exercise jurisdiction on its own motion any time before issuing a decree if it determined that its own court was an inconvenient forum and that another court was a more appropriate forum. The Court determined that: (1) the trial court properly analyzed the statute, complied with the statutory inconvenience analysis, and its findings were supported by the evidence; and (2) the trial court was not limited to considering the parties' circumstances only as they existed at the time the petition was filed.

In **Tamasy v. Kovacs**, 929 N.E.2d 820, 836-7 (Ind. Ct. App. 2010), the Court affirmed the trial court's order which modified physical custody of the children from Mother to Father, and concluded that it did not err in exercising jurisdiction. Mother moved to Massachusetts after the divorce was finalized and final orders were issued. It was undisputed that the trial court had jurisdiction to make all the initial orders and final orders. IC 31-21-5-1. Father continued to live in Indiana at all times since the initial custody determination, resulting in a significant connection between the instant custody matter and the trial court. Because there was a significant connection, the Court determined that whether Massachusetts would be a more convenient forum to decide the instant custody matter was solely within the trial court's discretion. Mother then argued that the trial court did not properly analyze whether Indiana was an inconvenient forum; the Court opined that she pointed to no such evidence supporting her argument.

In **In Re Guardianship of S.M.**, 918 N.E.2d 746, 748-50 (Ind. Ct. App. 2009), the Court reversed and remanded the trial court's order appointing Aunt as permanent guardian of the two children; the Court held that the trial court lacked subject matter jurisdiction to issue a temporary emergency order, and therefore, the temporary emergency order was void *ab initio*. The parents divorced in Illinois, and Mother, who lived in Indiana, eventually assumed custody. Mother died in November 2008, and Aunt received an emergency temporary guardianship from an Indiana Court, which eventually granted Aunt permanent guardianship. IC 31-21-5-3 states that an Indiana court may not modify a child custody determination made by a court of another state unless (1) the court of the other state determines that: (A) it no longer has exclusive, continuing jurisdiction under IC 31-21-5-2; or (B) an Indiana court would be a more convenient forum under IC 31-21-5-8; or (2) an Indiana court or a court of the other state determines that: (A) the child; (B) the child's parents; and (C) any person acting as a parent; do not presently reside in the other state. Neither of these provisions applied to this case because neither party suggested that the Illinois Court found that it lacked jurisdiction, and because it was undisputed that Father still lived in Illinois. The Court opined that Father was entitled to custody of the children as a matter of law upon Mother's death; the issue of subject matter jurisdiction could not be waived, and absent a showing of abandonment or the threat of mistreatment or abuse, no guardianship could be established.

In **Novatny v. Novatny**, 872 N.E.2d 673, 679-80 (Ind. Ct. App. 2007), the Court held that, at the time the petition was filed which is the relevant time to consider, none of the requirements for establishing jurisdiction under the UCCJA were met and the trial court's determination that it had jurisdiction was clearly erroneous. Both Mother and Father and relocated to other states, and none of the family lived in Indiana when Father filed this petition to modify custody. The court that first enters a custody decree on a matter gains exclusive jurisdiction, but that jurisdiction continues only until all parties and the children who were the subject of the decree have left the state. A child's home state is the state in which the child, immediately preceding the time involved, lived with his parent(s), or a person acting as a parent for at least six consecutive months. If the child has a home state other than Indiana, jurisdiction may not be assumed in Indiana unless the home state has declined its jurisdiction. Here, Virginia, the children's home state, apparently had not declined, or even been requested to assume, jurisdiction prior to Father's filing of the petition herein.

See also **Barwick v. Ceruti**, 31 N.E.3d 1008 (Ind. Ct. App 2015) (Court held that the trial court had jurisdiction over the unborn child, and the state was an appropriate and convenient forum for the custody dispute; when a parent files his or her petition before the child is born, the child does not have a home state when the proceedings were commenced, and no other state has custody jurisdiction over her because she has not been born, Indiana has child-custody jurisdiction).

Case law from prior to the 2007 amendments to the UCCJA includes:

In **In Re Adoption of M.L.L.**, 810 N.E.2d 1088, 1092-93 (Ind. Ct. App. 2004), the Court held that the trial court had not erred when it found that Mother had abandoned the child for purposes of the UCCJL. IC 31-17-3-3(a)(3) provides that a court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination if the child is physically present in this state and the child has been abandoned. There is no statutory definition of "abandonment" as it relates to the UCCJL, but common law provides that "abandonment exists when there is such conduct on the part of a parent which evidences a settled purpose to forego all parental duties and relinquish all parental claims to the child . . ." The Court opined that the evidence of

Mother's conduct was sufficient to show that Mother had abandoned the child for purposes of the UCCJL. The Court also held that IC 31-17-3-6(a), which states that the court of this state shall not exercise jurisdiction if a proceeding concerning the custody of the child was pending in another state, did not prohibit the Madison Circuit Court's exercise of jurisdiction because the Tennessee paternity proceeding did not concern Father's custody, just his paternity. Finally, the Court was unpersuaded by Mother's contention that Tennessee retained jurisdiction over the matter pursuant to the Interstate Compact on the Placement of Children, IC 12-17-8-1 (recodified in 2006 at IC 31-28-4-1 through 8). The Court found that it need not address the jurisdictional rules under the Compact because it does not apply to the sending or bringing of a child into a receiving state by the child's parent and leaving the child with a non-agency guardian.

In **Lollar v. Hammes**, 952 N.E.2d 754, 756-7(Ind. Ct. App. 2004), the Court held that because Mother accepted the benefits of the court's order as to the initial custody determination and did nothing to challenge the court's jurisdiction until a custody order contrary to her wishes was entered, Mother was estopped from objecting to the Indiana court's jurisdiction to decide custody matters concerning the child. Mother had waived the UCCJL jurisdictional limitations by initiating the paternity case in Indiana, seeking affirmative relief from the Indiana court, and failing to timely object to the Indiana court's exercise of jurisdiction.

The Court in **Bergman v. Zempel**, 807 N.E.2d 146 (Ind. Ct. App. 2004) reversed the trial court's dismissal of Mother's motion to dismiss alleged Father's paternity petition where (1) the trial court should have recognized and enforced a Pennsylvania court's previously entered initial custody decree which conformed with the Parental Kidnapping Prevention Act (PKPA) and (2) the trial court should have dismissed Father's petition because Pennsylvania had continuing jurisdiction over the custody determination in accordance with the PKPA and Pennsylvania's version of the UCCJA.

In **In Re Paternity of R.A.F.**, 766 N.E.2d 718, 723-24 (Ind. Ct. App. 2002), *trans. denied,* the Court affirmed the trial court's order granting emergency temporary custody of the children to Father. The Indiana court had continuing exclusive jurisdiction of custody matters concerning the children despite their relocation to Arizona with Mother, because the Indiana court entered the original custody determination in the paternity action, and Father continued to reside in Indiana. The court which first enters a custody decree on a matter gains exclusive jurisdiction only until the child and all parties have left the state, but the court which has exclusive jurisdiction may decline to exercise its jurisdiction if it determines that a different forum is in a better position to entertain the litigation.

Older case law pertaining to CHINS and pre-2007 amendments of the UCCJA includes:

In **Matter of Lemond**, 413 N.E.2d 228 (1980), where the Indiana Supreme Court found that in an emergency Indiana can assume jurisdiction of the custody issue under three different statutory provisions: (1) the emergency provision of the UCCJL; (2) the exclusive jurisdiction of the juvenile court over CHINS cases; and (3) the emergency treatment provisions of the juvenile code. However, jurisdiction can be invoked under these provisions only in compliance with relevant statutory prerequisites and upon the existence of substantial evidence of an emergency. The Court found that there was not adequate evidence of an emergency in this particular case, and the Indiana court lacked jurisdiction against the out-of-state custody decree. The juvenile court judge and counsel for the child's noncustodial Father attempted to avoid a ruling under the UCCJL that the child was to be returned to the out-of-state custodial parent, by establishing CHINS jurisdiction in Indiana.

In **Matter of E.H.**, 612 N.E.2d 174, 187-9 (Ind. Ct. App. 1993), adopted by the Indiana Supreme Court at 624 N.E.2d 471 (Ind. 1993), the Court noted than an Indiana juvenile court can exercise emergency jurisdiction with regard to an allegedly abused or neglected child who is the subject of a foreign custody/visitation decree, but such jurisdiction is effective only if there is an emergency within the meaning of the UCCJL statutes, and jurisdiction can continue only for the time of the emergency. The party invoking jurisdiction in Indiana against a foreign decree must meet the evidentiary burden of establishing a bona fide emergency under the UCCJL. Upon reviewing the facts and procedures of the case, the Court found that no attempt was made by the CHINS court to justify its exercise of emergency jurisdiction.

In **T.Y.T. v. Allen County Div. of Family**, 714 N.E.2d 752, 755 (Ind. Ct. 1999), relying on the E.H. opinion, the Court noted that the Indiana juvenile court has jurisdiction in an emergency, but when the emergency passes the jurisdiction ends. "If the CHINS court intends to exercise jurisdiction over the child on an ongoing basis after the emergency passes, it must follow the customary procedures set forth in the UCCJL." However, the Court's ruling was based on its determination that there was no out-of-state custody order. The Court found that the Allen County court had properly exercised jurisdiction over the child as an abandoned child under the CHINS statute, and further, there was no existing California custody ruling giving California priority jurisdiction over Indiana as the child's "home state."

See for interstate jurisdiction issues in paternity cases, Chapter 12 at IV.A.

See for interstate jurisdiction issues in guardianship and third-party custody cases:

White v. White, 796 N.E.2d 377, 381 (Ind. Ct. App. 2003) (notice to those who have physical custody of child, as well as proof of service, is required pursuant to UCCJA)

Meyer v. Meyer, 756 N.E.2d 1049 (Ind. Ct. App. 2001) (husband who is not father of child was unable to establish UCCJA basis for filing for third-party custody of child in Indiana court in which previous marriage to child's mother was dissolved)

In Re Guardianship of C.M.W., 755 N.E.2d 644, 648 (Ind. Ct. App. 2001) (probate court lacked jurisdiction under UCCJA)

See also Chapter 14 at III.B.2.

See for interstate jurisdiction issues in marriage dissolution cases:

In Re Marriage of Kenda and Peskovic, 873 N.E.2d 729, 736 (Ind. Ct. App. 2007) *trans. denied* (trial court had authority under UCCJA to modify custody arrangement because Indiana was child's home state in that child had lived in Indiana for more than six months prior to petition's filing)

Cox v. Cantrell, 866 N.E.2d 798, 805, 807-08 (Ind. Ct. App. 2007) *trans. denied* (It is possible for concurrent jurisdiction to exist in two state courts, but UCCJL is clear that there can be no concurrent exercise of jurisdiction between the two states; Indiana should not have issued order modifying Michigan court's custody because it was required to give full faith and credit to Michigan trial court temporary custody determination made pursuant to federal Parental Kidnapping Prevention Act)

Gamas-Castellanos v. Gamas, 803 N.E.2d 665 (Ind. 2004) (Indiana trial court should not have exercised jurisdiction over custody of youngest child where Louisiana court had previously exercised jurisdiction in substantial conformity with UCCJA and Louisiana decision is entitled to full faith and credit as issue was conclusively litigated in Louisiana with both sides participating)

Gardner v. Pierce, 838 N.E.2d 546, 552 (Ind. Ct. App. 2005) (Court must afford full faith and credit to judgment of Texas court holding that Indiana order modifying custody was valid)
Westenberger v. Westenberger, 813 N.E.2d 343, 349 (Ind. Ct. App. 2004) *trans. denied* (trial court did not abuse its discretion in concluding that Indiana was inconvenient forum and it would be more appropriate to litigate Father's petition to modify custody in Arkansas where children lived with Mother)
Counceller v. Counceller, 810 N.E.2d 372, 376 (Ind. Ct. App. 2004) (Mother established no abuse of discretion in trial court's denial of her request for transfer of jurisdiction pursuant to UCCJL)
Sudvary v. Mussard, 804 N.E.2d 854, 859 (Ind. Ct. App. 2004) (date Father filed petition to modify custody is dispositive in determining jurisdiction under UCCJL)
In Re Custody of A.N.W., 798 N.E.2d 556, 565 (Ind. Ct. App. 2003) *trans. denied* (Indiana trial court finding that out-of-state court, which would otherwise have jurisdiction, declined that jurisdiction in telephone conversation is sufficient to support exercise of jurisdiction in Indiana, the child's home state, under UCCJL)
Kolbet v. Kolbet, 760 N.E.2d 1146 (Ind. Ct. App. 2002) (inasmuch as Father still lives in Indiana, original Indiana dissolution court still has jurisdiction under UCCJL);
Christensen v. Christensen, 752 N.E.2d 179, 184 (Ind. Ct. App. 2001) ("by voluntarily engaging an Indiana trial court to determine child custody and expressly consenting to the trial court's authority to determine custody, a party effectively avails oneself to the jurisdiction of an Indiana trial court to determine child custody, thereby waiving any question regarding the authority of the trial court to decide the issue of custody and waiving the trial court's jurisdiction over the particular case")
Randolph v. Randolph, 722 N.E.2d 867, 870 (Ind. Ct. App. 2000) (Court found that the child's desire not to visit Father in Texas did not constitute an "emergency" for purposes of giving Indiana jurisdiction over the Texas visitation order, and since there was no emergency, the Court declined to rule whether the UCCJL permits the exercise of emergency jurisdiction)

II. G. 4. Parental Kidnapping Prevention Act (PKPA)

When dealing with a child who is the subject of an out-of-state custody or visitation order, the practitioner should also be aware of the federal Parental Kidnaping Prevention Act (PKPA). The PKPA can be found at 28 U.S.C. § 1738A, and is titled "Full faith and credit given to child custody determinations". It establishes national standards for the assertion of jurisdiction regarding child custody cases, and gives preferences to home states in issuing such orders. It is intended to prevent forum shopping, which could aid cases of parental kidnapping.

See **Cox v. Cantrell**, 866 N.E.2d 798, 807-08 (Ind. Ct. App. 2007) (Indiana trial court required to give full faith and credit to Michigan trial court temporary custody determination made pursuant to federal Parental Kidnapping Prevention Act*)*, *trans. denied*; **Randolph v. Randolph**, 722 N.E.2d 867, 870 n. 4 (Ind. Ct. App. 2000) (PKPA at 28 U.S.C. 1738A(c)(2)(C) authorizes the trial court to exercise jurisdiction when a child who is the subject of an out-of-state custody decree is physically in the state and "it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse"); **Matter of E.H.**, 612 N.E.2d 174, 184 n. 12 (Ind. Ct. App. 1993) (Court noted in dicta that the PKPA requires a juvenile court to enforce a foreign custody/visitation order, but grants the court limited jurisdiction in emergency situations).

II. G. 5. Jurisdiction of Indian Children

The Indian Child Welfare Act (the ICWA), 25 U.S.C. § 1901 et seq., protects the best interest of Indian children and promotes the security of Indian tribes and families by establishing minimum federal standards for the removal of Indian children from their families. 25 U.S.C. § 1902. The ICWA reflects a preference for tribal court jurisdiction. 25 U.S.C. § 1903 defines "Indian child" as "any unmarried person who is under the age of eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe."

