CHAPTER 5
DETENTION, PROTECTIVE ORDERS, FILING CHINS PETITION, AND DUAL STATUS CHILD

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CHAPTER 5
DETENTION AND PROTECTIVE ORDERS

I. OVERVIEW

I. A. Defining "Taking Child Into Custody" and "Detention"

"Taking a child into custody" refers to the removal of the child from the home or wherever the child is located, by a law enforcement officer, probation officer, or caseworker acting under the authority of a court order or an emergency custody statute. "Detention" generally refers to temporary maintenance of a child in a placement (for example: relative placement, foster care, shelter care) other than the child's home, prior to a CHINS adjudication. After the CHINS adjudication, removal of the child from the home or a change in the child's residence is covered by the dispositional statutes at IC 31-34-20 or the modification statutes at IC 31-34-23.

I. B. Defining "Protective Orders" and "No Contact Orders"

This chapter of the Deskbook focuses on "protective orders" available through IC 31-32-13 which require or enjoin a person from taking certain action in relation to a child prior to an adjudication of CHINS and throughout the CHINS proceeding. These statutes include authority to issue "no contact" or "restraining" orders, but also have a broader range of potential uses. Protective orders for "no contact", which are issued at the dispositional stage of the CHINS proceeding under IC 31-34-25-1 through 5 and IC 31-34-20-1(7) and (8), are discussed in Chapter 8 at VII. Statutes on child protective orders for removal of alleged perpetrators, IC 31-34-2.3-1 through 8, are included in this Chapter at II.B.

I. C. Jurisdiction for Taking Child Into Custody and Protective Orders

IC 31-30-1-1(6) provides that the juvenile court has exclusive, original jurisdiction in proceedings under IC 31-34-4 and IC 31-34-5 governing the detention of a child before a CHINS petition has been filed. IC 31-30-1-1(7) provides that the juvenile court has exclusive, original jurisdiction in "[p]roceedings to issue a protective order under IC 31-32-13."

I. D. Federal Law

42 U.S.C. § 671(a)(15) and 42 U.S.C. § 672(a)(2) require the State to use "reasonable efforts" to provide family services to prevent the removal of the child from the home. Compliance with the "reasonable efforts" standard is a prerequisite to federal reimbursement of state foster care and other costs under Title IV-E of the social security act. Federal regulations require specific judicial findings of necessity when a child is removed from the home and findings of reasonable efforts to avoid removal from the home, to insure continued funding for a child. These findings are discussed in this Chapter at II.E.4. ("contrary to welfare" finding) and IV.H.3. (reasonable efforts finding).

II. TAKING CHILD INTO CUSTODY

II. A. Policy

IC 31-10-2-1 states that it is the policy of Indiana and the purpose of the juvenile code to:

(6) remove children from families only when it is in the child's best interest or in the best interest of public safety.

Federal and state law generally require DCS to make reasonable efforts to avoid removal of the child from the home, when consistent with the paramount concern of the child's health and

safety. See 42 U.S.C. § 671(a)(15); IC 31-34-21-5.5 (reasonable efforts requirement); IC 31-34-21-5.6 (exceptions to reasonable efforts requirement).

II. B. Removing Perpetrator Rather Than Child From Home

IC 31-34-2-2 states:

> (a) A law enforcement officer may take a person into custody if the law enforcement officer has probable cause to believe that the person is the alleged perpetrator of an act against a child who the law enforcement officer believes to be a child in need of services as a result of the alleged perpetrator's act. The law enforcement officer may take the alleged perpetrator into custody under this section only for the purpose of removing the alleged perpetrator from the residence where the child believed to be in need of services resides.
> (b) The law enforcement officer shall immediately contact the attorney for the county department or another authorized person for the purpose of initiating a protective order under section IC 31-34-25 that will require the alleged perpetrator to refrain from having direct or indirect contact with the child.

This statute authorizes law enforcement to remove an alleged perpetrator without probable cause to arrest the perpetrator or a warrant for arrest of the perpetrator. The statute contains no authority to detain the perpetrator once removed, and does not prevent the perpetrator from having contact with the child.

IC 31-34-2.3-1 through 8 authorize the juvenile court to issue a child protective order to remove an alleged perpetrator of abuse or neglect from the child's home in specific situations. The statutes also impose criminal penalties for an alleged perpetrator who returns to the child's residence after a child protective order has been issued. The child protective orders are distinct from CHINS proceedings. IC 31-34-2.3-1 authorizes DCS to file a petition to remove the alleged perpetrator from the child's residence if, after investigation, DCS determines that there is probable cause to believe that a child is a child in need of services and the child would be protected by the removal of the alleged perpetrator. IC 31-34-2.3-2 allows the court to issue a temporary child protective order without a hearing if DCS's petition states facts sufficient to satisfy the court of all of the following: (1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse; (2) given the immediate danger to the child's physical health or safety, there is not time for an adversary hearing; (3) the child is not in danger of abuse or neglect from a parent or other adult with whom the child will continue to reside in the child's residence; and (4) the issuance of a temporary child protective order is in the child's best interest. IC 31-34-2.3-3 requires DCS to serve a temporary child protective order issued by the court under IC 31-34-2.3-2 on the alleged perpetrator and on the parent or other adult with whom the child will continue to reside. IC 31-34-2.3-4(a) states that the juvenile court shall hold a hearing on the temporary child protective order not more than 48 hours, excluding Saturdays, Sundays, and legal holidays for state employees, after the temporary order is issued. IC 31-34-2.3-4(b) requires DCS to provide notice of the time, place and purpose of the hearing to the child, the child's parent, guardian, or custodian if the person can be located, any adult with whom the child is residing, and the alleged perpetrator.

IC 31-34-2.3-5 states that the court may issue a child protective order after notice and a hearing if DCS's petition states facts sufficient to satisfy the court that the child is not in danger of abuse or neglect from a parent or other adult with whom the child will continue to reside and one or more of the following exist: (1) the alleged perpetrator's presence constitutes a continuing danger to the child's physical health or safety; (2) the child has been a victim of sexual abuse and there is a substantial risk that the child will be the victim of sexual abuse in the future if the alleged

perpetrator remains in the child's residence. IC 31-24-2.3-5(c) states that a child protective order is valid until the court determines the child is not a child in need of services or the child is adjudicated a child in need of services and the court enters a dispositional decree. When the court enters a dispositional decree, the court can order the perpetrator to refrain from returning to the child's residence pursuant to IC 31-34-20-1(8). IC 31-34-2.3-6 states that a temporary child protective order or any other order that requires the removal of an alleged perpetrator from the child's residence must require that the parent or other adult with whom the child will continue to reside make reasonable efforts to monitor the residence and report any attempt by the alleged perpetrator to return to the residence to DCS and the appropriate law enforcement agency.

After a child protective order is issued under IC 31-34-2.3-2 or 5, a parent or other adult with whom the child continues to reside who knowingly or intentionally fails to comply with a court order requiring reasonable efforts to monitor the residence and report the alleged perpetrator's attempt to return commits a class A misdemeanor. IC 31-34-2.3-7. An alleged perpetrator who knowingly or intentionally returns to a child's residence in violation of a child protective order commits a Class A misdemeanor, which is increased to a level 6 felony if the alleged perpetrator has a prior unrelated conviction. IC 31-34-2.3-8.

Practice Note: Practitioners should note that before a child has been adjudicated a CHINS, it is necessary to obtain a protective order pursuant to IC 31-32-13 to bar the perpetrator from having contact with the child, unless the situation fits within the parameters of IC 31-34-2.3 discussed above. No contact orders pursuant to IC 31-34-25 may be ordered after the CHINS adjudication as part of the dispositional order (IC 31-34-20-1(7)). The dispositional order may also provide that a perpetrator of child abuse or neglect must refrain from returning to the child's residence (IC 31-34-20-1(8)). IC 31-32-13 and IC 31-34-2.3 provide for protective orders before the CHINS adjudication.

II. C. Notices and Advisements Required Upon Taking Child Into Custody

II. C. 1. Notice to Parents that Child Has Been Taken Into Custody

IC 31-34-3-1 requires DCS to notify the child's custodial parent, guardian, or custodian within two hours after the child was taken into custody. IC 31-34-3-2 provides that if a "reasonable effort" to locate these persons fails, DCS shall make a good faith effort to leave a written notice at the last known address of the child's custodial parent, guardian, or custodian within six hours of taking the child into custody.