The provisions of 25 U.S.C. § 1911 are summarized as follows: (1) an Indian tribe has exclusive jurisdiction as to any State over any child custody proceeding involving an Indian child who resides or is domiciled on the tribal reservation; (2) in any State court proceeding for foster care (such as a CHINS proceeding) or a termination of parental rights proceeding for an Indian child who is not residing or domiciled on the child's tribal reservation, the State court, in the absence of good cause to the contrary, shall transfer the proceeding to the jurisdiction of the tribe upon the petition of either parent, the Indian custodian, or the tribe, unless either parent objects or the tribe declines transfer; (3) in any State court proceeding for foster care or termination of parental rights for an Indian child, the child's tribe shall have the right to intervene at any point in the proceeding; (4) every State and U.S. territory and every Indian tribe shall give full faith and credit to the judicial proceedings of any Indian tribe applicable to the Indian child custody proceedings to the same extent that States and territories give full faith and credit to the judicial proceedings of any other entity. If the child meets the definition of an "Indian child" and the tribal court declines jurisdiction, the State court is required to use the ICWA standards on multiple issues, including granting additional time to Indian parents for preparation before the hearing, appointment of counsel, stricter evidentiary standards for CHINS cases (clear and convincing evidence standard) and termination of parental rights cases (beyond a reasonable doubt), presentation of "qualified expert witnesses" as defined by the ICWA, and other required court determinations which are established at 25 U.S.C. § 1912.

The ICWA is further explained in the Bureau of Indian Affairs federal rules, which became effective on December 12, 2016. See www.bia.gov for detailed explanations of the federal rules. The ICWA also establishes specific standards for voluntary termination of the parent-child relationship, child placement preferences, and adoption proceedings and adoptive placements for Indian children at 25 U.S.C § 1913 and § 1915. 25 U.S.C. § 1914 provides that any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any Indian parent or Indian custodian from whose custody the child was removed, and the Indian child's tribe may petition any court to invalidate such action upon a showing that the action violated any provision of § 1911, § 1912, and § 1913 of the ICWA.

Failure to comply with the ICWA may result in reversal of a judgment which terminated the parent-child relationship. In **Matter of D.S.**, 577 N.E.2d 572 (Ind. 1991), the Indiana Supreme court reversed the trial court's order terminating the parent-child relationship between a Potawatomi Indian mother and her child, who had been adjudicated to be a CHINS. Id. at 576. The Court held that Mother and the child constituted an Indian family, at least presumptively, for the purpose of initiating the inquiries required by the ICWA. Id. at 573. The Court found that the trial court did not follow the provisions of the ICWA as they related to jurisdiction, and it appeared that the trial court did not follow federal law. Id. at 573-75. The Court noted that 25 U.S.C. § 1911(b) of the ICWA, which applies to children who are domiciled off the reservation, reflects a preference for tribal jurisdiction, and

provides that jurisdiction must be transferred to the tribal court upon a petition by either the parent or the tribe, absent good cause not to transfer jurisdiction to the tribe. Id. at 574. But see **In Re S.L.H.S.**, 885 N.E.2d 603 (Ind. Ct. App. 2008), in which the Court affirmed the trial court's order terminating Father's parental rights despite his contention that he was of Native American heritage. Id. at 616-17. The Court observed that: (1) the power of state courts to conduct termination proceedings involving children of Indian ancestry may be subject to significant limitations under the ICWA; (2) the party who seeks to invoke a provision of the ICWA has the burden of showing that the ICWA applies to the proceeding; (3) the applicability of the ICWA depends on whether the proceedings involve an "Indian child" within the definition of 25 U.S.C. § 1903(4); and (4) despite the efforts of Father and DCS to track down any possible tribal status for the child or either parent via multiple letters and calls to Indian organizations, including the Bureau of Indian Affairs and tribal organizations in Oklahoma and Minnesota, no tribal status for the child or his parents had been identified. Id. at 612-13.

The ICWA is also an important issue in Indiana adoption cases. In **Matter of Adoption of T.R.M.**, 525 N.E.2d 298 (Ind. 1983), the Indiana Supreme Court affirmed the jurisdiction of the Porter County, Indiana Circuit Court (Circuit Court) in the adoption case involving an Indian child despite Indian Birth Mother's challenge that the Ogalala Sioux Tribal Court had exclusive jurisdiction under the ICWA. Id. at 316. By the time the Indiana Supreme Court issued its opinion, the child had lived in Porter County with Adoptive Parents for seven years. Mother had requested that Adoptive Parents, who resided in Porter County and who had been visiting a mission at the Pine Ridge Reservation, South Dakota, adopt her unborn child. Mother gave the child to Adoptive Mother five days after the child's birth and signed a consent to the child's adoption. Adoptive Mother took the child to reside in Porter County. When Adoptive Parents filed their petition to adopt the child, the Ogalala Sioux Tribal Court moved to transfer the case to the Tribal Court. The Circuit Court heard evidence on the ICWA jurisdictional matter and the adoption proceeding, and granted Adoptive Parents' petition to adopt the child. The Circuit Court used the ICWA standards for termination of parental rights in making its decision, and found that the evidence, including evidence from qualified expert witnesses, which included a psychologist, a Juvenile Judge of the Rosebud Sioux Tribe who visited the Pine Ridge Reservation at least monthly, and a Porter County Welfare Department social worker, supported beyond a reasonable doubt the Circuit Court's determination that removing the child from Adoptive Parents' home environment and placing the child with her Indian Birth Mother would likely result in serious emotional harm to the child. The Indiana Supreme Court ruled that the Circuit Court had jurisdiction over the child when the following conditions existed: (1) the child was not a resident of or domiciled on an Indian reservation; (2) the Ogalala Sioux Tribal Court did not properly exert jurisdiction over the child; (3) the Circuit Court had "good cause" for not transferring jurisdiction to the Ogalala Sioux Tribal Court; (4) the concurrent state jurisdiction was properly exercised. Id. at 304-308. The Circuit Court's adoption judgment was affirmed. Id. at 316.

In **In Re Adoption of D.C.**, 928 N.E.2d 602, 605-6 (Ind. Ct. App. 2010), *trans. denied*, Adoptive Petitioners sought to adopt an eleven-year-old child, who had never lived with Father. Father had recently become an enrolled member of the Sitka Tribe of Alaska with a Tribal Degree of 1/16 and had enrolled the child with a Tribal Degree of 1/32. Father moved to contest the adoption and alleged that the child was subject to the Indian Child Welfare Act. Father sought the procedural protections of the ICWA applicable to termination proceedings, which include a beyond a reasonable doubt standard and the testimony of qualified expert witnesses as defined by the ICWA. Father did not seek a transfer of jurisdiction to the tribal court. The probate court permitted the Sitka Tribe to intervene in the adoption. The Sitka

representative argued that the ICWA was applicable, but advised that transfer of jurisdiction was not being sought. After hearing evidence and arguments regarding the potential application of the ICWA, the probate court found the ICWA inapplicable because the proposed adoption would not cause a removal from an Indian home. The Court affirmed the probate court's order granting the adoption, stating that the Indiana Supreme Court has construed the ICWA to be inapplicable where there was no "removal" from custody within an Indian family as contemplated by 25 U.S.C. §1902 and §1912. The Court was not persuaded by Father's second ICWA argument that he, the child's fifteen-year-old sister, and the child constitute an existing Indian family because of Father's and sister's tribal enrollment and the child's eligibility for enrollment. The Court characterized Father's argument as merely an invitation to reweigh the evidence, noting that the child had never lived with Father and thus had never lived in an Indian home from which he could be removed. Although Father requested that the Court of Appeals overturn the "existing Indian family" doctrine, the Court opined that it was not within the Court's province to do so.

See Chapter 2 at III.C., Chapter 6 at I.E., Chapter 10 at II.F., Chapter 11 at II.C., and Chapter 13 at II.B.2. for further discussion of the ICWA as it pertains to court proceedings in CHINS cases, voluntary and involuntary termination cases, and adoption cases.

II. G. 6. Pre-Petition Detention

Juvenile court has court exclusive jurisdiction in "[p]roceedings under IC 31-34-4, IC 31-34-5, ...governing the detention of a child before a petition has been filed." This grant of jurisdiction authorizes the court to remove a child from his/her home and to detain the child in protective care prior to the filing of the CHINS petition. IC 31-30-1-1(6).

II. G. 7. Protective and Injunctive Orders to Control the Conduct of the Child and Others

Juvenile court has exclusive jurisdiction in "[p]roceedings to issue a protective order under IC 31-32-13." IC 31-30-1-1(7). A protective order can be issued prior to the filing of a CHINS petition.

Protective orders referenced by IC 31-30-1-1(7) are detailed at IC 31-32-13-1:

(1) to control the conduct of any person in relation to the child;
(2) to provide a child with an examination or treatment under IC 31-32-12; or
(3) to prevent a child from leaving the court's jurisdiction.

A motion for one of these protective orders may be made by the court itself or a child's parent, guardian, custodian, or guardian ad litem, a probation officer, a caseworker, the prosecuting attorney, the attorney for the department of child services, or any person providing services to the child or the child's parent, guardian, or custodian. IC 31-32-13-1. The juvenile court must give notice to any person whose conduct would be regulated by such an order, and hear the matter. IC 31-32-13-2 and 3.

When issuing the order, the juvenile court may consider other evidence presented in other proceedings or hearings authorized under the juvenile law concerning the child as the basis for the issuance of the order; if the court issues such an order, it must have found good cause to do so. IC 31-32-13-4. The order must describe in specific detail the acts or persons to be regulated under the order. IC 31-32-13-5. The order remains in effect for one year; however, it can be extended under certain circumstances. IC 31-32-13-6.

If the juvenile court determines that an emergency exists, based its own review of the record, or if the moving party demonstrates by sworn testimony or affidavit that an emergency exists,

then the juvenile court can issue a protective order without a hearing. IC 31-32-13-7. For timelines on the duration of these emergency orders, see IC 31-32-13-8. Protective orders can be issued without notice in an emergency situation. See **Hallberg v. Hendricks Cty. Office**, 662 N.E.2d 639 (Ind. Ct. App. 1996) (without notice to Father, Mother obtained emergency protective order from juvenile court to block father's visitation with children, despite visitation order in dissolution proceeding in another county).

There are various types of protective and no contact orders, and it is important to distinguish them from one another. The different types of protective orders and no contact orders are codified at IC 31-32-12, IC 31-32-13, IC 31-34-20-1(a)(7), and IC 31-34-25 (formerly IC 31-34-17). Protective orders under IC 31-32-13 are very broad in scope, can be issued to both parties and non-parties, and can be issued at any time during the CHINS proceeding. These protective orders can be used to issue orders for the mental or physical examination or treatment of a child prior to the filing of a CHINS petition, or after the filing of the petition, but prior to the CHINS adjudication.

Dispositional no contact orders under IC 31-34-20-1(a)(7) are only effective after there has been a CHINS adjudication and are applicable only to parties to the CHINS proceeding; furthermore, these orders only allow a court to order a party to refrain from direct or indirect contact with the child. No contact orders under IC 31-34-25 are slightly more expansive; they allow for certain individuals to petition the juvenile court to issue any order preventing any person (whether they are a party or not) from having direct or indirect contact with a child who has been adjudicated to be a CHINS or a member of a foster family home. See Chapter 5 at VII. and Chapter 8 at VII. for further discussion of IC 31-34-25.

Medical examinations and services for the child can be ordered pre-adjudication in compliance with IC 31-32-12, and note that IC 31-32-12-1 requires that the protective order procedures of IC 31-32-13 are a prerequisite to medical examination and treatment orders. Under IC 31-32-12-1 and IC 31-32-12-2 the child may be confined for up to fourteen days for an examination, and the child may be detained for treatment during an emergency, or for a reasonable length of time after the emergency has passed, if medical care is still needed to protect the child.

Although not a protective order, DCS may petition the court to order that a custodial parent, guardian, or other custodian of a child make the child available for the caseworker to interview if the custodial parent, guardian, or custodian has refused to allow the caseworker to do so. IC 31-33-8-7(d). The court may grant a motion for the caseworker to interview the child, with or without the custodial parent, guardian, or custodian present, only after the court finds that (1) a custodial parent, guardian, or custodian has been informed of the hearing on DCS's petition, and (2) DCS has made reasonable and unsuccessful efforts to obtain consent from the custodial parent, guardian, or custodian. IC 31-33-8-7(e). In its order granting the interview, the court must specify the efforts that DCS made to obtain the consent to the interview. IC 31-33-8-7(e).

In **In Re F.S.**, 53 N.E.3d 582, 597-9 (Ind. Ct. App. 2016), the Court reversed the trial court's order compelling Mother to submit her children to DCS interviews, stating that the statutes require DCS to show some evidence suggesting abuse or neglect before the trial court may issue such an order. IC 31-33-8-1 provides that DCS shall initiate an "appropriately thorough" assessment of every report of child abuse or neglect it receives, and IC 31-33-8-7 states the assessment may include an interview with the child. IC 31-33-8-7(d) states DCS may petition the court to order the parent to make the child available for an interview and the

court may issue such an order, if the court "finds that good cause to issue the order is shown upon the record." Because of the distinction between must and may, the legislature cannot have intended an interview with a child to be a matter of course in every assessment. DCS is not required to conduct an interview with an interview with a child as part of its assessment, and the trial court is not required to issue an order allowing an interview over a parent's objection, but the trial court may issue such an order if DCS shows good cause on the record supporting its request.

The F.S. Court also said that a petition seeking to order a parent to make a child available for an interview by DCS is also governed by IC 31-32-13 [statute on issuance of orders to control conduct of a person in relation to a child], which allows the trial court to issue orders after a hearing "if the court finds that good cause to issue the order is shown upon the record." The statutes on which DCS based its request to control Mother's conduct by compelling her to submit the children to interviews require that DCS show some evidence of abuse or neglect before the trial court may issue such an order. The Court opined that, if, in gathering information about the items required to be included in an assessment, DCS finds some evidence supporting the allegations and determines as a result of the circumstances of the specific case being investigated that an interview is necessary to complete "an appropriately thorough" assessment, DCS may ask the trial court to order an interview if the parent does not consent. The Court found that, in the instant case, multiple reports and multiple visits led to the same result: no evidence supporting an allegation of abuse or neglect. The Court agreed with In Re A.H., 992 N.E.2d 960 (Ind. Ct. App. 2013) that the procedure selected by our legislature for assessing reports of child abuse and compelling interviews with children does not necessarily violate due process. When the procedure is not observed, such as in the instant case where DCS did not demonstrate by any evidence that an interview was necessary for it to carry out its obligation to investigate reports of abuse or neglect, the law impermissibly infringes upon the parent's fundamental right to raise her children without undue interference by the State.

In **In Re A.H.**, 992 N.E.2d 960, 967-8 (Ind. Ct. App. 2013), the Court affirmed the trial court's order granting DCS's petitions to interview Mother's two children as part of a DCS assessment of a report of child neglect. The Court concluded that Mother had failed to establish that the trial court erred in granting DCS's petitions to interview the children or that she was denied due process. The Court recognized the fundamental right of a parent to raise her child, without undue interference by the state, but could not say that due process requires DCS to conduct an assessment or a portion of an assessment in order to obtain information which would provide a basis supporting the accuracy or reliability of the report prior to interviewing the child.

See also **Davis v. Winston**, 535 N.E.2d 1240 (Ind. Ct. App. 1989) (Lake County Juvenile Division lacked jurisdiction to issue an order under IC 31-6-7-14 (recodified at IC 31-32-13-1) directing an Indiana mother to return her child to the out-of-state aunt with whom the child resided; this was a custody issue and Court ruled that the juvenile court cannot issue a protective order in the absence of an emergency or an underlying CHINS, delinquency, paternity, or other cause in which jurisdiction has been properly acquired).

See Chapter 5 at VII. and VIII. for further discussion on protective orders to control behavior of the child or others and for medical examination or treatment orders under IC 31-32-13 and IC 31-32-12. See Chapter 8 at VII. for dispositional no contact orders. See this Chapter below at II.G.17. for discussion on protective order to enjoin school from expelling child.

II. G. 8. Parental Participation

Juvenile court has exclusive jurisdiction in "[p]roceedings governing the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for a child under IC 31-34-16." IC 31-30-1-1(5).