IC 31-34-3-3 provides that if the custodial parent, guardian, or custodian is believed to reside outside of Indiana, DCS shall send written notice to the noncustodial parent, guardian, or custodian by certified mail on the day the child is taken into custody, or on the next business day, if the child is not taken into custody on a business day. IC 31-34-3-4 requires that the notice identify who can be contacted to obtain information about the removal of the child. IC 31-34-3-5 contains a significant caveat to the timing of the notice requirement: "the department of child services must have as the department's first priority the immediate needs of the child for medical care, shelter, food, or other crisis services."

II. C. 2. Written Advisement of Rights

IC 31-34-4-6 requires DCS to give a child's parent, guardian, or custodian a written advisement of rights to have a detention hearing, request the child's return, be represented by counsel, not make incriminating statements, request a case review by the child protection team, and be advised of the mandatory filing of a termination petition when the child has been removed and under DCS supervision for fifteen of the most recent twenty-two months.

Notice shall be given at the time the child is taken into custody, or at the time the CHINS petition is filed, whichever occurs earlier.

In **In Re G.P.**, 4 N.E.3d 1158, 1163 (Ind. 2014), the Indiana Supreme Court opined that IC 31-34-4-6 explicitly provides for the statutory right to court appointed counsel for a parent in a CHINS case if the parent requests the appointment of counsel and the trial court finds the parent to be indigent. See Chapter 2 at IV.C. for complete discussion.

II. C. 3. Notice to Relatives That Child Has Been Removed

IC 31-34-3-4.5(a) requires DCS to exercise due diligence, within thirty days after the child's removal from parents, to identify and provide notice of the child's removal to: (1) all adult relatives (as defined by IC 31-9-2-107) of the child, including relatives suggested by either parent as required under 42 U.S.C. 671(a)(29); and (2) all the child's siblings who are at least eighteen years old. IC 31-34-3-4.5(a). "Relative", for purposes of IC 31-34-3, is defined at IC 31-9-2-107(b) as: (1) a maternal or paternal grandparent; (2) an adult aunt or uncle; (3) a parent of a child's sibling if the parent has legal custody of the sibling; or (4) any other adult relative suggested by either parent of a child. IC 31-34-3-4.5(c) provides that the notice must: (1) state that the child has been removed from the parents by DCS; (2) set forth the options the relatives may have under federal, state, or local laws, including the care and placement of the child and other options that may be lost if the relative fails to respond to the notice; (3) describe the requirements for the relative to become a foster parent; (4) describe additional services available to the child placed in foster care; and (5) describe how a relative guardian of a child may enter into an agreement with DCS to receive financial assistances through the adoption assistance or guardianship assistance programs. If DCS "knows or suspects that the person has caused family or domestic violence," DCS may not provide notice to the relative or sibling. IC 31-34-3-4.5(b).

IC 31-9-2-42 states that "domestic or family violence" means, except for an act of self defense, the occurrence of one or more of the following acts committed by a family or household member:

> (1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member without legal justification.
>
> (2) Placing a family or household member in fear of physical harm without legal justification.
>
> (3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.
>
> (4) Beating (as described in IC 35-46-3-0.5(2)), torturing (as described in IC 35-46-3-0.5(5)), mutilating (as described in IC 35-46-3-0.5(3)), or killing a vertebrate animal without justification with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.

For purposes of IC 22-4-15-1 and IC 34-26-5, domestic or family violence also includes stalking (as defined in IC 35-45-10-1) or a sex offense under IC 35-42-4, whether or not the stalking or sex offense is committed by a family or household member.

II. D. Hospital Custody of Child During Abuse and Neglect Assessment

IC 31-33-11-1 requires that when a child is a hospital patient, and the hospital is advised that the child is the subject of an abuse or neglect report and assessment, the hospital may not release the child to his parent, guardian, custodian or to a court-approved placement until the hospital receives from DCS an authorization or a copy of a court order indicating that the child may be released to the child's parent, guardian, or custodian or to a court approved placement. A verbal authorization can suffice, but it shall be confirmed by a letter from DCS to the hospital. See Chapter 4 at III.B. for discussion of hospital detention of children.

II. E. Court Orders to Take Child Into Custody

II. E. 1. Inherent Authority to Issue Emergency Custody Orders

The juvenile code makes several references to court orders for custody and detention of a child. In fact, IC 31-34-2-3, which allows a child to be taken into custody without a court order, provides that this should occur only if the caseworker is unable to obtain an order. No statute clarifies the method or requirements for issuance of an emergency order for the removal of the child. In **N.W. v. Madison Co. Dept. of Public Welfare**, 493 N.E.2d 1256 (Ind. Ct. App. 1986), Mother challenged the court's issuance of an emergency custody order without notice or hearing. The Court declined to address the requirements for a court order, upon finding that the caseworker had authority to take the child into custody without a court order. Id. at 1259.

A court order should reiterate the same requirements included in IC 31-34-2-3 for emergency removal without a court order; i.e., probable cause to believe the child is a CHINS, the physical or mental health of the child will be seriously endangered or impaired if the child is not taken into custody, and consideration for the safety of the child precludes service delivery to avoid removal. This emergency order could be issued verbally and without notice or hearing, under the inherent power of the court to protect children.

II. E. 2. Protective Order for Custody of the Child

IC 31-33-8-8 provides that courts may use the protective order statute, IC 31-32-13, as a means to order the immediate removal of a child from the home when the DCS assessment indicates the need to protect the child from harm. IC 31-33-8-8(a) states:

> If, before the assessment is complete, the opinion of the law enforcement agency or DCS is that immediate removal is necessary to protect the child from further abuse or neglect, the juvenile court may issue an order under IC 31-32-13.

IC 31-32-13-1 authorizes the court to issue a protective order "to control the conduct of any person in relation to the child." Taking a child into custody clearly involves controlling the conduct of the child and the person from whom the child is removed. In an emergency, protective orders can be issued without notice or hearing. The procedure for obtaining an emergency protective order is outlined in this Chapter at VII.F.

The use of the protective order statute for emergency detention was mentioned in **N.W. v. Madison Co. Dept. of Public Welfare**, 493 N.E.2d 1256 (Ind. Ct. App. 1986). The facts of N.W. present the exact situation envisioned in IC 31-33-8-8: the welfare department had a child medically examined; the examination indicated that the child had a vaginal injury and had possibly been sexually abused; the welfare department sought a court order for removal of the child from the home; and the court issued an order for the emergency detention of the child. In affirming the juvenile court's ex parte detention order, the Court found that a court

order under the protective order statute was not necessary since the welfare department could have taken the child into custody by its own authority under IC 31-6-4-4 (now IC 31-34-2-3). Id.

II. E. 3. Non-Emergency Detention Based On Request in CHINS Petition

IC 31-34-9-5 provides that once the court has authorized the filing of the CHINS petition, the person filing the petition may file a written request that the child be taken into custody. The request shall be supported by sworn testimony or affidavit showing the existence of at least one of the grounds for detention stated in IC 31-34-5-3.

The written request for detention may be included in the CHINS petition, although IC 31-34-9-5 does not preclude filing the request at a subsequent time. The court is not required to hold a hearing on the request, but IC 31-34-9-5 requires that the court make written findings of fact upon the record that a ground for detention exists. IC 31-34-9-6 provides that if the court issues an order to take the child into custody, the court shall proceed with a detention hearing within forty-eight hours as is required by IC 31-34-5-1 and IC 31-34-5-2.

In **Matter of R.R.**, 587 N.E.2d 1341 (Ind. Ct. App. 1992), the Court reversed the juvenile court's denial of Mother's motions for relief from the CHINS and termination judgments. Id. at 1342. The Court ruled that the welfare department and juvenile court failed to adhere to statutorily required procedures in the CHINS case. Id. at 1345. The Court noted (among other procedural omissions) the following failures to comply with IC 31-6-4-10(c)(7) and (e) (recodified at IC 31-34-9-3 and IC 31-34-9-5) for the detention of the child: (1) the CHINS petition did not include a statement indicating whether the child had been removed from the parent; (2) the request for custody was not supported by affidavit or sworn testimony; and (3) the juvenile court did not make written findings of fact to support the detention ruling. Id. at 1344.

II. E. 4. Judicial Finding That Remaining in Home is "Contrary to the Welfare of the Child"

The regulations to the federal Adoption and Safe Families Act provide that the first written custody order, including any emergency order, issued by the court should contain findings that "continuation in the home is contrary to the welfare of the child." Failure to enter such a finding, or comparable language, may make the child's entire stay in foster care ineligible for Title IV-E funding.

IC 31-34-5-3(b) requires the juvenile court to include in any order approving the child's detention all findings and conclusions required for federal Title IV-E funding under the Social Security Act or any applicable federal regulation, including 45 CFR § 1356.21. IC 31-34-5-3(c) states that inclusion in a juvenile court order of language approved and recommended by the Indiana judicial conference on the child's removal from home or detention constitutes compliance with IC31-34-5-3(b). The juvenile court must find that it is in the best interest of the child to be removed from the home environment, and find that remaining in the home would be contrary to the health and welfare of the child, and list specific reasons for the findings.

II. F. Emergency Custody Without Court Order

IC 31-34-2-3 states, in pertinent part:

(a) If a law enforcement officer's action under section 2 [IC 31-34-2-2 concerning removal of perpetrator from child's home] of this chapter will not adequately protect the safety of the

child, the child may be taken into custody by a law enforcement officer, probation officer, or caseworker acting with probable cause to believe the child is a child in need of services if:

(1) it appears that the child's physical or mental condition will be seriously impaired or seriously endangered if the child is not immediately taken into custody;

(2) there is not a reasonable opportunity to obtain an order of the court; and

(3) consideration for the safety of the child precludes the immediate use of family services to prevent removal of the child.

(b) A probation officer or caseworker may take a child into custody only if the circumstances make it impracticable to obtain assistance from a law enforcement officer.

This emergency custody statute allows DCS to take the child into custody without a court order, but does not specifically award DCS temporary wardship of the child for the purpose of obtaining necessary care and treatment for the child. When a child must be removed before there is an opportunity to obtain a court order, it is good practice for DCS to contact the court as soon as possible after the removal of the child to obtain a court order approving the removal of the child, and granting temporary wardship of the child.

II. F. 1. Persons Authorized to Take Child Into Custody

IC 31-34-2-3 states that a child may be taken into custody by a law enforcement officer, a probation officer, or a caseworker. A probation officer or caseworker may take a child into custody only if the circumstances make it impracticable to obtain assistance from a law enforcement officer. IC 31-34-2.5 establishes procedures for children who are or who appear to be under thirty (30) days old who are voluntarily left with an emergency medical services provider or in a newborn safety device by parents. An emergency medical services provider may take custody of a child without a court order. IC 31-34-2.5-1(a). IC 31-9-2-43.5 states that "emergency medical services provider" has the meaning set forth in IC 16-41-10-1. IC 16-41-10-1 defines an "emergency medical services provider" as a firefighter, a law enforcement officer, a paramedic, an emergency medical technician, a physician licensed under IC 25-22.5, a nurse licensed under IC 25-23, or other person who provides emergency medical services in the course of employment. See this Chapter at II.F.7. for additional discussion of IC 31-34-2.5.

IC 31-34-12-4.5(a) establishes a rebuttable presumption that a child whose situation fits into the requirements of IC 31-34-1-3 [child lives in same household as a child sexual abuse victim or as an adult who committed sex offense or human or sexual trafficking offense or has been charged and is awaiting trial for the offense] or IC 31-34-1-3.5 [child is victim of human or sexual trafficking] is a child in need of services. IC 31-34-12-4.5(b) states that the presumption is not rebutted by the fact that the child is genetically related to the adult or is a different age from the child who was a victim of the adult's offense. IC 31-34-12-4.5(c) prevents the child from being taken into emergency custody without a hearing if the presumption is the sole basis for taking the child into custody. IC 31-34-12-4.5(c) states:

> This section does not affect the ability to take a child into custody or emergency custody under IC 31-34-2 if the act of taking the child into custody or emergency custody is not based upon a presumption established under this section. However, if the presumption established under this section is the sole basis for taking a child into custody or emergency custody under IC 31-34-2, the court first must find cause to take the child into custody or emergency custody following a hearing in which the parent, guardian, or custodian of the child is accorded the rights described in IC 31-34-4-6(a)(2) through IC 31-34-4-6(a)(5).

II. F. 2. Emergency Custody Requirements

IC 31-34-2-3 has four requirements for emergency custody. These are reviewed below:

II. F. 2. a. Probable Cause

The person taking the child into custody must have probable cause to believe the child is a child in need of services. This requires evidence that the child fits into one of the CHINS categories stated in IC 31-34-1-1 through 8 and IC 31-34-1-10 and IC 31-34-1-11.

II. F. 2. b. Serious Impairment or Endangerment

IC 31-34-2-3(a)(1) provides that a child can be taken into custody without a court order only when the child's "physical or mental condition will be seriously impaired or seriously endangered if he is not immediately taken into custody." This does not require that the child be injured.

II. F. 2. c. No Opportunity for Court Order

IC 31-34-2-3(a)(2) requires that there be no reasonable opportunity to obtain a court order. In **N.W. v. Madison Co. Dept. of Public Welfare**, 493 N.E.2d 1256 (Ind. Ct. App. 1986), the welfare department filed a probable cause affidavit and requested an emergency detention order the day after a medical examination of the child indicated possible sexual abuse. The court issued an emergency detention order. Mother appealed on the ground that the order was issued without notice or hearing. The Court found that the emergency detention order was not necessary because the welfare department had the authority to take the child into custody without a court order under IC 31-6-4-4 (recodified at IC 31-34-2-3). Id. at 1259. The Court referred to the trial court's detention order as an extra step. It stated:

> Rather than act upon its own reasonable belief that N.W.'s children were in need of services, [the welfare] Department obtained an independent determination of probable cause. We fail to see how this extra step, though not provided by statue, deprived N.W. of due process. Id.

The better practice is for DCS to seek a court order for custody and detention when the delay will not endanger the child.

II. F. 2. d. Family Services Precluded

IC 31-34-2-3(a)(3) provides that a child may be taken into custody when "consideration for the safety of the child precludes the immediate use of services to prevent removal of the child." This provision is intended to insure reasonable efforts by DCS to avoid removal of the child from the home. Services need not be provided when the child's safety is so imperiled that the services would be ineffective to prevent injury or continued endangerment to the child.

IC 31-26-5-1 through 6 provides for the availability of "family preservation services"[defined at IC 31-9-2-44.8] to protect, treat, and support families with a child at imminent risk of placement outside of the home due to dependency, abuse, neglect, emotional disturbance, extensive family conflict so that reasonable control of the child is not exercised, or delinquency adjudication. DCS can provide or contract for the provision of these highly intensive services, which must include the following: twenty-four hour crisis intervention; risk assessment; case management; monitoring; intensive in-home

skill building and counseling; and after-care linkage. These services may be delivered to families for which the services "may reasonably be expected to avoid out-of-home placement of the child."

II. F. 3. Documentation of Taking Child Into Custody Without Court Order

IC 31-34-2-6 requires that the person taking a child into custody without a court order must make written documentation within twenty-four hours of taking the child into custody. The documentation must state the following:

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

The written documentation must be immediately forwarded to DCS for inclusion in reports required under IC 31-33-7-4. The documentation must be prepared by the person removing the child, which suggests that it could be made by a law enforcement officer, probation officer, or child protection service caseworker. DCS shall create forms to be used for the documentation. IC 31-34-2-6(b).

II. F. 4. Review of Decision to Take Child Into Custody

IC 31-34-4-4 provides that when a child is taken into custody without a court order, the person taking the child into custody may release the child or deliver the child to a place designated by the juvenile court. IC 31-34-4-5 requires that an intake officer shall investigate the reasons for the detention. An "intake officer" is defined at IC 31-9-2-62 as "a probation officer or a caseworker who performs the intake, preliminary inquiry, or other functions specified by the juvenile court or by the juvenile law." After the investigation, the intake officer "shall" release the child to the parent, guardian, or custodian upon that person's written promise to bring the child to the juvenile court. However, the child may be continued in detention if the intake officer "reasonably believes" the child is a CHINS and one of the following detention criteria exists, as stated in IC 31-34-4-5:

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

II. F. 5. Notice to Parents if Child Detained

IC 31-34-4-4(2) provides that when a child is taken into custody without a court order and the decision is made to detain the child, the person who took the child into custody shall promptly notify the child's parent, guardian, or custodian that the child is being held and of

the reasons for the detention. This notice can coincide with, or be consolidated into the notice required under IC 31-34-3-1 through 5 which applies to all children who are taken into custody if all necessary time requirements are met.

II. F. 6. Special Considerations for Missing Child

IC 31-34-2-4 allows a law enforcement officer, probation officer, or caseworker to take a child into custody without a court order, when there is probable cause to believe the child is a "missing child" as defined within the missing child CHINS category at IC 31-34-1-8 and IC 10-13-5-4. Comparing IC 31-34-2-3 and IC 31-34-2-4 it appears that a missing child can be taken into emergency custody *without* the existence of the conditions required of the other CHINS categories. (Emphasis added by authors.)