A DCS attorney, the guardian ad litem, or court appointed special advocate can sign and file a petition for the juvenile court to require the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for a child. IC 31-34-16-1. The petition must be verified. IC 31-34-16-2. The petition must allege that (1) the respondent is the child's parent, guardian, or custodian; (2) the child has been adjudicated as a CHINS, and (3) the parent, guardian, or custodian should (A) obtain assistance in fulfilling obligations as a parent, guardian, or custodian; (B) provide specified care, treatment, or supervision for the child; (C) work with a person providing care, treatment, or rehabilitation for the child; (D) refrain from direct or indirect contact with the child; or (E) participate in a mental health or addiction treatment program.

Hearings on these petitions and what a court must find to issue an order under this chapter are covered at IC 31-34-16-4.

In **M.T. v. State**, 787 N.E.2d 509, 515 (Ind. Ct. App. 2003), a juvenile delinquency case in which the trial court's parental participation order was reversed. Because a proper verified petition for parental participation was never filed, the trial court did not have jurisdictional authority over the mother and could not order parental participation. The Court opined that the clear statutory requirements cannot be ignored.

In **Mikel v. Elkhart County DPW**, 622 N.E.2d 225, 228 (Ind. Ct. App. 1993), the juvenile court adjudicated the children to be CHINS and ordered the father to pay support, participate in psychological testing, and finish parenting classes. Later, the court found the father in contempt for failure to obey the orders, and sentenced him to jail for 180 days, or alternatively to serve the sentence in a mental health facility. The Court reversed the contempt order upon its finding that the juvenile court had not complied with the parental participation statute, IC 31-6-4-17 (recodified at IC 31-34-16-1). The Court ruled that the parental participation statute is jurisdictional, and compliance with that statute "is the only means a court may mandate parental involvement subject to contempt of court."

See also **J.S. v. State**, 843 N.E.2d 1013, 1018 (Ind. Ct. App. 2006) (parental participation order issued pursuant to petition for parental participation naming only mother, set aside with respect to father because statutory requirements not met, and also set aside as to mother where juvenile court did not advise mother of her rights regarding the effects of adjudication, including right to dispute allegations which concern participation and financial responsibility), *trans. denied*; **S.S. v. State**, 827 N.E.2d 1168, 1172-73 (Ind. Ct. App. 2005) (parental participation order upheld where petition for parental participation was properly filed), *trans. denied*; **A.W. v. State**, 756 N.E.2d 1037, 1045 (Ind. Ct. App. 2001) (juvenile court's authority to require parental participation is tempered by statutory due process considerations); and **A.E.B. v. State**, 756 N.E.2d 536, 543 (Ind. Ct. App. 2001) (without filing of proper verified parental participation petition, juvenile court does not have jurisdictional authority over parent and may not order parental action).

II. G. 9. Delinquency and Dual Status Child

Juvenile court has exclusive jurisdiction in "[p]roceedings in which a child, including a child of divorced parents, is alleged to be a delinquent child." IC 31-30-1-1(1). Delinquency

includes both criminal and status acts committed by children under the age of eighteen. Pursuant to IC 31-37-1, delinquency includes a child under the age of eighteen who commits an act that would be a criminal offense if he was eighteen years of age or older, except for certain criminal offenses exempted from juvenile court jurisdiction. Pursuant to IC 31-37-2, delinquency also includes a child under the age of eighteen who commits a status offense and needs care, treatment, and rehabilitation that the child will not receive without the coercive intervention of the court.

The six status offenses are summarized as: (1) leaving home without reasonable cause and without permission of the parent, guardian, or custodian who requests the child's return; (2) violating the compulsory school attendance law; (3) habitually disobeying the reasonable and lawful commands of the child's parent guardian, or custodian; (4) committing a curfew violation under IC 31-37-3; (5) violating IC 7.1-5-7 concerning minors and alcoholic beverages; and (6) violating IC 22-11-14-6(c) concerning minors and fireworks.

For case law on Indiana's curfew laws, see **Hodgkins ex rel. Hodgkins v. Peterson**, 355 F.3d 1048 (7th Cir. 2004), where the Seventh Circuit had reversed a decision of the District Court and held that a prior version of Indiana's curfew law was unconstitutional in that it impermissibly infringed on minors' First Amendment rights. In response to the Seventh Circuit's decision, the Indiana legislature amended its juvenile curfew law, effective March 17, 2004, and the result was challenged in 2004 WL 1854194. In **Hodgkins v. Peterson**, 2004 WL 1854194 (S.D. Ind.), the Court examined the state's curfew statutes at IC 31-37-3-2 through 31-37-3-3.5 following their amendment effective March 17, 2004. The Court held that these statutes violated the fundamental rights of parents under the Due Process Clause, and granted the motion for the preliminary injunction, preventing the enforcement of the laws. Accordingly, the Court issued **Hodgkins v. Peterson**, 2004 WL 1854195 (S.D. Ind.), Preliminary Injunction Prohibiting Enforcement of Indiana's Juvenile Curfew Law, IC 31-37-3-2 through 31-37-3-3.5. In 2004 WL 1854194, the Court indicated that the State of Indiana had objected to consolidating the preliminary injunction matter with the trial on the merits, contending that it might have additional evidence to submit at a merits trial, so "a trial on the merits will be scheduled in due course." Research disclosed no subsequent decision in this matter, however. Following issuance of 2004 WL 1854194 and 2004 WL 1854195, the only amendment made to the curfew statutes was made to IC 31-37-3-3.5, Defenses, in 2006. The amendment added the defense that the child engaged in the prohibited conduct while "participating in an activity undertaken at the prior written direction of the child's parent, guardian, or custodian."

Delinquency and CHINS overlap in that the acts or conditions of a child may fit into both categories. For example, a child who is exhibiting any of the delinquency status behaviors (running away, truancy, underage drinking, incorrigibility) may also fit into the CHINS category of self-endangerment (IC 31-34-1-6) or the child's behavior may be the result of CHINS Neglect, Abuse, or Sexual Abuse that the child is experiencing at home.

This overlap between CHINS and delinquency is addressed by the dual status statutes. "Dual status child" is defined at IC 31-41-1-2 and means any child who: (1) is alleged to be or who is adjudicated to be both a CHINS and a delinquent child; (2) who is named in an informal adjustment and adjudicated to be either a CHINS or a delinquent; (3) who formerly was adjudicated a CHINS or named in an informal adjustment that concluded before a current delinquency proceeding; (4) who was previously adjudicated delinquent and participated in a program of informal adjustment that ended prior to a current CHINS case; or (5) a child eligible for release from commitment to the department of correction whose parents are

unwilling to take custody of the child or cannot be located, and for whom the department of correction seeks a modification of the dispositional decree.

The juvenile court shall consider whether a child should be referred for an assessment by the dual status assessment team at the initial hearing (IC 31-34-10-2(e)), when the court enters a finding that a child is a CHINS (IC 31-34-11-2(b)), and in entering the dispositional decree (IC 31-34-19-10 (a)(6)). When the juvenile court determines that a child is a dual status child, it shall refer the child to be assessed by the dual status assessment team (defined at IC 31-41-1-5). IC 31-41-2-1.

A prosecuting attorney may request the juvenile court to authorize the filing of a CHINS petition, and must represent the interests of the state at this proceeding and at all subsequent proceedings on the petition, unless the prosecuting attorney and DCS agree DCS will represent the interests of the state. IC 31-34-9-1(b). If the prosecuting attorney decides to represent the interests of the state at subsequent hearings under the CHINS petition, all CHINS deadlines and procedures apply to the prosecuting attorney as they are applied to DCS. IC 31-34-9-1(c).

For more information on dual status children, see Chapter 5, IX.

II. G. 10. Specified Traffic Offenses Committed by Juveniles

The juvenile court has exclusive jurisdiction in proceedings involving a child less than sixteen years of age who commits a misdemeanor traffic offense. IC 31-30-1-1(8). The juvenile court also has exclusive jurisdiction in proceedings involving a child under age eighteen who commits an offense under IC 9-30-5. IC 9-30-5 includes misdemeanor and felony offenses of operating a motor vehicle with at least .08 gram of alcohol per one hundred milliliters of the person's blood or per two hundred ten liters of the person's breath.

II. G. 11. Informal Adjustment

The juvenile code authorizes the court to approve a program of informal adjustment under IC 31-34-8 as an alternative to the initiation of formal CHINS proceedings.

Neither the CHINS jurisdiction statute, IC 31-30-1-1, nor the informal adjustment statutes, IC 31-34-8, specifically state whether the juvenile court exercises formal subject matter jurisdiction when an informal adjustment is filed with the court. However, the informal adjustment must be approved or denied by the juvenile court (IC 31-34-8-1); compliance reports must be filed within certain times by DCS (IC 31-34-8-7); the court may extend the duration of the informal adjustment (IC 31-34-8-6); DCS can file a petition for compliance and the court an order compliance with the informal adjustment (IC 31-34-8-3); and a court can find the parent, guardian, or custodian in contempt of court upon violation of the compliance order (IC 31-34-8-3).

Despite these statutes which give the juvenile court the authority to exercise jurisdiction, the informal adjustment procedure does not meet all the requirements for subject matter jurisdiction, meaning that the informal adjustment statute does not require a written request for authority to file a CHINS petition nor the filing of a CHINS petition.

See the following cases: **Mikel v. Elkhart County DPW**, 622 N.E.2d 225, 228-229 (Ind. Ct. App. 1993); **Matter of R.R.**, 587 N.E.2d 1341, 1344 (Ind. Ct. App. 1992); **Daymude v. State**, 540 N.E.2d 1263, 1268) (Ind. Ct. App. 1989) (Court found that the informal adjustment did have legal significance, it noted that an informal adjustment is not an order of

the court. Instead the Court recognized that an informal adjustment was a "threat of court action").

II. G. 12. Paternity

A juvenile court has exclusive jurisdiction in "[p]roceedings concerning the paternity of a child under IC 31-14", except as otherwise provided by IC 31-30-1-13. A paternity proceeding under IC 31-14 includes the legal establishment of paternity for a child born out of wedlock, as well as the establishment of custody, visitation, and child support orders. The need to initiate a paternity proceeding may arise out of a CHINS or termination of parental rights proceeding involving an alleged father (man claimed to be the father of child born out of wedlock). See Chapter 12 generally on paternity.

There is a limited overlap between juvenile court jurisdiction and paternity court jurisdiction. IC 31-30-1-13. For details on this concurrent original jurisdiction, see this chapter at II.E.

In **In Re Marriage of Huss**, 888 N.E.2d 1238, 1242-44 (Ind. 2008), the Court affirmed the dissolution trial court's award to Husband of the custody of all four of Wife's children, including the youngest child who was not the biological child of Husband. The Court held that (1) the dissolution trial court did not err by failing to give effect to the intervening paternity judgment by the paternity court, since custody of all four children was pending before the dissolution court prior to Wife's initiation of the paternity proceedings; (2) the dissolution trial court had jurisdiction over the child of whom Husband was not the biological father; and (3) the dissolution trial court's authority to determine custody of all four children, including the child of whom Husband was not the biological father, was not impaired by the paternity statute's general presumption of sole custody for the biological mother; even if Wife were to be considered sole custodian of the child by reason of the paternity judgment or the operation of the paternity statute, the dissolution court in this case would be authorized to consider whether to make a superseding award of child custody to Husband as a non-biological parent of the child.

In **In Re V.C.**, 867 N.E.2d 167, 177, 183-84 (Ind. Ct. App. 2007), (Riley, J., dissenting) the trial court consolidated a CHINS and a paternity case involving the same child. On appeal, the Court held that Mother had waived appellate review of the consolidation issue because she neither objected to the consolidation nor requested a continuance during the twenty-three days between the trial court's grant of Father's consolidation request and the fact-finding hearing.

II. G. 13. Certain Types of Guardianships

A juvenile court has exclusive original jurisdiction over child guardianship proceedings where the guardianship is over the person of the child, the child has been adjudicated as a CHINS, the CHINS actions is pending, and the juvenile court has approved a permanency plan that provides for the appointment of a guardian. IC 31-30-1-1(10). See this Chapter at II.C. for more detailed information.

II. G. 14. Sterilization of Minor

Pursuant to case law, the juvenile court has jurisdiction to authorize sterilization of a minor upon clear and convincing evidence that the medical procedure was in the best interest of the child. See **P.S. by Harbin v. W.S.**, 452 N.E.2d 969, 976 (Ind. 1983). The juvenile code does not address sterilization of a child, although the jurisdiction statute, IC 31-30-1-1 (7), gives the juvenile court exclusive jurisdiction in proceedings to issue protective orders,

which include orders for the examination and medical treatment of a child. See IC 31-32-13-1(2); IC 31-32-12-1.

For other case law on this topic, see

In Re Guardianship of V.S.D., 660 N.E.2d 1064, 1068 (Ind. Ct. App. 1996), where the guardian of an incapacitated adult established by clear and convincing evidence in a probate proceeding that tubal ligation was in the best interests of incapacitated adult's health and welfare. The Court determined that it was within probate court's discretion to authorize guardian to consent to this procedure, despite the heightened scrutiny it gave to the matter, since it implicated a fundamental right to procreate.

Lulos v. State, 548 N.E.2d 173, 174 (Ind. Ct. App. 1990), an adult sterilization case, where the trial court denied a guardian's petition for sterilization of a mentally retarded adult ward. Relying on the health care consent law, the Court of Appeals determined that the trial court applied the wrong legal standard to the petition and ruled that the standard on a sterilization petition is "clear and convincing evidence that the judicially appointed guardian brought the petition for sterilization in good faith and the sterilization is in the best interest of the incompetent adult." In his dissent, Judge Sullivan argued that the health care consent law did not apply to sterilization.

II. G. 15. Religious Objection to Medical Treatment

IC 31-34-1-14 states:

> 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 a 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.

This presumption against CHINS does not apply when the child's life or health is in serious danger. Further, IC 31-34-1-14 does not state the source of the court's jurisdiction to order medical services without the filing of a CHINS petition. Arguably jurisdiction can be predicated on the grant of exclusive jurisdiction for protective orders under IC 31-30-1-1(7), in conjunction with the statutes at IC 31-32-13 and IC 31-32-12.

See **Schmidt v. Mutual Hosp. Services, Inc.**, 832 N.E.2d 977, 983 (Ind. Ct. App. 2005) (parents were obligated as a matter of law to pay for medical services provided to daughter over their religious objections).

II. G. 16. Waiver of Parental Consent to Minor's Abortion

Practice Note: At the time of writing this section, there is pending litigation regarding the implementation of these statutes. Whether or not these particular statutes regarding waiver of parental consent to a minor's abortion will remain effective depends on the outcome of **Planned Parenthood of Indiana and Kentucky, Inc. v. Commissioner**, 194 F.Supp.3d 818 (7th Cir. 2016).

Petitions for waiver of parental consent for a minor's abortion are within the jurisdiction of the juvenile court. IC 16-34-2-4. Unemancipated pregnant minors are entitled to have the juvenile court appoint an attorney to represent them in a waiver proceeding brought by the minors and any appeals, if they have not obtained an attorney on their own. IC 16-34-2-4(f).

This cost is paid by the county. IC 16-34-2-4(f). Minors who initiate these legal proceedings are exempt from filing fees. IC 16-34-2-4(i).

Definitions of parent and legal guardian or custodian for the purposes of these petitions are found at IC 16-18-2-266.4. Parent and legal guardian or custodian does not include the department of correction, a community based correctional facility, or a secure juvenile facility. The state and state agencies, such as DCS, cannot consent to an abortion regarding an unemancipated pregnant minor, even if the state or state agency has wardship of the minor. IC 16-34-1-10. The state or state agency could consent to the abortion if it was necessary to avoid the pregnant minor's death or substantial and irreversible impairment of a major bodily function, as determined by a physician who certifies this determination in writing. IC 16-34-1-10.

Physicians are not permitted to perform abortions on unemancipated pregnant minors (less than eighteen years old) without first getting certain required documents and information from one of the minor's parents, the minor's legal guardian, or the minor's custodian who is accompanying the minor. IC 16-34-2-4(a). The required documents and information are (IC 16-34-2-4(a)):

(1) the written consent of a parent, legal guardian, or custodian of the unemancipated pregnant minor;
(2) government issued proof of identification of the parent or the legal guardian or custodian of the unemancipated pregnant minor; and
(3) some evidence, which may include identification or other written documentation that provides an articulable basis for a reasonably prudent person to believe that the person is the parent or legal guardian or custodian of the unemancipated pregnant minor.

Physicians are required to keep records of the documents required under this statute in the unemancipated pregnant minor's medical file for at least seven years. IC 16-34-2-4(a).

If a minor does not wish to be required to get the consent of her parent, legal guardian, or custodian, or they refuse to consent to an abortion, the unemancipated pregnant minor may petition the juvenile court in the county in which the pregnant woman minor resides or in which the abortion is to be performed, for a waiver of the parental consent requirement and a waiver of the parental notification requirement. IC 16-34-2-4(b). She may so petition the court on her own behalf or by next friend; however, the next friend cannot be a physician or provider of abortion services, representative of the physician or provider, or other person that may receive a direct financial benefit from the performance of an abortion. IC 16-34-2-4(b). It is possible for physicians themselves to petition the juvenile court for waiver of parental consent and parental notification. IC 16-34-2-4(c).

A parent, legal guardian, or custodian of a pregnant unemancipated minor is entitled to receive notice of the unemancipated minor's intent to obtain an abortion before the abortion is performed. IC 16-34-2-4(d). They are not entitled to such notice if a juvenile court found that it is in the best interests of the unemancipated pregnant minor to be able to obtain an abortion without parental notification following a hearing on a petition. IC 16-34-2-4(d).

Petitions under this statute must be ruled upon by the juvenile court within forty-eight hours of the filing of the petition. IC 16-34-2-4(e). The court must consider the concerns expressed by the unemancipated pregnant minor and her physician, and must waive the parental consent requirement if the court finds that the minor is mature enough to make the abortion decision independently or that an abortion would be in the minor's best interests. IC 16-34-2-4(e). The

juvenile court must waive the parental notification requirement if it finds that obtaining an abortion without parental notification is in the best interests of the unemancipated pregnant minor. IC 16-34-2-4(e). If the juvenile court does not waive the parental notification requirement, the court must, subject to an appeal, order the unemancipated pregnant minor's attorney to serve notice. IC 16-34-2-4(e).

Expedited appeals are permitted and provided for under IC 16-34-2-4(g). All records of these proceedings in the juvenile court and the appellate courts are confidential. IC 16-34-2-4(h). Physicians must keep certain records detailed at IC 16-34-2-4(k).

The need for waiver of consent and notification of these individuals does not apply if there is an emergency need for a medical procedure to avoid the pregnant minor's death or substantial and irreversible impairment of a major bodily function of the pregnant minor. IC 16-34-2-4(j). The attending physician must certify this in writing. IC 16-34-2-4(j).

A person who, with intent to avoid the parental notification requirements, falsely claims to be the parent or legal guardian or custodian of an unemancipated pregnant minor by: (1) making a material misstatement while purportedly providing the required written consent; or (2) providing false or fraudulent required identification; commits a Level 6 felony. IC 16-34-2-4(l). Other civil liability matters are covered by IC 16-34-2-4.2 and IC 25-1-9-4.

See **Lockett v. Planned Parenthood of Indiana**, 42 N.E.3d 119 (Ind. Ct. App. 2015) (prior to 2017 amendments to statutes, the abortion statute does not establish a private cause of action to enforce its provisions; abortion provider did not owe a common law duty to patient's mother to obtain mother's consent before providing abortion services to minor patient; violation of abortion statute would not support claim of negligence per se by patient's mother; abortion provider believed in good faith that minor patient was 18-years-old and authorized to consent; and patient who lied about her age was equitably estopped from recovering damages arising from abortion provider's provision of services without parental consent); **S.H. v. D.H.**, 796 N.E.2d 1243, 1246, 1249 (Ind. Ct. App. 2003) (a minor may only be required to obtain the consent of one parent, one legal guardian, or the court through the judicial bypass procedure under IC 16-34-2-4; and another interested party can challenge the physician's determination that the fetus is not viable with competent evidence); **Matter of P.R.**, 497 N.E.2d 1070 (Ind. 1986) (Court ruled that the mother can consent to an abortion for a minor child who is a ward of the welfare department); **In The Matter of T. H.**, 484 N.E.2d 568 (Ind. 1985) (sufficient evidence supported trial court's findings that minor was not sufficiently mature to make abortion decision independently and that abortion would not be in minor's best interests, and denial of minor's petition was thus not reversible); **In Re The Matter of T.P.**, 475 N.E.2d 312 (Ind. 1985) (trial judge did not use improper standards in determining that minor did not demonstrate sufficient maturity to be able to make an independent judgment about best means by which to solve her pregnancy problem); **Indiana Planned Parenthood Affiliates Association, Inc. v. Pearson**, 716 F.2d 1127 (U.S. Ct. App., 7th Cir. 1983) (statute requiring juvenile court rule on a petition for waiver of parental notification within 48 hours of the filing of waiver petition, but which did not specify procedures for appellate review of adverse decision, was unconstitutional for failure to provide for prompt resolution of waiver petition; (2) statute establishing a procedure for bypassing the parental notification requirement impermissibly failed to provide for the appointment of counsel to minors who sought judicial bypass; (3) statute impermissibly required that court notify minor's parents upon denial of minor's petition for waiver of parental notification; and (4) statute impermissibly imposed a mandatory 24–hour waiting period between actual notice to the parents and the abortion).

II. G. 17. Judicial Authority to Override School Expulsion of CHINS

In the delinquency case of **West Clark Community Schools v. H.L.K.**, 690 N.E.2d 238 (Ind. 1997), the Court ruled that the child's guardian could not petition the juvenile court to block a school expulsion of an adjudicated delinquent child. However, the child's probation officer (whose actions were not constrained by the Indiana Disciplinary Code) could obtain a protective order from the juvenile court, under what is now codified at IC 31-32-13-1, to prohibit the school from expelling the child. IC 31-32-13-1 grants the authority to the juvenile court to issue orders controlling the conduct of any person, including the school, in relation to the child. The Indiana Supreme Court cautioned that the juvenile court should be restrained in the use of this power and act only when it is in the best interest of the child and no other reasonable alternatives are available.

III. ACQUIRING SUBJECT MATTER JURISDICTION

III. A. Jurisdiction for Preliminary Matters

The juvenile court can issue orders for the care and protection of the child before it assumes formal jurisdiction of the CHINS case. The juvenile court has jurisdiction in the following preliminary matters: (1) pre-petition custody and detention of the child, IC 31-30-1-1(6); (2) pre-petition treatment and examination of the child, IC 31-32-12-1(1); (3) pre-petition restraining orders and other protective orders, IC 31-30-1-1(7); and (4) informal adjustment under IC 31-34-8 as an alternative to the initiation of formal CHINS proceedings.

See this chapter at II.G.11. for more discussion of jurisdiction and nature of informal adjustment; this chapter at II.G.6. for information on pre-petition custody and detention of the child; this chapter at II.G.7. for information on pre-petition treatment and examination of the child; and this chapter at II.G.7. for information on pre-petition restraining orders and other protective orders.

The procedure for acquiring jurisdiction in these preliminary matters is outlined in Chapter 5 at II. E. and F. on taking child into custody and VII. and VIII. on protective and treatment orders.

III. B. Formal Jurisdiction of the Case: Jurisdictional Prerequisites

Indiana trial courts possess two types of jurisdiction: subject matter jurisdiction (the power to hear and make determinations on cases of the class to which the particular proceeding belongs); and personal jurisdiction (which requires that appropriate process be obtained over the parties). **K.S. v. State**, 849 N.E.2d 538, 540 (Ind. 2006). Although legal professionals frequently mischaracterize a defect in a procedural process as a jurisdictional error, a trial court's error in procedural process does not mean it necessarily lacked jurisdiction to hear the case. K.S. v. State, 849 N.E.2d at 541. This is different from a long line of older cases stating that strict compliance with statutory procedures was required for a juvenile court to assert subject matter jurisdiction. See below, this section for this case law.

Since the case most recently issued from the Indiana Supreme Court so defines subject matter and personal jurisdiction, and classifies adherence to filing procedures in CHINS and delinquency matters as procedural processes and defects which must be raised as procedural errors during the proceedings, it is most instructive for practitioners to read and understand **K.S. v. State**, 849 N.E.2d 538, 540-2 (Ind. 2006). In K.S., a juvenile delinquency case, the minor argued that the record did not reflect that the juvenile court provided the filing of the original delinquency petition as required by IC 31-37-10-1 and-2, and so, the juvenile court did not have subject matter jurisdiction. The Court opined that there was "no question that the juvenile court had subject matter jurisdiction" over the case since it belonged to general category of cases to which the

juvenile court was granted exclusive original jurisdiction under IC 31-30-1-1. The Court characterized the minor's claim that the lack of juvenile court approval of the filing of the delinquency petition meant there was no subject matter jurisdiction as a procedural defect, not a jurisdiction defect. According, the Court determined that the claim of procedural error was not raised in a timely fashion during the proceedings, and the claim of procedural error was waived.

See also **In Re Change of Name of Fetkavich**, 855 N.E.2d 751, 754 (Ind. Ct. App. 2006), in which the Court stated that "Jurisdiction over the particular case refers to a trial court's right, authority, and power to hear and decide a specific case within the class of cases over which a court has subject matter jurisdiction... Here, publication of the notices does not affect the trial court's subject matter jurisdiction to hear name change petitions generally. Rather, timely publication of notices of the name change request affected the trial court's right, authority, and power to hear and decide the present case." Father argued for the first time on appeal that the trial court lacked jurisdiction. Thus, the Court concluded he had waived review of his contention that the trial court lacked jurisdiction over the child's name change petition. But see **In Re Adoption of H.N.P.G.**, 878 N.E.2d 900, 904 (Ind. Ct. App. 2008) (Court discussed issue of simultaneous adjudication of adoption matter and CHINS proceeding as jurisdictional issue without reference to K.S. or the possibility that using term "jurisdiction" to refer to issue might be improper), *trans. denied.*

Although K.S. v. State very clearly delineates a difference between jurisdiction matters and procedural defects, practitioners should bear in mind that K.S. is a juvenile delinquency case, not a CHINS case, and that some procedural defects may be so severe as to deprive a parent of due process, resulting in an appealable matter. Because of this important difference, the authors of this Deskbook felt it appropriate to include older case law which refers to these procedural requirements in filing a CHINS case, and adherence to these procedures should continue.

Older case law, as noted in the paragraph above, includes:

Hite v. Vanderburgh Cty Office of Fam. & Chil., 845 N.E.2d 175, 180 (Ind. Ct. App. 2006) (issued two months before K.S. v. State), where the Court held that because the OFC followed the statutory procedures when filing the CHINS petition, and Mother was present and admitted the allegations, the juvenile court had subject matter jurisdiction. Hite directly contradicts K.S. v. State by opining that there are three types of jurisdiction (subject matter jurisdiction, personal jurisdiction and jurisdiction of the case), while K.S. states there are two (subject matter and personal jurisdiction). The Hite Court reviewed the statutory procedure for the filing of CHINS petitions and distinguished In Re Heaton, 503 N.E.2d 410 (Ind. Ct. App. 1986) which Father relied on to support his argument that the trial court never had subject matter jurisdiction. The Court noted that (1) the OFC filed a request for authority to file a verified petition alleging that the child was a CHINS and included a written intake report; (2) the trial court found probable cause to believe that the child was a CHINS; (3) the OFC then filed a petition alleging that the child was a CHINS; (4) the petition stated that the juvenile court had jurisdiction pursuant to IC 31-30-1-1(2), which provides, "A juvenile court has exclusive original jurisdiction … in … [p]roceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services under IC 31-34;" and (5) at this point, the juvenile court had exclusive original jurisdiction.

Allen v. Proksch, 832 N.E.2d 1080, 1156-7 (Ind. Ct. App. 2005), in which the Court, in contradiction of K.S. v. State, opines there are three types of jurisdiction subject matter jurisdiction, personal jurisdiction and jurisdiction of the case), but correctly notes that arguments regarding "jurisdiction over the particular case" (which K.S. now classifies as procedural defects and not jurisdiction defects), require a timely objection or the argument is waived.

A.P. v. PCOFC, 734 N.E.2d 1107, 1112-13, 1119 (Ind. Ct. App. 2000), where the Court reversed the judgment of termination based on due process grounds, but at least one of the cited procedural errors related to a jurisdictional/procedural prerequisite (the filing of the CHINS petition). Multiple procedural irregularities in the underlining CHINS case "may be of such import that they deprive a parent of procedural due process with respect to the termination of his or her parental rights." The procedural errors in the CHINS case included: unsigned and unverified CHINS petition; no issuance of an original or modified dispositional decree containing the requisite written findings; a failure to provide parents with copies of case plans; no holding of a permanency hearing to examine whether the parents' procedural rights were being safeguarded; non-compliance with the protective order statute; and failure to ensure the presence of an incarcerated parent at hearings.

Hallberg v. Hendricks Cty. Office, 662 N.E.2d 639 (Ind. Ct. App. 1996), where the Court indicated that strict compliance with jurisdictional/procedural prerequisites might not be required if the purpose of the law had otherwise been fulfilled. The Court stated that the jurisdictional/procedural prerequisites include the following: the child fits within one of the CHINS categories; the office of family and children files the necessary preliminary inquiry and evidence of probable cause; and the juvenile court authorizes the filing of the CHINS petition. Although the Court noted the absence of a preliminary inquiry report and order authorizing the filing of the CHINS petition, it ruled that the presentation of probable cause evidence and the court's order finding probable cause sufficiently complied with the jurisdictional prerequisites.

Matter of R.R., 587 N.E.2d 1341, 1343-45 (Ind. Ct. App. 1992), where the Court found that failure of the trial court to comply with statutory procedures denied Mother due process in the CHINS proceeding. The Court stated that "where statutes pertaining to CHINS matters clearly set forth the jurisdictional prerequisites, and those prerequisites are not followed, the court lacks subject matter jurisdiction, and any order or judgment rendered is a nullity." The multiplicity of statutory omissions, exacerbated by Mother's diminished mental capacity, operated to deny her due process. The omissions included: failure of the welfare department to correctly seek judicial approval of the CHINS petition; failure of the CHINS petition to contain a concise statement of facts supporting the allegations; failure of the court to give the parent the required advisement of rights and proceedings at the initial hearing; the court's abuse of discretion in failing to appoint a guardian ad litem/court appointed special advocate for the child; the court's abuse of discretion in failing to appoint counsel for Mother; the court's failure to follow requirements regarding the detention request in the CHINS petition.

Collins v. State, 540 N.E.2d 85 (Ind. Ct. App. 1989), opining that the preliminary inquiry is a prerequisite to jurisdiction in the juvenile court, and discussing the requirements for the preliminary inquiry. Case law distinguishes the requirements for the preliminary inquiry in child neglect and dependency cases from delinquency cases in which a juvenile has committed an act that would be a crime if committed by an adult.

In Re Heaton, 503 N.E.2d 410, 414 (Ind. Ct. App. 1986), opining that strict compliance with statutory procedures is required for the juvenile court to assert subject matter jurisdiction. If the court lacks jurisdiction of the subject matter any order it issues is void and subject to attack at any time.

Taylor v. State, 438 N.E.2d 275 (Ind. 1982), opining that the court's record book should reflect satisfaction of each jurisdictional prerequisite.

Matter of Lemond, 274 Ind. 505, 413 N.E.2d 228 (1980), opining that the court cannot assert jurisdiction over a juvenile case in which the jurisdictional prerequisites are completely ignored.