When a missing child is taken into custody under a court order, notice must be given to the child's legal custodian and to the Indiana Clearinghouse on Missing Children and Missing Endangered Adults. IC 31-34-2-5. It is the better practice to give this notification for missing children taken into custody with or without a court order. See Chapter 1 at VII. and Chapter 4 at I.I. for further information about missing children and the Clearinghouse.

II. F. 7. Special Considerations for Emergency Custody of Infants Under Thirty Days Old

IC 31-34-2.5-1 through 4 provide procedures for a child who is, or appears to be, not more than thirty (30) days old and who is voluntarily left with: (1) an emergency medical services provider; (2) in a newborn safety device located in a hospital that is staffed continuously on a twenty-four hour basis; (3) or in a newborn safety device that was installed on January 1, 2017, at a site staffed by an emergency services provider by the child's parent and the parent does not express an intention to return for the child. IC 31-34-2.5-1(a) allows an emergency medical services provider (defined at IC 16-41-10-1) to take custody of the child without a court order. IC 31-34-2.5-1(b) states that an emergency medical services provider who takes custody of a child shall perform any act necessary to protect the child's physical health or safety. Presumably this would include taking the child to a hospital or emergency shelter care and notifying law enforcement of the child's situation. IC 31-34-2.5-1(c) states that any person who in good faith voluntarily leaves a child with an emergency medical services provider is not obligated to disclose the person's name or the parent's name. IC 31-34-2.5-2 (a) states that an emergency medical services provider shall notify DCS immediately after the provider has taken custody of the child. IC 31-34-2.5-3 provides that a child for whom DCS assumes care, control, and custody from the emergency medical services provider under IC 31-34-2.5-2 shall be treated as a child taken into custody without a court order, except that efforts to locate the child's parents or reunify the child's family are not necessary if the court makes a finding to that effect under IC 31-34-21-5.6(b)(5). See Chapter 4 at VI.D.3. for further discussion.

III. PLACE OF DETENTION

III. A. General Considerations for Place of Detention

The juvenile code expresses a preference for placement of children with a relative or de facto custodian care giver, when consistent with the safety of the child. IC 31-34-4-2, provides that DCS should consider relative or defacto custodian placement for the child before considering other out-of-home placements for the child. See this Chapter at III.E.2. for mandatory consideration of relative placement when a child has been removed from home under a court order.

The juvenile code and federal law generally require placement in the least restrictive family-like setting that is consistent with the needs of the child. See IC 31-34-15-4(3) (case plan); IC 31-34-19-6(1) (dispositional guidelines); IC 31-34-21-5(b)(10) (case review); 42 U.S.C. § 675(5)(A) (federal case review requirements).

III. B. Secure Detention Prohibited

IC 31-34-6-1 states that a CHINS may not be held in the following:

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

IC 31-9-2-114 defines "secure facility" to mean "a place of residence, other than a shelter care facility, that prohibits the departure of a child." A "shelter care facility" is defined at IC 31-9-2-117 as a place of residence licensed under the laws of any state which is not locked to prevent a child's departure "unless the administrator determines that locking is necessary to protect the child's health." Therefore, a "shelter care facility" may be locked for the limited purpose of protecting the child's health, as might be justified in the case of runaways, substance abusers, and emotionally unstable children whose mental or physical health would be jeopardized if they were allowed to escape to the streets.

Courts should not place missing children, CHINS, and delinquents in county jails or other adult detention facilities, because of potential government liability for denial of substantive due process rights (right of juvenile to be incarcerated separate from adults) created through federal legislation. See **In Re Deinstitutionalization of Status Offenders**, 537 N.E.2d 468 (Ind. 1989) (Indiana Supreme Court order permitting the Public Defender of Indiana to initiate appropriate habeas corpus actions to secure the release of delinquents, status offenders, and CHINS who are detained in violation of state law).

A runaway child may be defined as a delinquent pursuant to IC 31-37-2-2 or may be considered a CHINS under the CHINS category of self-endangerment at IC 31-34-1-6. See **In Re M.O.**, 72 N.E.3d 527, 533 (Ind. Ct. App. 2017), in which the Court affirmed the juvenile court's CHINS adjudication of a sixteen-year-old girl who substantially endangered her own health or that of another by running away from her placement and engaging in other negative behavior.

IC 31-37-7-3 explains the time limit when a child alleged to be a delinquent child under IC 31-37-2-2 (runaway) may be held in a secure facility. The statute states:

> A child alleged to be a delinquent child because of an act under IC 31-37-2-2 may be held in a juvenile detention facility for:
> (1) not more than twenty-four (24) hours before; and
> (2) not more than twenty-four (24) hours immediately after;
> the initial court appearance, not including Saturdays, Sundays, and nonjudicial days.

III. C. Placement in Facility Must Be in County of Child's Residence, Unless Unavailable or Inadequate

IC 31-34-6-3 provides that a court or DCS may not place a child in a shelter care facility that is located outside the child's county of residence "unless placement of the child in a comparable facility with adequate services located in the child's county of residence is unavailable or the

child's county of residence does not have an appropriate comparable facility with adequate services." The provision has no application to placements with relatives or foster parents, but applies only to placements into shelter care or other residential facilities. IC 31-40-1-2 provides that DCS is not responsible for any costs or expenses for housing or services provided to or for the benefit of a child placed by the juvenile court outside Indiana if the placement is not recommended or approved by the DCS director or the director's designee.

III. D. Temporary Health Care Placement for Examination or Treatment

IC 31-32-12-1 provides that the juvenile court may authorize mental or physical examinations or treatment, including drug and alcohol screens. If the court has not authorized the filing of a CHINS petition, but a physician certifies that an emergency exists, the child may be detained in a health care facility for the length of the emergency, and for an additional "reasonable length" of time if there is a continuing medical need. IC 31-32-12-1 also provides that if the court has authorized the filing of a CHINS petition, the court may order examination or treatment to provide information for the dispositional hearing. IC 31-32-12-2 provides that a child may be ordered into "temporary confinement" for up to fourteen days (excluding Saturdays, Sundays, and legal holidays) for completion of a mental or physical examination. See this Chapter at VIII. for further discussion on treatment and examination orders.

III. E. Special Considerations for Detention of Children Taken Into Custody Under a Court Order

III. E. 1. Order Shall Designate Placement

IC 31-34-4-3 provides that when a child is taken into custody under an order of the court, the order shall designate the placement for the child.

III. E. 2. Department Shall Consider Placement With Relatives or Other Specified Individuals

IC 31-34-4-2(a) states that DCS is responsible for the placement. IC 31-34-4-2(a) requires that, if a child alleged to be a CHINS is taken into custody under a court order and the court orders out-of-home placement, DCS, before considering any other out-of-home placement, must consider placing the child with a: (1) suitable and willing relative; or (2) de facto custodian before considering any other out-of-home placement. IC 31-34-4-2(b) states that DCS shall consider placing the child with a relative related by blood, marriage, or adoption before considering any other placement. IC 31-34-4-2(c) provides that, before placing the child with a relative or a de facto custodian, DCS shall complete an evaluation based on a home visit of the relative's home. IC 31-34-4-2(d) requires DCS to conduct a criminal history check of persons currently residing in an unlicensed home before the child may be placed in the home. The term "conduct a criminal history check" is defined at IC 31-9-2-22.5, and includes more than seeking information about criminal convictions. It includes: (1) a state police fingerprint based criminal history background check of both state and national data bases or a national name based criminal history check for persons living in the residence who are at least eighteen years old; (2) for persons who live in the residence and are at least fourteen years old, collecting substantiated reports of child abuse or neglect in a jurisdiction where the person resided within the past five years; (3) conducting a check of the national sex offender registry maintained by the U.S. Department of Justice for all persons fourteen years and older; and (4) conducting a check of local law enforcement agency records in every jurisdiction where a person who is at least eighteen years old has resided within the past five years unless DCS or a court grants an exception to conducting this check.