See also **In Re Marriage of Kenda and Peskovic**, 873 N.E.2d 729, 735 (Ind. Ct. App. 2007) ("In 1990, our Supreme Court held that the jurisdictional limitations imposed by the UCCJA are

not that of subject-matter jurisdiction, but rather are refinements of the ancillary capacity of a trial court to exercise authority over a particular case. Williams v. Williams, 555 N.E.2d 142, 145 (Ind. 1990)"), *trans. denied*; **In Re Adoption of J.D.B.**, 867 N.E.2d 252, 255 n.5 (Ind. Ct. App. 2007) (Court noted that "jurisdictional" issues raised might be more properly explored in terms of comity), *trans. denied;* and **Christian v. Durm**, 866 N.E.2d 826, 829 (Ind. Ct. App. 2007) (regarding contention on appeal that trial court "lacked jurisdiction," Court held that both subject matter and personal jurisdiction were met and issue raised was not "jurisdictional," but rather whether trial court committed legal error by refusing to dismiss intervenor's claim where underlying dissolution petition had been voluntarily dismissed), *trans. denied.*

III. C. Procedural Requirements for CHINS Filing

III. C. 1. CHINS Category

The facts supporting the alleged injury, endangerment, or situation of the child must fit within one of the CHINS categories listed in IC 31-34-1.

III. C. 2. Written Information Given to Intake Officer

Any person may give an intake officer written information indicating that a child is a CHINS. IC 31-34-7-1. The intake officer may be a probation officer or a DCS caseworker. IC 31-9-2-62. There is no specific definition in either statute or case law of the "written information" requirement, but arguably, the 310 or 311 forms used by DCS to report and investigate abuse and neglect complaints could serve as the written information.

III. C. 3. Preliminary Inquiry

If the intake officer completing the preliminary inquiry has reason to believe that the child is a CHINS, then the intake officer must make a preliminary inquiry to determine whether the interests of the child require further action, and complete the dual status screening tool on the child (IC 31-41-1-3). IC 31-34-7-1.

A preliminary inquiry is an informal investigation into the facts and circumstances reported to the court. IC 31-9-2-94. The preliminary inquiry should include information on the child's background, current status, and school performance. IC 31-34-7-1. The intake officer must also include recommendations as to whether to: (1) file a petition; (2) file a petition and recommend that the child be referred for an assessment by a dual status assessment team; (3) informally adjust the case; (4) informally adjust the case and recommend that the child be referred for an assessment by the dual status assessment team; (5) refer the child to another agency; or (6) dismiss the case. IC 31-34-7-2. A copy of the preliminary inquiry must be sent to the attorney for DCS. IC 31-34-7-2.

The juvenile court must consider the preliminary inquiry and the evidence of probable cause contained in that report or in an affidavit of probable cause. IC 31-34-9-2.

III. B. 4. Referral of Preliminary Inquiry to DCS Counsel

A copy of the preliminary inquiry must be sent to the attorney for DCS. IC 31-34-7-2. The person representing the interests of the state who receives the preliminary inquiry and recommendations must decide whether to request authorization to file a petition. IC 31-34-7-3. This decision is final only as to the office of the person making the decision. IC 31-34-7-3.

Practice Note: The prosecuting attorney is no longer a possible recipient of the intake officer's report and recommendations. Thus, the prosecuting attorney is no longer allowed

to request authorization to file a CHINS petition under the authority given in IC 31-34-7-3. However, see below at III.C.5.

III. C. 5. Request for Judicial Authorization to File Petition and Probable Cause Evidence

The person representing the interests of the state who receives the preliminary inquiry and recommendations must decide whether to request authorization to file a petition. IC 31-34-7-3; IC 31-34-9-1(a). The only person specifically authorized to receive the preliminary inquiry is the attorney for DCS. IC 31-34-7-2.

However, a prosecuting attorney may request the juvenile court to authorize the filing of a CHINS petition, and then must represent the state's interests at all proceedings on the CHINS petition, unless the prosecuting attorney and DCS agree that DCS will represent the interests of the state. IC 31-34-9-1(b). If the prosecuting attorney does represent the state's interests at all proceedings on the CHINS petition, then all deadlines and procedures regarding CHINS apply to the prosecuting attorney as they would to DCS. IC 31-34-9-1(c).

Since the juvenile court is require to consider the preliminary inquiry and the evidence of probable cause contained in that report or in an affidavit of probable cause, the request for judicial authorization to file the CHINS petition should be accompanied by the preliminary inquiry. IC 31-34-9-2.

It is recommended that the request for authorization be made in writing to the court. However, the request could be made orally at a detention hearing after the court has ruled that there is probable cause to believe the child is a CHINS, and followed later with a written request. CHINS case law has not dealt with a jurisdictional challenge based specifically on probable cause. In **Matter of Lemond**, 413 N.E.2d 228, 247 (1980), the Court listed the absence of a probable cause finding as part of the "total failure to abide by and follow these clear statutory procedures" resulting in its decision.

III. C. 6. Judicial Authorization to File Petition

The juvenile court must consider the preliminary inquiry and the evidence of probable cause contained in that report or in an affidavit of probable cause. IC 31-34-9-2. Once it has done so, the juvenile court must authorize the filing of a CHINS petition if the court finds probable cause to believe that the child is a CHINS. IC 31-34-9-2. The juvenile court must also determine if a child should be referred for an assessment by a dual status assessment team (IC 31-41-1-5). IC 31-34-9-2. See **Matter of R.R.**, 587 N.E.2d 1341, 1344 (Ind. Ct. App. 1992) (in reviewing omissions of statutory requirements in CHINS case, Court noted welfare department filed CHINS petition three days before it received court;s authorization to file petition).

III. C. 7. Petition Filed

IC 31-34-9-3 outlines the format and information necessary for the CHINS petition. See this Chapter immediately below at IV. on requirements of CHINS petition.

III. D. Failure to Strictly Comply with Statutory Requirements During Petition's Pendency

Unless the allegations of the CHINS petition are admitted, a CHINS factfinding hearing "shall" be completed not more than sixty days after the petition is filed, with a possibility of extending the time an additional sixty days if all parties consent. IC 31-34-11-1. If the factfinding hearing is not held within the proper time frame, then the court shall dismiss the case without prejudice, if someone files a motion to do so. IC 31-34-11-1(d). If the factfinding hearing is not held immediately after the initial hearing as provided in IC 31-34-10-9, DCS must provide notice of

any factfinding hearing to each parent or caretaker with whom the child has been placed for temporary care. IC 31-34-11-1(c). The court must provide a person who is required to be notified a chance to be heard at the factfinding hearing. IC 31-34-11-1(c).

A dispositional hearing must be completed not more than thirty days after the date the court finds the child to be a CHINS. IC 31-34-19-1. If the dispositional hearing was not completed in the time set forth, the court shall dismiss the case without prejudice if a motion is filed requesting the court to do so. IC 31-34-19-1(b).

The statutory time constraints and the sections creating penalties for failing to adhere to these time constraints of IC 31-34-11-1 and IC 31-34-19-1 were created and amended *after* **Parmeter v. Cass Cty Dept. of Child Serv.**, 878 N.E.2d 444, 447-48, 452 (Ind. Ct. App. 2007). The Parmeter Court held that the trial court did not err when it held the fact-finding and dispositional hearings beyond the statutory deadlines, because "shall" as used in IC 31-34-11-1 and IC 31-34-19-1 was directory and not mandatory. Practitioners should note that now there are penalties attached to failing to comply with these time constraints, as both statutes were amended to provide for the dismissal of the petition without prejudice upon the motion of a party.

Practice Note: When the statutory deadlines and due process concerns stand in contradiction to each other, practitioners should consider the heavy weight given to due process by Indiana courts. See **In Re K.W.**, 12 N.E.3d 241 (Ind. 2014) ((trial court erred when it denied Mother's motion to continue and proceeded with termination hearing without her participation; DCS objected to continuance in large part because a continuance would almost certainly place the termination hearing past the statutory deadlines. The Court stated: it assumed Mother would not file a motion to dismiss pursuant to the statutory deadlines after her own continuance pushed the hearing over the deadline; the missed deadline would not end the matter as DCS could file a new termination petition; and the fact that the case was pressed against the statutory deadline was not completely Mother's fault, as DCS had filed its own motion for continuance due to a family illness).

Recent case law has indicated the importance of strictly adhering to statutory requirements during a CHINS petition is not simply limited to time frames, but rather implicates all portions of the CHINS process. In **In Re L.C.**, 23 N.E.3d 37, 39-42 (Ind. Ct. App. 2015), *trans. denied*, the Court concluded that the juvenile court erred by adjudicating the child a CHINS before the completion of the fact-finding hearing. The Court observed that: (1) a CHINS adjudication is not a determination of parental fault but rather is simply a determination that a child is in need of services and is unlikely to receive those services without the court's intervention; and (2) CHINS proceedings are civil actions and the State must prove by a preponderance of the evidence that a child is a CHINS. Father claimed that the juvenile court violated his due process rights by depriving him of a meaningful CHINS hearing. The Court said that, "[d]ue process protections at all stages of CHINS proceedings are vital because [e]very CHINS proceeding has the potential to interfere with the rights of parents in the upbringing of their children." The procedure employed by the juvenile court with respect to Father's factfinding hearing has been expressly rejected by the Indiana Supreme Court. Because Father challenged the allegations in the CHINS petition, due process required the completion of a factfinding hearing, including the presentation of evidence and argument by both parents, if present in person or by counsel, before the child was adjudicated a CHINS.

See also **In Re T. N.**, 963 N.E.2d 467, 469 (Ind. 2012) (Court held that the trial court erred in not conducting a contested fact-finding hearing that was requested by Father and, thus, violated his due process rights); **In Re K.D.**, 962 N.E.2d 1249, 1260 (Ind. 2012), (Court reversed the trial court's CHINS determination and remanded the case to the trial court to provide Stepfather with a

factfinding hearing, and held that whenever a trial court is confronted with one parent wishing to make an admission that the child is in need of services and the other parent wishing to deny the same, the trial court shall conduct a factfinding hearing as to the entire matter).

IV. CHINS PETITION

IV. A. Persons Authorized to File CHINS Petition

The DCS attorney can request judicial authority to file a CHINS petition, and then must represent the interests of the state at this proceeding and at all subsequent proceedings on the petition. IC 31-34-9-1(a).

A prosecuting attorney can request judicial authority to file a CHINS petition, and then must represent the interests of the state at this proceeding and at all subsequent proceedings on the petition, unless the prosecuting attorney and DCS agree that DCS will represent the state. IC 31-34-9-1(b). If the prosecuting attorney represents the interests of the state in a CHINS proceeding, all relevant deadlines and procedures apply to the prosecuting attorney, just the same as they apply to DCS. IC 31-34-9-1(c).

IV. B. Time Limitation

A CHINS petition shall be filed before a detention hearing concerning the child is held. IC 31-34-10-2(i). Therefore, the CHINS petition must be filed within 48 hours, excluding Saturdays, Sundays, and state employee holidays, to meet the required time for a detention hearing. The juvenile court must hold an initial hearing on each petition within ten days after the filing of the petition. IC 31-34-5-1(a). If the initial hearing is not scheduled and held within the specified time as described in this section, the child shall be released to the child's parent, guardian, or custodian. IC 31-34-5-1(d).

IV. C. Content of Petition and Verification of Petition

The format and content of the CHINS petition is provided at IC 31-34-9-3. The 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 family services before the removal.
    (ii) Reasons why family services were not provided before the removal of the child if family services were not provided.

See **A.P. v. PCOFC**, 734 N.E.2d 1107, 1115 (Ind. Ct. App. 2000), (Court noted that the "unsigned and thus unverified" CHINS petition was "clear error." Reversal was not based on that error alone, but a multiplicity of procedural irregularities).

IV. C. 1. Citation to Jurisdiction Section

IC 31-34-9-3(4)(A) requires the petitioner to cite the section that gives the court jurisdiction over CHINS proceedings, which is IC 31-30-1-1(2).

IV. C. 2. Citation to CHINS Category and Error in Citation

IC 31-34-9-3(4)(B) states that the petition shall contain a "citation to the provision of the juvenile law that defines a child in need of services." Child in need of services is defined at IC 31-9-2-17 as a child described in IC 31-34-1. IC 31-34-1-1 through -11 provide the circumstances under which a child can be alleged and proven to be a CHINS. See Chapter 1 for more discussion of these categories.

Although IC 31-34-9-3(4)(B) specifically says "defines", both the statutory definition and case law use the categories of CHINS as definitions. See also **In Re Heaton**, 503 N.E.2d 410 (Ind. Ct. App. 1986) (Court stated that the self-endangerment category at IC 31-6-4-3(a)(6) (recodified at IC 31-34-1-6), was the definition of CHINS under which the welfare department was proceeding); **Matter of Lemond**, 274 Ind. 505, 413 N.E.2d 228 (1980) (the Court listed neglect and child self-endangerment as the applicable definitions or categories of CHINS). Thus, a citation to a specific CHINS category must be alleged to satisfy IC 31-34-9-3(4)(B). But see **Matter of M.R.**, 452 N.E.2d 1085, n.1 (Ind. Ct. App. 1983) (Court discussed the absence of the code citation defining CHINS. Relying on IC 31-6-4-10(d) (recodified at IC 31-34-9-4), the Court indicated that the omission was not grounds for reversal since it was clear to which CHINS category the welfare department was referring).

The Court clarified the significance of pleading and proving a specific CHINS category in **Maybaum v. Office of Family & Children**, 723 N.E.2d 951, 956 (Ind. Ct. App. 2000). The Court found that (1) the OFC never expressly informed the parents or the trial court that it intended to prove that the child was a CHINS because she was seriously endangered due to an injury caused by her father's act or omission; (2) the OFC did not present any specific evidence which would place the parents on notice that it was trying to prove that someone other than the father had caused the child's penetrating injury; and (3) the record did not show that the parents had impliedly consented to litigation of that theory. The Court reversed the CHINS adjudication and concluded that OFC did not give the parents notice that they were required to defend against a claim that they had failed to protect the child. The Court stated that "[t]o permit the trial court to base its decision upon a theory not set forth by the OFC would contravene the purpose of the CHINS statutes, which specifically require the OFC to provide a citation to the precise section of the CHINS statute and the specific facts underlying the allegation."

In light of Maybaum, DCS may want to plead alternative CHINS categories in the CHINS petition. Furthermore, an error or omission in stating the citation in the CHINS petition could result in a dismissal or reversal if it misleads the parties. IC 31-34-9-4 states that an 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.

See Chapter 1 at IV.B. for further discussion of IC 31-34-1-3(b) and the rebuttable presumption at IC 31-34-12-4.5.

In **In Re M.O.**, 72 N.E.3d 527, 531-2 (Ind. Ct. App. 2017), the Court affirmed the juvenile court's determination that the child was a CHINS pursuant to IC 31-34-1-6 [substantial danger to self or others]. Finding that the issue of whether Child was a CHINS 6 was tried by consent under Ind. Trial Rule 15(B), the Court held the juvenile court did not err in adjudicating Child to be a CHINS on different grounds from those set forth in the CHINS petition. Both Child and DCS argued that the juvenile court erred in adjudicating Child to be a CHINS pursuant to IC 31-34-1-6, because the CHINS petition filed by DCS alleged that Child was a CHINS pursuant to CHINS 1. Ind. Trial Rule 15(B) states that issues not set out in the pleadings may be tried by the express or implied consent of the parties. Either party may demand strict adherence to the issues raised before trial. If the court allows introduction of an issue not raised before trial, an objecting party may seek a reasonable continuance in order to litigate the new issue. The Court also noted that, where the trial court concludes without objection to the new issue, the evidence actually presented at trial controls. There are limits to the amendment of pleadings through implied consent: (1) parties should be given some form of notice that an issue not pleaded is now before the court; and (2) this notice can be overt and expressly raised prior to, or sometime during, the trial or it can be implied "as where the evidence presented at trial is such that a reasonable competent attorney would have recognized that the unpleaded issue was being litigated." Consent to the introduction of another issue will be found if DCS and Child had overt or implied notice that evidence was being presented that Child was a CHINS pursuant to CHINS 6, and the Court found this to be the case.

In **In Re Ju.L.**, 952 N.E.2d 771, 778-80 (Ind. Ct. App. 2011), the Court concluded that DCS provided Mother with adequate notice that the abuse statute was also a ground for the CHINS petition because Mother's acts toward the children were also at issue. DCS cited IC 31-34-1 generally in its CHINS petition, and included language mirroring the neglect statute (IC 31-34-1-1). In contrast, the trial court eventually decided that the boys were CHINS according to the abuse statute (IC 31-34-1-2). The question of notice in a CHINS petition is governed by IC 31-34-9-3; a CHINS petition must contain both "[a] citation to the provision of juvenile law that gives the juvenile court jurisdiction in the proceeding" and "[a] concise statement of the facts upon which the allegations are based, including the date and location at which the alleged facts occurred." The specific allegations in the CHINS petition provided Mother with implied notice that her acts and omissions could be grounds for the CHINS proceeding under the abuse statute.

In **In Re S.W.**, 920 N.E.2d 783, 789 (Ind. Ct. App. 2010), the Court affirmed the CHINS adjudication of a seventeen-year-old girl who had been found by a deputy sheriff walking with a friend in a rural area about twelve miles from her home, and who tested positive for marijuana. On appeal, the child argued that the trial court abused its discretion when it admitted evidence of her drug use. She argued she was given no notice that her drug use would be litigated at the CHINS hearing. The Court noted: (1) by citing IC 31-34-1-1 as the authority by which the child was a CHINS, DCS alleged that the child's parents were not supplying her with "necessary food, clothing, shelter, medical care, education, or supervision" so lack of adequate parental supervision was undoubtedly the focus of the proceedings; (2) the factual allegations of the CHINS petition also provided to the child that her drug use could be an issue because the CHINS petition explicitly stated the child's report to the case manager that domestic violence, drug use, and abuse had occurred in the home; and (3) DCS provided the results of the child's drug test to the child's counsel and her parents

prior to the hearing. The Court concluded that the child and her parents had ample notice that the child's drug use could be an issue in the CHINS proceedings.

In **In Re V.C.**, 867 N.E.2d 167, 178-79 (Ind. Ct. App. 2007) the Court held that the juvenile court did not err in adjudicating the child as a CHINS as to Mother on grounds different from those set forth in the CHINS petition. Pursuant to T.R. 15(B), issues not set out in the pleadings may be tried by the express or implied consent of the parties. If the trial court allows introduction of an issue not raised before trial, an objecting party may seek a reasonable continuance in order to prepare to litigate the new issue. However, where the trial ends without objection to the new issue, the evidence actually presented at trial controls. There are limits upon the principle of amending pleadings through implied consent; for example, a party is entitled to some form of notice that an issue that was not pleaded is before the court. Such notice can be overt, as where the unpleaded issue is expressly raised prior to or sometime during the trial but before the close of the evidence, or implied, as where the evidence presented at trial is such that a reasonably competent attorney would have recognized that the unpleaded issue was being litigated. In this case, Father asked DCS to amend the CHINS petition to allege that the child was a CHINS because Mother was endangering the child's mental health, and "the transcript reveals a plethora of evidence elicited without objection at trial that Mother had such notice."

IV. C. 3. Concise Statement of Facts

IC 31-34-9-3(4)(C) states that the petition must contain a "concise statement of the facts upon which the allegations are based, including the date and location at which the alleged facts occurred."

For case law on this topic, see

In Re V.C., 867 N.E.2d 167, 179 (Ind. Ct. App. 2007) (juvenile court did not err in adjudicating child as CHINS as to Mother on grounds different from those set forth in CHINS petition)

Maybaum v. Office of Family & Children, 723 N.E.2d 951, 954 (Ind. Ct. App. 2000) (Court noted that pursuant to IC 31-34-9-3(4)(B),(C), the CHINS petition must contain concise statement of facts upon which allegations are based, including date and location at which alleged facts occurred)

Matter of Lemond, 413 N.E.2d 228, 247-8 (1980) (Court stated that the concise statement requirement "contemplates a substantial recitation of specific facts which demonstrates that a child may be in need of services"; Court included the absence of a concise statement of facts in its listing of procedural flaws)

Matter of R.R., 587 N.E.2d 1341, 1344 (Ind. Ct. App. 1992) (in reviewing omissions of statutory requirements in CHINS case, Court noted CHINS petition did not contain a concise statement of facts supporting the allegations)

Specificity in pleading the exact date, time, or location in the CHINS petition has not been challenged in a reported CHINS case. For criminal child abuse cases affirming very broad and unspecific time frames, see **Baggett v. State**, 514 N.E.2d 1244, 1245 (Ind. 1987); **Duffitt v. State**, 519 N.E.2d 216 (Ind. Ct. App. 1988); **Phillips v. State**, 499 N.E.2d 803 (Ind. Ct. App. 1986).

IV. C. 4. Detention and Reasonable Efforts Standard

IC 31-34-9-3(4)(G) requires the petitioner to state whether the child has been removed from the child's home and placed into protective detention. If the child has been detained, the petition must list the efforts made to provide family services before the removal or the

reasons why family services prior to removal were not provided. DCS may plead that safety of the child precluded the immediate use of family services to prevent removal of the child. See Chapter 4 at VI. for further discussion of reasonable efforts to provide preservation and reunification services.

See **Matter of S.G. v. IN Dept of Child Services**, 67 N.E.3d 1138, 1147 (Ind. Ct. App. 2017) (Court affirmed the trial court's determination that DCS did not need to undertake reasonable efforts to reunify Mother with four of her children who were adjudicated CHINS; (1) IC 31-34-21-5.6(b)(4) (the No Reasonable Efforts Statute) is not unconstitutional as applied to Mother; and (2) the trial court did not abuse its discretion by granting DCS's request to forego reasonable efforts. The Court looked to prior case law concluding that the No Reasonable Efforts statute: (1) serves the State's compelling interest of protecting children from parental abuse and neglect; (2) is narrowly tailored to meet the compelling interest it is intended to serve; and (3) "is not more intrusive than necessary to protect the welfare of children" because it "include[s] only those parents who have had at least one chance to reunify with a different child through the aid of governmental resources and have failed to do so.").

See also **G.B. v. Dearborn Cty. Div. of Fam. and Child.**, 754 N.E.2d 1027, 1031 (Ind. Ct. App. 2001), *trans. denied* ((1) whether a statute is constitutional on its face is a question of law, which is reviewed de novo; (2) statutes are "clothed in a presumption of constitutionality"; (3) an individual who is challenging the constitutionality of a statute bears the burden of rebutting this presumption; (4) all reasonable doubts must be resolved in favor of an act's constitutionality; (5) when a statute can be construed to support its constitutionality, the Court must adopt such a construction).

A CHINS petition must be filed as described in IC 31-34-5-1(a), before a detention hearing is held for the child. IC 31-34-5-1(c).

IV. C. 5. Request for Detention of Child

If a CHINS petition is authorized, the petitioner may make a written request to detain the child. IC 31-34-9-5(a). The petitioner shall support the detention request with an affidavit alleging the existence of one or more of the detention criteria set out at IC 31-34-5-3. IC 31-34-9-5(b).

If the court grants the request to have the child taken into custody, the court must proceed under IC 31-34-5-1 and IC 31-34-5-2. IC 31-34-9-6. IC 31-34-5-1 provides for the timing of the detention hearing, notice of the detention hearing and to whom it must be given, and the requirement of filing a CHINS petition. IC 31-34-5-2 pertains to the findings a court must make at a detention hearing.

The court can grant the written detention request (IC 31-34-9-5) and issue a detention order without notice or a hearing. IC 31-34-2-3. A child may be taken into custody by a law enforcement officer, probation officer, or caseworker, if they have probable cause to believe a child is a CHINS if (IC 31-34-2-3):

(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.

The preference is for a law enforcement officer to assist in this process; a probation officer or a caseworker can take a child into custody "only if the circumstances make it impracticable to obtain assistance from a law enforcement officer." IC 31-34-2-3(b). Whoever takes the child into custody must create written documentation within twenty-four hours of the child being detained. IC 31-34-2-3(c) and IC 31-34-2-6 (describing the written documentation).

A detention hearing is required within forty-eight hours of the time the child is detained, excluding Saturdays, Sundays, and legal holidays. See IC 31-34-5-1.

For case law on this topic, see **Matter of R.R.**, 587 N.E.2d 1341, 1344 (Ind. Ct. App. 1992) (in reviewing omissions of statutory requirements in the CHINS case, Court noted the welfare department did not support its request in the CHINS petition to take the child into custody by sworn testimony or affidavit).

IV. D. Amending the CHINS Petition

Ind. Trial Rule 15 provides that a petition can be amended within the specified time lines, or at a later date, by leave of the court or by written consent of the adverse party. T.R. 15(B) also provides for an amendment to the petition to conform to the evidence presented in the factfinding hearing. T.R. 15(C) also provides for changing or adding a party within certain timelines and procedures; this may be applicable to an alleged father whose name was not known at the initiation of the CHINS proceeding.

Alleged fathers are considered to be parents for purposes of juvenile law. IC 31-9-2-88(b). See also **In Re J.S.O.**, 938 N.E.2d 271, 276-7 (Ind. Ct. App. 2010) (Kirsch, J. dissenting) (concluding that the trial court's order terminating Father's parental rights violated Father's due process rights due to failure to name Father as a party to the CHINS case and failure to follow other CHINS statutory mandates regarding Father. DCS was aware of Father's name, place of residence, and alleged paternity of the child throughout the entirety of the CHINS proceedings).

If an alleged father is not identified until after there is judgment on a CHINS petition, case law supports the notion that the petition may be later amended, and a new factfinding hearing held. In **In Re S.A.**, 15 N.E.3d 602, 609, 612 (Ind. Ct. App. 2014), when Father, who was on active duty in the Navy, became aware of the CHINS proceedings, he requested paternity testing, a public defender was ordered to represent him, and the trial court entered a denial of the CHINS allegations on Father's behalf. Mother admitted allegations in the CHINS petition, and the trial court adjudicated the child to be a CHINS and held a dispositional hearing. Later, the court held the factfinding hearing requested by Father and issued written findings in support of its decision to "continue the adjudication that [the Child] is a [CHINS]." Father appealed, and the Court reversed the CHINS adjudication. The Court opined that, by adjudicating the child as a CHINS prior to Father's factfinding hearing, the trial court deprived Father of a meaningful opportunity to be heard.

On rehearing in In **In Re S.A.**, 27 N.E.3d 287, 292-3 (Ind. Ct. App. 2015), *trans. denied*, the Court clarified that, when the CHINS adjudication *can* involve both parents at the same time, it should involve both parents at the same time so there is one adjudication as to all facts pertaining to the entire matter. IC 31-34-11-1 requires the trial court to complete the factfinding within sixty days after the CHINS petition was filed, with a sixty-day extension if all parties consent. The Court opined that, if multiple hearings are unavoidable, then the trial court should, if at all possible, refrain from adjudicating the child a CHINS until evidence has been heard from both parents. If an adjudication is unavoidable before evidence has been heard from the second parent,

then the trial court must give meaningful consideration to the evidence provided by the second parent in determining whether the child remains a CHINS.

For case law on adjudicating a child to be a CHINS on different grounds than what was pled, see **In Re M.O.**, 72 N.E.3d 527, 531-2 (Ind. Ct. App. 2017), where the Court affirmed the juvenile court's determination that the child was a CHINS pursuant to IC 31-34-1-6 [substantial danger to self or others]. Finding that the issue of whether Child was a CHINS 6 was tried by consent under Ind. Trial Rule 15(B), the Court held the juvenile court did not err in adjudicating Child to be a CHINS on different grounds from those set forth in the CHINS petition. Both Child and DCS argued that the juvenile court erred in adjudicating Child to be a CHINS pursuant to IC 31-34-1-6, because the CHINS petition filed by DCS alleged that Child was a CHINS pursuant to CHINS 1. Ind. Trial Rule 15(B) states that issues not set out in the pleadings may be tried by the express or implied consent of the parties. Either party may demand strict adherence to the issues raised before trial. If the court allows introduction of an issue not raised before trial, an objecting party may seek a reasonable continuance in order to litigate the new issue. The Court also noted that, where the trial court concludes without objection to the new issue, the evidence actually presented at trial controls. There are limits to the amendment of pleadings through implied consent: (1) parties should be given some form of notice that an issue not pleaded is now before the court; and (2) this notice can be overt and expressly raised prior to, or sometime during, the trial or it can be implied "as where the evidence presented at trial is such that a reasonable competent attorney would have recognized that the unpleaded issue was being litigated." Consent to the introduction of another issue will be found if DCS and Child had overt or implied notice that evidence was being presented that Child was a CHINS pursuant to CHINS 6, and the Court found this to be the case.

See this Chapter at IV.C.2. and D. for discussion of amending petition to conform to the evidence pursuant to T.R. 15(B).

V. ACQUIRING PERSONAL JURISDICTION

Ind. Trial Rule 4.4(A), which serves as Indiana's long-arm provision governing the permissible exercise of personal jurisdiction, provides the following language at the end of the existing list of specific acts which may serve as a basis for assertion of personal jurisdiction: "In addition, a court of this state may exercise jurisdiction on any basis not inconsistent with the Constitutions of this state or the United States." In **LinkAmerica Corp. v. Albert**, 857 N.E.2d 961, 965-67 (Ind. 2006), the Court held that this amendment to Trial Rule 4.4(A) "was intended to, and does, reduce analysis of personal jurisdiction to the issue of whether the exercise of personal jurisdiction is consistent with the Federal Due Process Clause."

Case law involving general jurisdiction issues includes:

In Re Paternity of D.T., 6 N.E.3d 471 (Ind. Ct. App. 2014), where the Court determined that the trial court impermissibly morphed the UIFSA child support cause of action into a custody action, resulting in a custody order that was void for lack of subject matter jurisdiction. UIFSA did not allow for an independent custody determination, and Mother could not anticipate, consent to or stipulate to the trial court's exercise of jurisdiction.

In Re Adoption of D.C., 887 N.E.2d 950, 955-58 (Ind. Ct. App. 2008), where the Court reversed and remanded the trial court's denial of the biological Mother's motion to set aside the adoption decree. The Court held that because the service of process on Mother in the adoption proceedings was ineffective, the trial court did not have personal jurisdiction over Mother, and the adoption proceedings terminating her parental rights were therefore void. Whether service of process was sufficient to permit a trial court to exercise jurisdiction over a party involves two issues: whether

there was compliance with the Indiana Trial Rules regarding service and whether such attempts at service comported with the Due Process Clause of the Fourteenth Amendment. As to the first issue, the Court held that the requirements of T.R. 4.1 had not been met and nothing established a reasonable probability that Mother received notice to confer personal jurisdiction. The Court also determined that Adoptive Mother's efforts at service were not reasonably calculated to apprise Mother of the adoption proceedings and therefore did not comport with due process.
Trigg v. Al-Khazali, 881 N.E.2d 699, 702-03 (Ind. Ct. App. 2008), where the Court ratified its holding in Sims v. Beamer, 757 N.E.2d 1021, 1025 n.3 (Ind. Ct. App. 2001), to the effect that a party who seeks affirmative relief from the court voluntarily submits himself to jurisdiction of that court and is thereafter estopped from challenging the court's personal jurisdiction. Here, because of the unique facts of the case, the Court remanded for determination of whether Father received adequate notice of Mother's paternity petition prior to the entry of the 1996 default judgment against him, and if notice is found to have been inadequate the trial court must allow Father the opportunity to present evidence relevant to the determination of his support obligation from November 17, 1995, to the present.
El v. Beard, 795 N.E.2d 462, 464-467 (Ind. Ct. App. 2003), where the Court determined that the trial court lacked personal jurisdiction over Mother under the Uniform Interstate Family Support Act (UIFSA), IC 31-18, to determine child support.