IC 31-34-4-2(e) states that, except as provided in IC 31-34-4-2(g), DCS may not make an out-of-home placement if a person residing in the home has: (1) committed an act resulting in a substantiated report of child abuse or neglect; or (2) been convicted of a nonwaivable

offense defined by IC 31-9-2-84.8 or had a juvenile adjudication for an act that would be a nonwaivable offense if committed by an adult. A conviction or juvenile adjudication for the following crimes will always preclude placement: murder, causing suicide, assisting suicide, voluntary manslaughter, reckless homicide, kidnapping, criminal confinement within the past five years, human and sexual trafficking, battery within the past five years, domestic battery, aggravated battery, arson within the past five years, a felony sex offense under IC 35-42-4 (rape, criminal deviate conduct, child molesting, child exploitation, vicarious sexual gratification, child solicitation, child seduction, sexual battery, sexual misconduct with a minor), carjacking (repealed) within the past five years, incest, neglect of a dependent, child selling, a felony involving weapons within the past five years, a felony for operating a vehicle while intoxicated within the past five years, a felony relating to controlled substances within the past five years; an offense relating to material or a performance that is harmful to minors or obscene, or a substantially equivalent felony for which conviction was entered in another jurisdiction.

IC 31-34-4-2(g) allows the court to order or DCS to approve an out-of-home placement if a person residing in the home has committed an act that resulted in a substantiated report of abuse or neglect or has a criminal conviction or juvenile adjudication for specific felonies. The felonies which do not preclude placement are listed at IC 31-34-4-2(g) as follows: (1) battery (IC35-42-2-1); (2) criminal confinement (IC35-42-3-3) as a felony; (3) carjacking (IC 35-42-5-2) (repealed) as a felony; (4) arson (IC35-43-1-1) as a felony; (5) a felony involving a weapon under IC 35-47 or IC 35-47.5; (6) a felony relating to a controlled substance under IC 35-48-4; (7) a felony under IC 9-30-5 (operating a vehicle while intoxicated); or (8) a substantially equivalent felony in another jurisdiction. The conviction or juvenile delinquency adjudication also must not have occurred within the past five years and the offense must not be relevant to the person's present ability to care for a child. The placement must also be in the child's best interest. For the court to order or DCS to approve the out-of-home placement, IC 31-34-4-2(h) requires the court or DCS to consider the following: (1) the length of time since the person committed the offense, delinquent act, or abuse or neglect; (2) the severity of the offense, delinquent act, or abuse or neglect; and (3) evidence of the person's rehabilitation, including cooperation with a treatment plan, if applicable.

In **In Re G.R.**, 863 N.E.2d 323 (Ind. Ct. App. 2007), a CHINS case, the child's Maternal Grandmother and Step-grandfather filed a petition for kinship placement of the child more than three months after Mother's parental rights had been involuntarily terminated. The court denied the petition. The Court opined that the trial court's denial of the petition for placement with Maternal Grandmother and Step-grandfather was proper. Id. at 328. The Court stated:

> The Indiana Code does not define "grandparent" for purposes of the CHINS statutes – Indiana Code Sections 31-34-1-1 through 31-34-25-5 – and it appears that this Court has not yet specifically addressed the issue.
>
> Indiana Code Section 31-34-4-2(a) states: "If a child alleged to be a child in need of services is taken into custody under an order of the court under this chapter, the court shall consider placing the child with a suitable and willing blood or adoptive relative caretaker, including a grandparent, an aunt, an uncle, or an adult sibling, before considering any other out-of-home placement." We conclude that because Mother's parental rights were terminated prior to the filing of the Leonellis' [Maternal Grandmother and Step-grandfather's] petition for placement, Mrs. Leonelli [Maternal Grandmother] was no longer G.R.'s grandparent and the trial court was therefore not

> required to consider her for placement under 31-34-4-2(a) or any other CHINS statute. Mr. Leonelli [Step-grandfather] was not a grandparent to G.R. under the CHINS statutes because he had never been her blood or adoptive relative.

Id. at 327-28.

Subsequent to the issuance of G.R., IC 31-34-4-2 was amended to include the required initial consideration of the child's placement with a de facto custodian or a suitable and willing relative.

III. F. Special Considerations for Detention of Children Taken Into Custody Without a Court Order

IC 31-34-4-4 provides that when a child is taken into custody without a court order, the child may be delivered "to a place designated by the juvenile court." The court may have a general order or policy that specifies where children taken into custody without a court order are to be detained. The policy may vary upon a variety of factors: age of child; type of abuse or neglect; child's special emotional or physical needs. The policy may list placement options in a descending order of preference: relative placement; foster care; youth shelter; hospital; group home; or other residential placement.

IV. DETENTION HEARING

IV. A. Overview

The detention hearing is a probable cause hearing. The Court reviewed the purpose of the detention hearing in **Wardship of Nahrwold v. Dept. of Public Welfare**, 427 N.E.2d 474, 480 (Ind. Ct. App. 1981):

> The hearing was not intended to be adjudicatory in nature. It was a preliminary proceeding for the purpose of determining whether probable cause existed for the detention of the child and the filing of a [CHINS] petition.

IC 31-34-5-5 permits the child or the child's parent, guardian, or custodian to petition the juvenile court for additional detention hearings.

IV. B. Preparation for Detention Hearing

In preparing for the detention hearing, it may be necessary to discover records of the parent's mental health treatment or drug and alcohol treatment rapidly. Counsel may initiate the necessary court proceeding to obtain the records prior to the detention hearing or at the detention hearing. See Chapter 4 at III.G.3. for the expedited procedure to obtain mental health records in preparation of the preliminary inquiry and Chapter 7 at II.D.4. and D.6. for procedures to obtain mental health and drug and alcohol records generally.

IC 31-34-10-2(i) requires that the CHINS petition be filed before the detention hearing is held. IC 31-34-10-2(j) states that, if a detention hearing is held under IC 31-34-5, the initial hearing on the CHINS petition shall be held at the same time as the detention hearing. See Chapter 6 at I. for discussion of the initial hearing.

IV. C. Time Limitation

IC 31-34-5-1 provides that a detention hearing must be held within forty-eight hours (not including Saturdays, Sundays, or legal holidays for state employees) of the time the child is taken into custody, if the child is not earlier released. A detention hearing is required if the child is taken into custody with a court order or without a court order. In **Matter of Jordan**, 616 N.E.2d 388 (Ind. Ct. App. 1993), the Court ruled that the statutory time limitation for the detention hearing (which was seventy-two hours at the time) was constitutionally sound. Id. at 393. The opinion states:

> As in criminal cases, the states should be permitted to apply their CHINS requirements with some flexibility. Some delays are reasonable and inevitable, such as the gathering of paperwork, the review of records, and the drafting of documents.

Id.

IC 31-34-5-1.5 requires the juvenile court to hold a detention hearing not later than 48 hours after an emergency medical services provider takes the child into custody, excluding Saturdays, Sundays, and legal holidays for state employees. IC 31-34-5-1.5(b) states that the CHINS petition for the abandoned child who is under thirty days old shall be filed before the detention hearing is held. See this Chapter at II.F.7. for statutes at IC 31-34-2.5 regarding an emergency medical services provider taking custody of a child who is, or who appears to be, not more than thirty days old without a court order. The child must be voluntarily left with the emergency medical services provider or in a newborn safety device described at IC 31-34-2.5-1(1)(B) or (C) by the parent who does not express an intent to return for the child. IC 31-34-2.5-1.

IV. D. Notice of Hearing

IC 31-34-5-1 provides that notice of the time, place, and purpose of the detention hearing shall be given to the child, and to the child's parent, guardian, or custodian if "the person can be located." The statute does not require that the notice be in writing or that it be served in compliance with the service of summons statute at IC 31-32-9-1. Given the brief period of time involved, it may be sufficient to give notice by telephone. See this Chapter at II.C. and II.F.5. for information about the requirements for giving notice to the child's parent, guardian, or custodian when the child is taken into custody.

IV. D. 1. Others Who Shall Receive Notice

IC 31-34-5-1(a)(3) requires that notice of the time, place, and purpose of the detention hearing be given to "each foster parent or other caretaker with whom the child has been placed for temporary care under IC 31-34-4," in addition to the notice to the child and the child's parent, guardian, or custodian required by IC 31-34-5-1(a)(1) and (2). IC 31-34-5-1(b) states the court shall provide a person who is required to be notified (parent, guardian, custodian, foster parent or other caretaker) an opportunity to be heard and to make recommendations to the court at the detention hearing. IC 31-34-5-1(c), states that a CHINS petition shall be filed before a detention hearing is filed.

IC 31-34-5-1.5(c) states that DCS may notify the emergency medical services provider who took emergency custody of an abandoned child under IC 31-34-2.5 of the detention hearing. The statute also provides that the emergency medical services provider may be heard at the detention hearing. IC 31-34-5-1.5(d) requires DCS to give notice of the detention hearing to a foster parent or other caretaker with whom an abandoned infant has been placed. The court shall provide the foster parent or other caretaker an opportunity to be heard and make recommendations at the detention hearing.