V. A. Persons to be Served With Summons for Initial Hearing and CHINS Petition

The juvenile court shall set a time for the initial hearing and a summons shall be issued for the following (IC 31-34-10-2(b)):

(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.

The definition of parent, found at IC 31-9-2-88, means a biological or adoptive parent, and includes both parents, regardless of their marital status. Although not relevant to IC 31-34-10, practitioners should be aware that parent also includes an alleged father for purposes of IC 31-34-1, IC 31-34-8, IC 31-34-16, IC 31-34-19, IC 31-34-20 and IC 31-35-2.

Despite the use of the word "or" in IC 31-34-10-2(b)(2), it is reasonable to assume that the statute does not intend for just one individual to be notified. It is more consistent and in line with due process concerns to notify all the individuals applicable. IC 31-34-10-2(b)(3) specifically provides that "any other person necessary for the proceedings" shall be given notice. Given the statutory rights of legal guardians and the fundamental rights of parents to the care and control of the child, these caretakers should be given notice even if the child is not residing with them when the CHINS action is initiated. See Chapter 2, I.C. through H. for involvement of custodial parents, noncustodial parents, guardians, custodians, foster parents, putative fathers, and relatives in the CHINS proceeding.

A copy of the CHINS petition must accompany each summons, and the clerk must issue the summons under Trial Rule 4. IC 31-34-10-2(c).

See **Hallberg v. Hendricks County Office of Family and Children**, 662 N.E.2d 639 (Ind. Ct. App. 1996) (failure of court to serve Father with summons or copy of CHINS petition did not deny Father his right to due process or opportunity to be heard, and Father was not prejudiced thereby; Father was served with copy of protective order which prohibited him from having any contact with his children, stated that court had found probable cause to believe that he had molested one child and that both children were CHINS, and notified him of date of emergency

hearing on CHINS petition); **In Re Bender's Wardship**, 352 N.E.2d 797 (Ind. Ct. App. 1976) (summons informing Mother that hearing on county department of public welfare's petition concerned removal of her children from her care, custody, and control "for all purposes including adoption," was constitutionally sufficient notice of termination proceeding and accorded Mother due process); see also **Johnson v. State**, 202 N.E.2d 895 (Ind. Ct. App. 1964); **Ford v. State**,104 N.E.2d 406 (Ind. Ct. App. 1952).

V. B. Method of Service

Service may be made upon anyone under Trial Rule 4.1. IC 31-32-9-1(a). Personal service needs to be made at least three days before the hearing to which the person is being summoned. IC 31-32-9-1(b). Service by mail must be sent at least ten days before the hearing. IC 31-32-9-1(c). Service of a summons is not needed if the person entitled to be served attends the hearing. IC 31-32-9-1(d).

If any person, other than the child, cannot be served according to Trial Rule 4.1, the juvenile court can order service by publication in accordance with Trial Rule 4.13. IC 31-32-9-2(a). However, in such a case, the summons must clearly inform the person being served that the person must respond not later than ten days after the last publication. IC 31-32-9-2(a). If the proceeding is to terminate the parent-child relationship and the parent cannot be served according to Trial Rule 4.1, service must be made by publication. IC 31-32-9-2(b).

In **In Re Adoption of D.C.**, 887 N.E.2d 950, 955-58 (Ind. Ct. App. 2008), the Court reversed and remanded the trial court's denial of the biological Mother's motion to set aside the adoption decree. The Court held that service of process on Mother under both Ind. Trial Rules 4.1 and 4.13 was ineffective, the trial court did not have personal jurisdiction over Mother, and the adoption proceedings terminating her parental rights were therefore void. The Court opined: (1) ineffective service of process prohibits a trial court from having personal jurisdiction; (2) a judgment rendered without personal jurisdiction over a defendant violates due process and is void; and (3) because a void judgment is without legal effect, it may be collaterally attacked at any time, and the "reasonable time" limitation under Ind. Trial Rule 60(B)(6) does not apply.

The D.C. Court stated that whether process was sufficient to permit a trial court to exercise jurisdiction over a party involves two issues: whether there was compliance with the Indiana Trial Rules regarding service and whether such attempts at service comported with the Due Process Clause of the Fourteenth Amendment. As to the first issue, the Court examined the attempted service on Mother by certified mail under the requirements of T.R. 4.1 and by publication under the requirements of T.R. 4.13. The Court held that the requirements of T.R. 4.1 had not been met by either of these efforts, based on the evidence of the actions that Adoptive Mother had taken to serve Mother. Regarding the second issue, whether the attempts at service comported with due process, the Court concluded that, given the trial court's factual findings, Adoptive Mother's efforts at service were not reasonably calculated to apprise Mother of the adoption proceedings and therefore did not comport with due process. The Court also found that T.R. 4.15, which provides for the validity of summonses which are technically defective but nevertheless satisfy due process, was inapplicable because the trial court determined that Adoptive Mother's efforts at service were not reasonably calculated to inform Mother of the adoption proceedings, and they therefore did not satisfy due process.

V. B. 1. Waiver of Service

IC 31-32-9-1(d) provides that summons is not required if the person entitled to be served attends the hearing. This statement does not clarify whether the child's parent, guardian, or custodian waives jurisdictional objections based on failed or insufficient service by appearing

in court. See **Watson v. Dept. of Public Welfare**, 165 N.E.2d 770 (1960) (Court ruled that error in service was waived by the father's presence in court and failure to promptly object to alleged irregularity in service); **Johnson v. State**, 136 Ind. App. 528, 202 N.E.2d 895 (1964) (Court held that the father's presence in court did not waive jurisdictional objection based on failed service. The Court reasoned that presence alone does not submit a person to the jurisdiction of the court in the absence of some affirmative act to legally enter an appearance in the proceeding. A party may waive objection to lack of personal jurisdiction by failing to object in a timely manner).

This statutory provision cannot be used to excuse inadequate attempts at service, however. For case law on this, see

In Re J.H., 898 N.E.2d 1265, 1270-1 (Ind. Ct. App. 2009), *trans. denied*, holding that neither prior case law nor IC 31-32-9-1(d) exempted DCS from complying with the Ind. Trial Rules regarding service of process; however, DCS adequately complied with the Trial Rules and satisfied due process. Father appeared at a review hearing regarding the CHINS adjudication, and the same day, was served with a summons regarding the termination proceedings. Father appeared at the termination hearing, but objected to the trial court's jurisdiction, on the grounds that he had not received proper service of process because the service did not comport with Ind. Trial Rule 4(C). The trial court denied his objection based on IC 31-32-9-1(d), and ultimately terminated Father's parental rights. Father, on appeal, argued that IC 31-32-9-1(d) cannot apply because it conflicts with the Ind. Trial Rules. The Court acknowledged that there was a potential conflict between the service requirements of the Ind. Trial Rules and IC 31-32-9-1(d), so it addressed the merits of Father's claim. Although the summons lacked several key items, Ind. Trial Rule 4.15(F) provides that "No summons or the service thereof shall be set aside or be adjudged insufficient when either is reasonably calculated to inform the person to be served that an action has been instituted against him, the name of the court, and the time within which he is required to respond." The summons was handed to Father personally, Father was aware of the proceedings and had been attending the proceedings, and it provided information as to what the proceedings would be about. The Court acknowledged that its reasoning may have proved faulty if Father had failed to show for the hearing, but Father did appear, indicating that the defects in the summons did not run afoul of due process.

In Re Adoption of D.C., 887 N.E.2d 950, 955-58 (Ind. Ct. App. 2008), the Court reversed and remanded the trial court's denial of the biological Mother's motion to set aside the adoption decree. The Court held that service of process on Mother under both Ind. Trial Rules 4.1 and 4.13 was ineffective, the trial court did not have personal jurisdiction over Mother, and the adoption proceedings terminating her parental rights were therefore void. Regarding this statutory provision, the Court opined that T.R. 4.15, which provides for the validity of summonses which are technically defective but nevertheless satisfy due process, was inapplicable because the trial court determined that Adoptive Mother's efforts at service were not reasonably calculated to inform Mother of the adoption proceedings, and they therefore did not satisfy due process. Similar reasoning can be applied to this statutory provision.

V. B. 2 Failure of Service

In the absence of service or waiver of service by presence or other means, a court does not obtain personal jurisdiction upon the child's parent, guardian, or custodian. See **In Re Heaton**, 503 N.E.2d 410 (Ind. Ct. App. 1986); **Ford v. State**, 122 Ind. App. 315, 104 N.E.2d 406 (1952).

For case law where a defect in service was determined to not deprive a parent of due process, see:

Hite v. Vanderburgh County Office of Family and Children, 845 N.E.2d 175, 178-83 (Ind. Ct. App. 2006), where the Court held that failure to provide Father with notice during initial stages of CHINS action did not deprive him of his procedural due process rights during termination proceedings. Father argued that because he did not receive notice of the CHINS hearing: (A) the trial court never had subject matter jurisdiction; and (B) that his due process rights were violated. The Court differentiated the present case from In Re Heaton, 503 N.E.2d 410 (Ind. Ct. App. 1986) and other prior case law, and determined that based on the record, it could not say that the failure to provide Father with notice during the initial stages of the CHINS action substantially increased the risk of error in the termination proceedings.

Hallberg v. Hendricks Cty. Office, 662 N.E.2d 639 (Ind. Ct. App. 1996), the Court ruled that failure to serve Father with a summons and copy of the CHINS petition as required by IC 31-6-7-4 (recodified at IC 31-34-10-2(b)) was not a violation of due process. Although Father was not served with a copy of the CHINS petition, he was given adequate notice through service of the protective order which reflected a finding of probable cause that Father had molested the children and advised him of the next hearing date. Father was not prejudiced by the failure of service because he was given the opportunity to address the allegations in the CHINS factfinding hearing and he chose not to appear.

Abell v. Clark County Department of Public Welfare, 407 N.E.2d 1209, 1211 (Ind. Ct. App. 1980), where the Court held that since there was unchallenged evidence that county welfare department had Father's address, service of process by publication was not constitutionally sufficient to be reasonably calculated to inform Father under the circumstances as to the pending proceedings.

V. B. 3. Service Upon the Child

IC 31-34-10-2(b)(1) requires that the child be served with notice of the proceeding. The statute makes no mention or differentiation of competence or ages of the child who is to be served. This statute does not specifically incorporate Ind. Trial Rules 4.1 and 4.2, but they do not appear to be inconsistent with the statute. Furthermore, IC 31-32-9-1 provides that service can be made on any person under Ind. Trial Rule 4.1.

Ind. Trial Rule 4.1 permits personal service by leaving a summons at a person's residence, by giving it to the person personally, or by certified or registered mail, or by leaving a copy at the person's usual residence. It is possible to use these Trial Rules to satisfy this statute and to avoid delivering the summons to a child who is too young to understand its contents. Ind. Trial Rule 4.2 provides that service on an infant can be made on the child's next friend or guardian ad litem in the same action. If there is no next friend or guardian ad litem, service can be made on a child's court-appointed representative. If there is no court-appointed representative, then service is accomplished by serving either parent who has custody of the child, or if there is no parent, the person who is occupying the position of custodian or parent. If the child is fourteen years old or older, the child should also be served.

V. C. Service by Publication

Service by publication is authorized in CHINS and termination of parental rights proceedings for any person but the child. IC 31-32-9-2. However, service by publication can be used only for those persons who cannot be served in accordance with Ind. Trial Rule 4.1 by certified or regular mail, delivery of a copy to them personally, leaving a copy at the person's dwelling house or place of abode, or serving the person's agent.

Service by publication should not be used when the location of the person to be served is known or is reasonably discoverable. See **In Re Adoption of L.D.**, 938 N.E.2d 666, 671 (Ind. 2010) (Court concluded that because Paternal Grandparents and their counsel failed to perform the diligent search for Mother required by the Due Process Clause, notice and service by publication was insufficient to confer personal jurisdiction over Mother).

Absence from the state alone is not sufficient grounds for publication. See **Smith v. Tisdal**, 484 N.E.2d 42 (Ind. Ct. App. 1985) (publication of an adoption in an Indiana newspaper was not sufficient to obtain personal jurisdiction of the natural mother who had resided at the same address in Alaska since 1977 where she and the petitioner had lived during their marriage)

Case law involving service by publication includes:

In Re C.G., 954 N.E.2d 910, 919 (Ind. 2011) (Court held that DCS family case manager's misrepresentation on affidavit of diligent inquiry for publication in CHINS case did not violate Mother's due process rights)

In Re L.D., 938 N.E.2d 666, 671 (Ind. 2010) (Court vacated adoption decree because adoptive petitioners and their counsel failed to perform diligent search for Mother required by Due Process Clause; notice by publication was insufficient to confer personal jurisdiction over Mother)

D.L.D. v. L.D., 911 N.E.2d 675, 679-80 (Ind. Ct. App. 2009) (in dissolution of marriage proceeding, service by publication sufficient to comply with Ind. Trial Rule 4.13 and establish personal jurisdiction for valid child support order)

In Re Adoption of D.C., 887 N.E.2d 950, 957-58 (Ind. Ct. App. 2008) (there was not a diligent search where a simple inquiry would have uncovered Mother's address)

In Re A.C., 770 N.E.2d 947, 949, 950 (Ind. Ct. App. 2002) (trial court had jurisdiction and was constitutionally empowered to act where Father received service by publication of filing of petition to terminate his parental rights)

Bays v. Bays, 489 N.E.2d 555, 557 (Ind. Ct. App. 1986), *trans. denied* (Father had attempted to locate Mother by contacting her parents several times over the course of three years and by employing a private investigator, all prior to publishing notice; Court found these efforts constituted diligent search)

Abell v. Clark Cty. Dept. of Public Welfare, 407 N.E.2d 1209, 1210 (Ind. Ct. App. 1980) (service must be made in the best possible manner which is "reasonably calculated to inform the respondent of the pending action"; publication did not accord with due process when the welfare department had knowledge of Mother's address through a check she had sent to the department)

Strict compliance with Ind. Trial Rule 4.13 is required in publication service. The person seeking summons by publication must file the following with the clerk of the court: (1) praecipe for summons; (2) affidavit which shows that a diligent search has been made to locate the respondent and he cannot be found, has concealed his whereabouts, or has left the state; and (3) content of the summons to be published. The clerk of the court or the sheriff must sign the summons. Ind. Trial Rule 4.13(A). See **Hair v. Deutsche Bank Nat. Trust Co.**, 18 N.E.3d 1019 (Ind. Ct. App. 2014) (service by publication is inadequate if there has not been a diligent search); **Harris v. Delaware County Division**, 732 N.E.2d 248, 249 (Ind. Ct. App. 2000) (attorney for OFC failed to file the praecipe and affidavit necessary for publication on Father; Court held that this requirement in T.R. 4.13 was not discretionary, thus OFC failed to give proper notice of the termination factfinding hearing date, and termination judgment was reversed and remanded).

The content of the summons must be as follows (Ind. Trial R. 4.13(B):

(1) The name of the person being sued, and the person to whom the notice is directed. If the person's whereabouts are unknown or some or all of the parties are unknown, there must be a statement to that effect.

(2) The name of the court and cause number.

(3) The title of the case; if there are multiple parties, the title can be shortened to only the first named plaintiff and those defendants to be served by publication. There must be an indication there are additional parties.

(4) The name and address of the attorney representing the person seeking service.

(5) A brief statement of the nature of the suit. No details or specifics of the claim are necessary. There should be a description of any property, relationship, or other res involved in the action, and a statement that the person being sued has an interest in it.

(6) A clear statement that the person being sued must respond within thirty days after the last notice of the action is published, and that if he fails to do so, judgment by default may be entered against him. *Practice Note*: IC 31-32-9-2(a) requires a statement within the summons that the person being served must respond not later than ten days after the last publication. T.R. 4.13(B)(6) grants the respondent thirty days.

The notice must be published three times. Ind. Trial R. 4.13(C). The exact timing and specifics are further discussed at Ind. Trial R. 4.13(C). The person making service shall file with the court the following: (1) any supporting affidavit from the printer containing a copy of the summons which was published; (2) a statement or information showing the publication meets legal requirements, and (3) the dates of the publication. Ind. Trial R. 4.13(E). The returns and affidavit shall be filed with the pleadings. Ind. Trial R. 4.13(E).

VI. VENUE

VI.A. Proper Venue

A CHINS proceeding may be initiated in the county where the child resides, the act occurred, or the condition exists. IC 31-32-7-1.

VI.B. Change of Venue From the County and Assignment of the Case

The juvenile court can assign a CHINS case to the county where the child resides at any time before the dispositional hearing. IC 31-32-7-2; IC 31-32-7-3(a). This can be done on the court's own motion, the motion of the child, or the motion of the child's parent, guardian, or custodian. IC 31-32-7-3(a). A juvenile court can assign supervision of a child to the county of the child's residence following disposition. IC 31-32-7-3(b). The assigning court shall send to the receiving court certified copies of all documents pertaining to the case. IC 31-32-7-3(c).

In Re Adoption of Z.D., 878 N.E.2d 495, 497 (Ind. Ct. App. 2007) involves conflicting adoption petitions regarding the same child, filed in two separate Indiana counties. One was filed in Benton Circuit Court by the former paternal grandmother, a resident of Benton County, and the other was filed in Tippecanoe Circuit Court by the child's foster parents. Neither Benton Circuit Court nor the former paternal grandmother received notice of the Tippecanoe Circuit Court petition. The Court affirmed the Tippecanoe Circuit Court's order granting the foster parents' adoption petition. The Court noted that IC 31-19-2-2 allows adoption petitions to be filed with the court having probate jurisdiction in the county in which the petitioner for adoption resides; a licensed child placing agency or governmental agency having custody of the child is located; or the child resides. The Court concluded, among other things, that under Ind. Trial Rule 75(A) preferred venue was in Tippecanoe County, and that, after the repeal of IC 31-19-4-10 in 2003, there was

no longer any law which would require that the former paternal grandmother be provided with notice of the competing adoption petition in Tippecanoe County.

VI.C. Case Law on Change of Venue From the Judge

T.H. v. State, 810 N.E.2d 348 (Ind. Ct. App. 2004), where the Court found that the juvenile was required to file an affidavit showing cause for her motion for change of judge. The Court noted that, according to IC 31-32-1-1, in delinquency proceedings, procedures governing criminal trials apply in all matters not covered by the juvenile law, and both the juvenile statute at IC 31-32-8-1 and Ind. Crim. Rule 12(B) require that a supporting affidavit be filed with a motion for change of judge. The Court distinguished State ex rel. Gosnell v. Cass Cir. Court, 577 N.E.2d 957 (Ind. 1991), in that, as a CHINS case, it was not subject to IC 31-32-1-1 or -2, so by the terms of IC 31-32-1-3, "the Indiana Rules of Trial Procedure apply in all matters not covered by the juvenile law."

In **In Re Adoption of I.K.E.W.**, 724 N.E.2d 245 (Ind. Ct. App. 2000), the adoption petitioner grandparents struck after the court appointed a panel of three judges pursuant to Ind. Trial Rule 79, but the attorney for the office of family and children did not strike or respond. The Court noted in footnote 4 that T.R. 79(F) requires the clerk to strike if the non-moving party fails to timely strike.

In **State ex rel. Gosnell v. Cass Cir. Court**, 577 N.E.2d 957 (Ind. 1991), the Indiana Supreme Court ruled that the juvenile code statute which allows a change of venue from the judge "only for good cause" is void because it conflicts with Ind. Trial Rule 76(B), which allows a change of venue from the judge without cause upon timely filing of an unverified application or motion for such. Pursuant to Gosnell, a party is entitled to one change of venue from the judge without a showing of cause in a CHINS or termination case, despite the language of IC 31-32-8-1.

In **Matter of Lemond**, 413 N.E.2d 228, 244, 248-9 (1980), the Court discussed the procedure for appointment of a special judge in a CHINS case. For the purpose of striking, the custodial parent stands in the shoes of the respondent and the prosecutor or office of family and children attorney stands in the shoes of the plaintiff.

VII. ENDING JUVENILE COURT JURISDICTION

Except as otherwise provided, the juvenile court's jurisdiction over a CHINS and over the child's parent, guardian, or custodian continues until the child becomes twenty-one years old, dismissal of the case at an earlier time, discharge of the child or the child's parent, guardian, or custodian, or guardianship of the child is awarded to the department of correction. IC 31-30-2-1(a).

IC 31-30-2-1(d) provides: Except as provided in subsection (g), the jurisdiction of the juvenile court over a proceeding described in IC 31-30-1-1(10) for a guardianship of the person continues until the earlier of the date that:

(1) the juvenile court terminates the guardianship of the person; or

(2) the child becomes:

(A) nineteen (19) years of age, if a child who is at least eighteen (18) years of age is a full-time student in a secondary school or the equivalent level of vocational or career and technical education; or

(B) eighteen (18) years of age, if clause (A) does not apply.

If the guardianship of the person continues after the child becomes the age specified in subdivision (2), the juvenile court shall transfer the guardianship of the person proceedings to a court having probate jurisdiction in the county in which the guardian of the person resides.

If the juvenile court has both juvenile and probate jurisdiction, the juvenile court may transfer the guardianship of the person proceedings to the probate docket of the court.

IC 31-30-2-1(e) provides that the jurisdiction of the juvenile court to enter, modify, or enforce a support order under IC 31-40-1-5 continues during the time the court retains jurisdiction over a guardianship of the person proceeding described in IC 31-30-1-1(10).

IC 31-30-2-1(f) provides that at any time, a juvenile court may, with the consent of a probate court, transfer to the probate court guardianship of the person proceedings and any related support order initiated in the juvenile court.

IC 31-30-2-1(g), which provides that the juvenile court can retain jurisdiction over an older youth (defined at IC 31-28-5.8-4) who is a recipient or beneficiary of kinship guardianship assistance under Title IV-E of the federal Social Security Act, or other financial assistance provided for the benefit of a child who was previously adjudicated as a CHINS, is a protected person under a legal guardianship if IC 29-3-38-9(f) applies, or is approved for assistance under a rule or published policy of the department.

VII.A. Dismissal

IC 31-34-9-8 provides that:

(a) A person representing the interests of the state may file a motion to dismiss any petition that the person has filed under this chapter.

(b) If a person files a motion to dismiss under subsection (a), the person must provide to the court a statement that sets forth the reasons the person is requesting that the petition be dismissed.

(c) Not later than ten (10) days after the motion to dismiss is filed under subsection (a), the court shall:

(1) summarily grant the motion to dismiss; or

(2) set a date for a hearing on the motion to dismiss.

(d) If the court sets a hearing on the motion to dismiss under subsection (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.

The Court's opinion in **In Re K.B.**, 793 N.E.2d 1191, 1198-1201 (Ind. Ct. App. 2003), is informative even though it predates the substantial change to IC 31-34-9-8 in 2005. In K.B., a ten-year-old child had been admitted by his mother for inpatient treatment due to the child's severe aggression toward family members, destruction of property, fire-setting, running away and truancy. After about one month of treatment the child was deemed psychiatrically stable and ready for discharge to a less restrictive, long-term residential treatment setting. This determination resulted in Medicaid denying further inpatient funding. The mother refused to accept the care, custody and supervision of the child and declined to pick him up from the inpatient treatment facility. The LaPorte County OFC filed a CHINS petition and the mother admitted to the allegation of the CHINS petition at the initial hearing. The OFC subsequently filed a motion to dismiss the CHINS petition based on its assertion that the mother and the treatment facility had entered into a private agreement permitting the child's admission into a residential program at the facility. The trial court denied the motion to dismiss and determined that the child was a CHINS and scheduled a dispositional hearing.

The OFC appealed, contending that the trial court was required to dismiss the case based on IC 31-34-9-8, which at that time provided that, upon motion by the person representing the interests of the state, the juvenile court shall dismiss any petition the person has filed. The Court disagreed with the OFC, noting that IC 31-34-10-8 stated that once a parent admits the allegations contained in the CHINS petition, the juvenile court shall enter judgment accordingly and schedule a dispositional hearing. The Court opined that it must construe the apparently conflicting statutes together to produce a harmonious statutory scheme and assume that the legislature did not intend conflicting mandates. The Court concluded that the ability of the OFC to move the trial court for mandatory dismissal of the CHINS petition ended upon the mother's admission to the allegations of the CHINS petition. Thus, any motions to dismiss filed subsequent to the mother's admission were to be judged on the merits, as opposed to being automatically granted under IC 31-34-9-8. The Court further opined that the OFC had failed to properly raise the issues on appeal and the issues had been waived due to: (1) failure to file a formal request with the juvenile court for a permissive interlocutory appeal pursuant to Ind. Appellate R. 14(B); and (2) failure to present cogent argument with regard to the juvenile court's denial of a second motion to dismiss. The Court was also unpersuaded by the OFC's argument that its motion to dismiss the CHINS petition was based on its determination that it could not establish the statutory prerequisites that the child was a CHINS.

VII.B. Age of Child and Continuing Jurisdiction for Financial Responsibility

The continuing jurisdiction statute, IC 31-30-2-1(a)(1), provides that juvenile court jurisdiction over the child terminates upon the child's twenty-first birthday, unless the child is discharged before that date. However, IC 31-30-2-1(c) provides that jurisdiction over a parent or a guardian of the child's estate continues until the parent or guardian has satisfied the financial obligation imposed by the court under the reimbursement statutes at IC 31-40.

VII.C. Discharge

IC 31-34-21-11 provides that the court shall discharge the child and the parent, guardian or custodian when it finds that "the objectives of the dispositional decree have been met."

IC 31-34-21-7(d) provides that there is a rebuttable presumption that jurisdiction over a child adjudicated to be a CHINS continues for not longer than twelve months after the date of the original dispositional decree or twelve months after the child in need of services was removed from the child's parent, guardian, or custodian, whichever occurs first. DCS can rebut this 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. IC 31-34-21-7(d). If DCS cannot so prove these elements, the court must (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. The court may retain jurisdiction to the extent necessary to carry out any orders under subdivision (1).

In **In Re A.T.**, 889 N.E.2d 365, 368 (Ind. Ct. App. 2008), *trans. denied*, the Court held that the juvenile court lacked jurisdiction to reinstate the nineteen year old former CHINS as a ward of DCS. The trial court had discharged her wardship at age eighteen, pursuant to IC 31-34-21-11. IC 31-30-2-1(a) provides that such an action was not possible, since jurisdiction over a child 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". A juvenile court can reinstate its jurisdiction using IC 31-30-2-3 (sua sponte reinstatement within thirty days upon notification from the Department of Correction regarding the child's release) and IC 31-30-2-4 (on petition of the Department of Correction), neither of which applied to this case.

In **In Re Infant Girl W.**, 845 N.E.2d 229, 245-6 (Ind. Ct. App. 2006) *trans. denied*, the Court held that the juvenile court was statutorily required, under IC 31-34-21-11, to dismiss the CHINS action once the dispositional goal for child, which was adoption, had been met. The juvenile court's refusal to do so was error; at time adoptive parents filed their motion to dismiss the CHINS action, child had been adopted by them, child was no longer a "child in need of services," as there was universal agreement that child had been well cared for by adoptive parents since she was two days old, and juvenile court's unqualified statutory obligation to discharge its CHINS jurisdiction was not tolled by possible or actual appeals of adoption decree that remained in force.

In **Lake County FCS v. Charlton**, 631 N.E.2d 526 (Ind. Ct. App. 1994), the Lake County OFC petitioned the court during a status hearing to end the wardship of a disabled child who had been adjudicated CHINS due to the financial inability of his parents to provide for his needs. The OFC petition is variously referred to in the opinion as a petition to end wardship, a motion to dismiss, and a motion to discontinue wardship. The juvenile court denied the motion, and the Court reversed, ruling it was error not to end the wardship. The child no longer fit within the definition of the CHINS neglect category at IC 31-34-1-1 because the parents could now financially provide for the child.

In **Matter of C.B.**, 616 N.E.2d 763, 768-9 (Ind. Ct. App. 1993), the Marion County Department of Public Welfare offered several arguments supporting its position that the Marion Superior Court, Juvenile Division, was divested of jurisdiction over a child that the Juvenile Division had placed in the state of Tennessee with her uncle. In an argument discussed in footnote 2 of the opinion, the welfare department maintained that when the child's uncle obtained a guardianship over the child in Tennessee the objectives of the dispositional decree were accomplished within the meaning of the discharge statute IC 31-6-4-19(g) (recodified at IC 31-34-21-11), and once the objectives were accomplished the court was divested of jurisdiction. The Court rejected this argument, clarifying that the discharge provision "clearly requires a finding by the court that the objectives of the dispositional decree have been met" and that such finding cannot be assumed.

VII.D. Effect of Ending Jurisdiction on CHINS Custody Orders

Amendments to IC 31-30-1-12 and IC 31-30-1-13 now provide for the survival of a CHINS custody order after a CHINS case in certain circumstances. An order of a CHINS court which establishes or modifies establishing or modifying paternity, custody, child support, or parenting time survives the termination of the CHINS proceeding until the court having concurrent original jurisdiction (either a dissolution court or a paternity court) assumes or reassumes primary jurisdiction of the case to address all other issues. IC 31-30-1-12(c) and IC 31-30-1-13(c).

If a dissolution court or a paternity court has jurisdiction over a child in an establishment or modification of paternity, custody, parenting time, or child support proceeding, that court has concurrent original jurisdiction with a juvenile court for the purpose of establishing or modifying paternity, custody, parenting time, or child support of a child who is under the jurisdiction of the other juvenile court because the child is a CHINS. IC 31-30-1-12(a) and IC 31-30-1-13(a).

If the dissolution or paternity court modifies child custody and there is a juvenile court which has jurisdiction over a child because the child is a CHINS, the modification only becomes effective when the juvenile court (1) enters an order adopting and approving the child custody modification; or (2) terminates the child in need of services proceeding or the juvenile delinquency proceeding. IC 31-30-1-12(b) and IC 31-30-1-13(b). *Practice Note*: IC 31-30-1-12(b) and IC 31-30-1-13(b) both refer to only a modification of child custody, whereas the other sections refer to modifications of other child-related matters as well as custody.

A dissolution or paternity court that assumes or reassumes jurisdiction of a case under either IC 31-30-1-12(c) or IC 31-30-1-13(c) may modify child custody, child support, or parenting time in accordance with applicable modification statutes. IC 31-30-1-12(d) and IC 31-30-1-13(d).

Just prior to these statutes being amended, **In Re J.B.**, 61 N.E.3d 308, 311-3 (Ind. Ct. App. 2016) was issued. The Court declined to guess what the legislature meant when it said in IC 31-30-1-13(d) that "[a]n order establishing or modifying *paternity* of a child by a juvenile court survives the termination of the [CHINS] proceeding". (Emphasis in original.) The Court asked the legislature to take a deeper look at IC 31-30-1-12 and IC 31-30-1-13. DCS argued that according to IC 31-30-1-13(d), the CHINS court's custody modification order survived the termination of the CHINS proceedings. The Court found two ways to read what "[a]n order establishing or modifying the paternity of a child" means, and since both were valid, needed clarification from the legislature. The Court ultimately reversed that part of the CHINS court's order which discharged the parties and terminated the CHINS case because the goal of the CHINS statutory scheme was not furthered in this case.

See also **Reynolds v. Dewees**, 797 N.E.2d 798, 800-802 (Ind. Ct. App. 2003) ("To the extent that [Fox v. Arthur, 714 N.E.2d 305 (Ind.Ct.App.1999)] stands for the general proposition that once a CHINS petition is filed all other courts lose jurisdiction to act in custody matters, we decline to follow it in light of IC 31-30-1-12 and -13, which became effective just weeks prior to the Fox decision").

See this Chapter at II. for more specific information on various jurisdictional matters.