IV. D. 2. Manner of Notice

IC 31-32-1-4 addresses the notice of hearings in child in need of services proceedings. IC 31-32-1-4(a) states that Indiana Trial Rule 5 provides the manner of service for any written notice of a hearing to a party [parent, guardian, custodian, guardian ad litem/court appointed special advocate, and other persons who have party status].

Ind. Trial Rule 5(B) states that service on a party shall be made upon the party's attorney unless service upon the party himself is ordered by the court. Service upon the party or

attorney shall be made via hand delivery; leaving the document at the attorney's office or at a person's dwelling house with some person of suitable age and discretion residing therein; leaving it at some other suitable place, selected by the attorney upon whom service is being made, pursuant to duly promulgated local rule; according to T.R. 5(B)(2) via United States mail; or according to T.R.5(B)(3) by facsimile or e-mail by the Clerk or other parties. The document should also contain a certificate of service and be filed with the court. T.R. 5(B)(2) provides that proof of service by mail may be made by written acknowledgement of service, by affidavit of the person who mailed the papers, or by certificate of an attorney.

IC 31-32-1-4(a)(2) states that notice to non-party individuals may be given by personal delivery or by mail as provided in T.R. 5(b)(2).

DCS is responsible for giving notice with one exception. IC 31-32-1-4(d) states that written notice is not required if verbal notice of the date, time, place and purpose of the hearing is given by the court at an earlier hearing at which the individual to be notified is present. IC 31-32-1-4(e) states that written notice is also not required in the following circumstances: (1) the hearing is scheduled to be held within forty-eight hours (excluding Saturdays, Sundays, and legal holidays for state employees); (2) the individual responsible for giving notice provides verbal notice of the date, time, place, and purpose of the hearing directly to the person required to be notified; and (3) the individual responsible for giving notice verifies by affidavit or testimony at the hearing that verbal notice was given.

Practice Note: Practitioners should be certain that court orders generated at court hearings accurately list the names of all persons, including alleged fathers, foster parents, and relative caretakers, who were in attendance at the hearing to clarify who received verbal notice by the court of the next hearing date, time, place, and purpose. If the court order is unclear concerning who attended, it will be necessary to send written notice to the persons who are not listed in the order as being present.

IV. E. Rights of the Child

IV. E. 1. Presence of Child at Detention Hearing

The child has a right to be present at the detention hearing unless the court excludes the child for good cause shown upon the record pursuant to IC 31-32-6-8.

IV. E. 2. Counsel, Guardian ad Litem or Court Appointed Special Advocate Appointment

A child alleged to be a CHINS has no statutory right to be represented by counsel, guardian ad litem, or court appointed special advocate at the detention hearing. However, IC 31-32-4-2(b) provides that the court may appoint counsel for a child in any CHINS proceeding, and IC 31-32-3-1 provides that the court may appoint a guardian ad litem or court appointed special advocate, or both, for the child at any time.

When a child who is, or who appears to be, not more than thirty days old is voluntarily left in a newborn safety device or with an emergency medical services provider by the parent who does not express an intent to return for the child, IC 31-34-2.5-4(3) requires the attorney for DCS to request the juvenile court to appoint a guardian ad litem or court appointed special advocate for the child. After receiving a written report and recommendation from the guardian ad litem or court appointed special advocate, and holding a hearing, the court may find, under IC 31-34-21-5.6(b)(5), that reasonable efforts to locate the child's parents or reunify the child's family are not necessary. IC 31-34-2.5-3. See Chapter 4 at VI. regarding reasonable efforts under Indiana law.

IV. E. 3. Subpoena, Cross-Examine, and Introduce Evidence

IC 31-32-2-1 provides that the child is entitled to subpoena witnesses and tangible evidence, cross-examine witnesses, and introduce evidence in any CHINS proceeding from which he is not excluded pursuant to IC 31-32-6-8. This right may be limited in the detention hearing. See **Wardship of Nahrwold v. Dept. of Public Welfare**, 427 N.E.2d 474, 480 (Ind. Ct. App. 1981) (right of parties to present evidence and cross-examine may be limited in a probable cause detention hearing).

IV. F. Rights of Parent, Guardian, or Custodian, Including Indian Parent and Indian Custodian

IC 31-34-4-6(a)(2) states that DCS must give parents, guardians, and custodians written information on the "right to be represented by a court appointed attorney…upon request…if the court finds that the parents, guardian or custodian does not have sufficient means for obtaining representation as described in IC 34-10-1."

Regulations established by the federal Bureau of Indian Affairs effective December 12, 2016 state that the court should inquire at emergency removal and emergency placement hearings whether there is "reason to know" that the child is an Indian child. See www.bia.org and 25 CFR § 23.107. If the child meets the federal definition of an Indian Child at 25 U.S.C. § 1903(4), the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1902 et seq., applies to the child's case. The ICWA requires special procedures, and allows the tribe to assert jurisdiction over the child. Even if the tribe declines jurisdiction, special notice procedures, standards of proof, and evidence are required in an Indiana court's CHINS proceeding which involves an Indian child. For example, 25 CFR § 23.113 states that in an emergency removal proceeding, the State court must find that the emergency removal or placement is necessary to prevent "imminent physical damage or harm to the child." See Chapter 2 at III.C. and IV.C., Chapter 3 at II.G.5., Chapter 6 at I.E., and Chapter 8 at II.C. and V.A. for further information on the ICWA in CHINS proceedings.

IV. F. 1. Counsel

The child's parent, guardian, or custodian has the right to appear with counsel at the detention hearing. See **Wardship of Nahrwold v. Dept. of Public Welfare**, 427 N.E.2d 474, 480 (Ind. Ct. App. 1981) (due process was provided as Mother was given the "opportunity to be present with counsel and state her version or explanation of the events in question"). A party can seek a continuance of the detention hearing to obtain counsel.

In **In Re G.P.**, 4 N.E.3d 1158, 1163 (Ind. 2014), the Indiana Supreme Court opined that IC 31-34-4-6 explicitly provides for the statutory right to court appointed counsel for a parent in a CHINS case if the parent requests the appointment of counsel and the trial court finds the parent to be indigent.

See Chapter 2 at IV.C. for further discussion on right to counsel in CHINS cases.

IV. F. 2. Subpoena, Cross-Examine, and Introduce Evidence

IC 31-32-2-3(b) provides that the parent, guardian, or custodian is entitled to cross-examine witnesses, subpoena witnesses and tangible evidence, and present evidence. According to IC 31-32-2-3(a), these rights apply to a parent, guardian, or custodian in proceedings to determine the following: (1) whether a child is a child in need of services; (2) parental participation in the care, treatment and rehabilitation of the child; (3) financial responsibility; (4) a petition for termination of the parent child relationship. The detention hearing does not qualify as any of those types of proceedings.

In **Wardship of Nahrwold v. Dept. of Public Welfare**, 427 N.E.2d 474 (Ind. Ct. App. 1981), the Court of Appeals held that the rights enumerated in IC 31-6-3-2(a) (now at IC 31-32-2-3) did not apply to the probable cause determination in the detention hearing. The Court stated:

> At the dispositional or fact-finding hearing...the issue of whether the subject child is a child in need of services is actually adjudicated and the parent is entitled to those adversarial rights enumerated in IC 31-6-3-2(a)....One such right, of course, is the opportunity to present evidence on one's own behalf. While Nahrwold [Mother] argues that she should have been afforded such an opportunity at her [detention] hearing, we find that neither due process nor the statutory scheme under which the proceeding was held requires that she be permitted to call character witnesses at this stage. It is sufficient that she was given the opportunity to be present with counsel, and state her version or explanation of the events in question....While a parent's right to the custody of his child cannot be terminated by less than a full adjudicatory hearing, the Welfare Department or the court can intervene in the parent-child relationship on the basis of a probable cause determination that the subject child is in need of services.

Id. at 479-480.

The rights advisement for parents under IC 31-34-4-6 requires DCS to advise parents of their right to cross examine and present witnesses in court proceedings on a CHINS petition.

See **In Re V.C.**, 967 N.E.2d 50 (Ind. Ct. App. 2012), in which the Court opined that the juvenile court did not erroneously deny Father's request to subpoena the child's maternal aunt when Father did not provide her address to the court. Id. at 53-54.

IV. G. Hearsay

Hearsay is admissible in the detention hearing within the discretion of the judge. This position is based on the general rule that hearsay is allowable in probable cause determinations. Arguments could be made that unreliable or "double hearsay" should not be admitted into evidence.

IV. H. Required Issues

There are four required issues in the detention hearing: (1) probable cause to believe the child is a CHINS; (2) the existence of one or more of the detention criteria; (3) the "reasonable efforts" of DCS to avoid removal of the child from the home; and (4) consideration of placing the child with an appropriate family member or de facto custodian. Additional issues may be raised in the detention hearing as discussed in this Chapter at V.

IV. H. 1. Probable Cause Finding of CHINS

IC 31-34-5-3 requires the court to make a finding that there is probable cause to believe the child is a child in need of services. The CHINS categories are stated at IC 31-34-1-1 through 8 and IC 31-34-1-10 and 11.

In **Wardship of Nahrwold v. Dept. of Public Welfare**, 427 N.E.2d 474 (Ind. Ct. App. 1981), the Court stated that the detention issue was based on a probable cause standard:

> Accordingly, after a child is taken into custody and detained the court must make two probable cause determinations; one as to whether further detention is proper and the other as to whether the court should authorize the filing of a petition to adjudicate the matter of whether the child is a child in need of services.

Id. at 479.

IV. H. 2. Proof of One or More of the Detention Criteria

The court "shall" release the child to the parent, guardian, or custodian unless DCS proves the existence of at least one of the detention criteria as quoted below from IC 31-34-5-3:

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

Although **State ex rel. v. Marion County Super. Court**, 704 N.E.2d 477 (Ind. 1998), is a mandamus ruling in a delinquency case, the holding impacts CHINS cases because the CHINS detention law contains comparable language requiring findings that the statutory detention criteria were satisfied. In this case, the Indiana Supreme Court ruled that the judge could not place a child on home detention without issuing findings that detention was required within the statutory criteria. Id. at 480. The Court noted that detention requires two probable cause findings: (1) probable cause to believe the child committed a delinquent act and (2) probable cause as to the existence of one of the criteria for detention. Id. The trial court must issue findings on the grounds for detaining a child. Id.

IC 31-34-5-3.5 states that, if the juvenile court releases a child to the child's parent, guardian, or custodian at the detention hearing, the court may impose conditions on the child or the child's parent, guardian, or custodian to ensure the safety of the child's physical or mental health.

IC 31-34-5-1.5 provides that an emergency medical services provider who has taken a child who is, or appears to be, not more than thirty days old into emergency custody pursuant to IC 31-34-2.5 may be heard at the detention hearing. Evidence from the emergency medical services provider could support the need for continued detention (placement in protective custody). See this Chapter at II.F.7. for further discussion of IC 31-34-2.5.

IV. H. 3. Reasonable Efforts to Prevent Removal of Child

If the child was taken into custody without a court order, then "in accordance with federal law" the court shall make written findings and conclusions on the issues stated in IC 31-34-5-2(1) through (5):

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

See this Chapter at IV.I. for information about reasonable efforts required by IC 31-34-5-3 so the child's placement may be eligible for funding under Title IV-E of the federal Social Security Act.

IV. H. 4. Mandatory Consideration of Placement with Relative, or De Facto Custodian

Although the court is required under IC 31-34-4-2 to consider placement of the child with a relative or de facto custodian at the time the judge issues an order to take a child into custody, IC 31-34-6-2 also requires that the court revisit that issue at the detention hearing, or examine that issue for the first time at the detention hearing if the child was taken into custody without a court order. IC 31-34-6-2(a) states that the court or DCS shall consider placing a child alleged to be a child in need of services with a suitable and willing relative or de facto custodian before considering any other placement for the child. IC 31-34-6-2(b) states that the court or DCS shall consider placing the child with a relative related by blood, marriage, or adoption before considering any other placement of the child. IC 31-34-6-2(c) states that before a child is placed with a relative or a de facto custodian, a home evaluation and background checks described in IC 31-34-4-2 are required. See this Chapter at III.E.2. for discussion of IC 31-34-4-2 on temporary placement of a child who is taken into custody before the detention hearing.

IV. I. Written Findings of Fact Required by Indiana Law

The court must make written findings of fact upon the record of probable cause to believe the child is a CHINS and of the existence of one or more of the detention criteria set out at IC 31-34-5-3. When the child is removed from the home without a court order, the court is also required to make written findings and conclusions regarding reasonable efforts to prevent removal of the child from the home, as set out in factors (1) through (5) of IC 31-34-5-2.

IC 31-34-5-3(b) requires the juvenile court to include in any order approving or requiring the child's detention all findings and conclusions required under: (1) applicable provisions of Title IV-E of the federal Social Security Act (42 U.S.C. § 670 et seq.); or (2) any applicable federal regulation, including 45 C.F.R. § 1356.21. IC 31-34-5-3(c) states that inclusion in the juvenile court order of language approved and recommended by the judicial conference of Indiana relating to the child's removal from home or detention constitutes compliance with IC 31-34-5-3(b).

IV. J. Required Findings Under Federal Law to Insure IV-E Funding

Federal regulation 45 CFR § 1356.21(c) of the Adoption and Safe Families Act of 1997 requires that the court make a finding that "continuation in the home is contrary to the welfare of the child" as a prerequisite to IV-E funding for the child. Federal regulation 45 CFR § 1356.21(b) requires the court to make a finding within sixty days of removal of the child from the home that "reasonable efforts have been made to prevent the removal of the child from the home" in order to insure continued IV-E funding for the child.

V. CHINS PETITION AND ADDITIONAL ISSUES THAT MAY BE RAISED AT DETENTION HEARING

V. A. Filing the CHINS Petition

IC 31-34-9-1 provides that the DCS attorney or the prosecuting attorney may request the court to authorize the filing of the CHINS petition. IC 31-34-5-1(c) states that the CHINS petition shall be filed before the detention hearing is held. IC 31-34-5-1.5(b) [statute for the child less than thirty days old who has been left with emergency medical services provider] also requires that the CHINS petition shall be filed before the detention hearing is held. See Chapter 3 at III.C.

V. B. Informal Adjustment

If the evidence presented at the detention hearing indicates that the parent agrees to the conditions or requirements of an informal adjustment necessary to the safety of the child, the court can approve the informal adjustment and order the child to remain at or be placed at home. An informal adjustment is a voluntary agreement between DCS and the parent, guardian, or custodian regarding the care and treatment of the child as outlined at IC 31-34-8. It is an alternative to a formal court proceeding. In **Wardship of Nahrwold v. Dept. of Public Welfare**, 427 N.E.2d 474, 480 (Ind. Ct. App. 1981), the Court approved of proposing an informal adjustment at the detention hearing as a "means by which a referee can achieve the resolution of a child in need of services question without the necessity of authorizing a petition."

See Chapter 4 at IV.A. for a detailed discussion on informal adjustment.

V. C. Visitation and Protective Orders

Two visitation issues can be raised at the detention hearing: (1) reasonable visitation for the parent, guardian, or custodian with the child and (2) limitations on visitation for the protection of the child. See **In Re E.W.**, 26 N.E.3d 1006 (Ind. Ct. App. 2015) (Court found evidence readily supported juvenile court's judgment ceasing visitation and telephone contact between Mother and the child, who had been adjudicated to be a CHINS) and **Lang v. Stark Cty. Office of Fam. Children**, 861 N.E.2d 366 (Ind. Ct. App. 1997) (Court found abusive Father's due process rights were not violated by denial of unsupervised visitation; Father refused to agree to not use corporal punishment and refused to stop speaking to the children about the termination of parental rights case). The juvenile code does not give the parent, guardian, or custodian any specific rights of visitation at the pre-adjudication stage.

Any party to the CHINS proceeding can seek a protective order to limit or prevent a person's contact with the child. The applicable pre-adjudication statute is IC 31-32-13-1 which authorizes the court to issue an order "to control the conduct of any person in relation to the child." A motion for a protective order could be made at the detention hearing pursuant to IC 31-32-13-1. If prior notice is given to the person whose conduct will be regulated by the order or if the person whose behavior will be regulated by the order waives notice, IC 31-32-13-3, then the motion may be litigated at the detention hearing; otherwise, a subsequent hearing may be required. In an emergency, IC 31-32-13-7 states a protective order can be issued without notice or hearing. See this Chapter at VII. for orders to prohibit contact with child. See also **A.P. v. PCOFC**, 734 N.E.2d 1107, 1116 (Ind. Ct. App. 2000), *trans. denied*, (procedural error to fail to state grounds for "no contact" order against Father in CHINS proceeding).

See Chapter 8 at VI. for detailed discussion on visitation and parenting time, including case law regarding the Indiana Parenting Time Guidelines and visitation with incarcerated sex offender parents. See this Chapter at II.B. for legislation authorizing child protective orders for removal of alleged perpetrator from child's residence.

V. D. Parental Participation Orders

The parental participation petition statutes at IC 31-34-16 authorize the court to order the parent, guardian, or custodian to participate in the care, treatment, and rehabilitation of the child. Although the parental participation statutes do not technically take effect until the child is adjudicated CHINS, nothing prevents the court from ordering participation at the detention hearing prior to a CHINS adjudication, if the parent, guardian, or custodian consents. Appropriate participation orders for the parent, guardian, or custodian might include, but are not limited to, the following: mental health evaluation; substance abuse treatment; parent training;

counseling; specified manner of caring for the child; specified medical treatment for the child; protection of the child from contact with the perpetrator. Orders could also be issued under the protective order statute IC 31-32-13-1(1) "to control the conduct of any person in relation to the child."

See Chapter 8 at VII. for a detailed discussions of orders for protective/no contact at IC 31-34-25-1 through IC 31-34-25-5. See Chapter 8 at VIII. for a detailed discussion of parental participation petitions.

V. E. Financial Responsibility

IC 31-40-1-3(c)(1) provides that the juvenile court "shall" issue orders at the detention hearing to the child's parents or the guardian of the child's estate to pay for services provided to the child or the child's parent or guardian, unless the court finds that the parent or guardian is unable to pay or that justice would not be served by ordering payment from the parent or guardian. See this Chapter at V.H. and Chapter 8 at IX. for full discussion on financial responsibility.

V. F. Wardship

Wardship is defined at IC 31-9-2-134.5. The statute states:

> (a) "Wardship", for purposes of the juvenile law, means the responsibility for temporary care and custody of a child by transferring the rights and obligations from the child's parent, guardian, or custodian to the person granted wardship. Except to the extent a right or an obligation is specifically addressed in the court order establishing wardship, the rights and obligations of the person granted wardship include making decisions concerning the:
>
> (1) physical custody of the child;
> (2) care and supervision of the child;
> (3) child's visitation with parents, relatives, or other individuals; and
> (4) medical care and treatment of the child.
>
> (b) "Wardship" does not apply to requirements for consenting to an adoption under IC 31-9-9.

V. G. Initial Hearing Shall Be Held at Same Time as Detention Hearing

The initial hearing statute, IC 31-34-10-2(i), requires the CHINS petition to be filed before the detention hearing. IC 31-34-10-2(j) requires the initial hearing to be held at the same time as the detention hearing. IC 31-34-10-2(k) allows the court to schedule an additional initial hearing. IC 31-34-10-2(l) states that an additional initial hearing shall be held not more than thirty days after the first initial hearing unless the court grants an extension of time for extraordinary circumstances and states the extraordinary circumstances in a written court order.

Practice Note: Extraordinary circumstances could include: (1) time needed to complete service by publication (Ind. Trial Rule 4.13); (2) time needed to serve summons and petition on an incarcerated parent (Ind. Trial Rule 4.3); (3) delayed discovery of a parent's identity or address; (4) time needed to comply with the Indian Child Welfare Act or the Servicemembers Civil Relief Act; (5) time needed to finalize dual status assessment team recommendations pursuant to IC 31-41-2-6. See this Chapter at IX. for information on Dual Status Children. See Chapter 2 at III.C. for information on the ICWA and Chapter 2 at IV.C.1. for information on the Servicemembers Civil Relief Act. IC 31-34-10-2(a) requires the court to hold an initial hearing on each CHINS petition within ten days after the filing of the petition. IC 31-34-10-2(d) provides that the child shall be released to the child's parent, guardian, or custodian if the initial hearing is not scheduled and held "within the specified time as described in this section."

IC 31-34-2.5-4 addresses the time limit for holding an initial hearing for an abandoned child less than thirty days old whose parents have left the child with an emergency medical services provider or in a newborn safety device. IC 31-34-2.5-4 requires the DCS attorney to request the juvenile court to hold an initial hearing not later than the next business day after the child is taken into custody.

V. H. Pre-Adjudication Services, Programs, and Out-of-Home Placement

IC 31-34-4-7 applies to programs and services provided to or on behalf of an alleged child in need of services before the entry of a dispositional decree or approval of a program of informal adjustment. IC 31-34-4-7(b) requires the juvenile court, before ordering or approving a service, program, or out-of-home placement for a child that has not been recommended by DCS, to submit the proposed service, program, or placement to DCS for consideration. DCS shall submit a report to the court stating its approval or disapproval of the court's proposed service, program, or placement within three business days after receipt of the court's proposal. If DCS approves the court's proposal, the court may enter an appropriate order to implement the proposal. IC 31-34-4-7(c). If DCS does not approve the court's proposed service, program, or placement, DCS may recommend an alternative service, program, or placement for the child. IC 31-34-4-7(c). IC 31-34-4-7(d) requires the court to accept DCS's recommendations for any predispositional service, program, or placement unless the court finds that the recommendation is: (1) unreasonable, based on the facts and circumstances of the case; or (2) contrary to the welfare and best interests of the child. If the juvenile court does not accept DCS's recommendations, IC 31-34-4-7(e) allows the court to order DCS to provide a specified service, program or placement. The court's order should specifically state: (1) the reasons why the court is not accepting DCS's recommendations, (2) make the findings that a recommendation is unreasonable or contrary to the child's welfare and best interests, and (3) for an out-of-home placement, include whether the placement is an emergency required to protect the health and welfare of the child. IC 31-34-4-7(d), (e),(f), and (g).

IC 31-34-4-7(f) allows DCS to initiate an expedited appeal of court orders which are contrary to DCS' recommendations. The appeal procedure is described at Indiana Rule of Appellate Procedure 14.1. IC 31-34-4-7(g) states that, if DCS prevails on appeal, DCS shall pay the following costs and expenses incurred before the date of the final decision: (1) any programs or services implemented during the appeal other than the cost of out-of-home placements, and (2) any out-of-home placement if the juvenile court order includes written findings that the placement is an emergency required to protect the health and welfare of the child. If the juvenile court has not made findings that the placement is an emergency, IC 31-34-4-7(g) states that DCS shall file a notice with the judicial center. See Chapter 8 at XIII.C.1. for information on Ind. Appellate Rule 14.1.

IC 34-40-1-2 provides that DCS is not responsible for payment of any costs or expenses for a child placed in an institution, group home, or private secure facility if the entity does not have an executed contract with DCS, unless the services to be provided by the entity are recommended or approved by the DCS director or the director's designee in writing prior to the placement. The statute also states that DCS is not responsible for payment of any costs or expenses for housing or services provided to a child placed by a juvenile court in a home or facility located outside Indiana, if the placement is not recommended or approved by the DCS director or the director's designee.

V. I. Requesting Information to Provide Notice to Relatives

IC 31-34-3-4.5 requires DCS to exercise due diligence, within thirty days, to identify and provide notice of the child's removal to the child's relatives and siblings who have reached the age of eighteen. See this Chapter at II.C.3.

Practice Note: To facilitate compliance with IC 31-34-3-4.5, practitioners could request the judge to place the parent, guardian, or custodian under oath at the detention hearing so that information concerning the identity and whereabouts of relatives and siblings age eighteen and older may be elicited.

VI. POST-DETENTION HEARING ISSUES

VI. A. Request for Additional Detention Hearing

DCS can move the court to order the return of a child who has been released and the child's parent, guardian, or custodian may be ordered to appear with the child at juvenile court for an additional detention hearing. IC 31-34-5-4. The court may, upon its own motion, order an additional detention hearing. The child and the child's parent, guardian, or custodian can move the court for an additional detention hearing. IC 31-34-5-5. Neither IC 31-34-5-4 nor IC 31-34-5-5 set standards for granting an additional detention hearing. The motion should state changed circumstances that have created new reasons or resolved prior reasons for protective detention. The guardian ad litem or court appointed special advocate could also request an additional detention hearing.

VI. B. Case Plan

DCS is required under IC 31-34-15-2 to complete a case plan within sixty days of the child's removal from the home or the date of the dispositional decree, whichever comes first. DCS should "negotiate" the plan with the parent and provide a copy to the parent within ten days of completion. See Chapter 8 at I.F. for further discussion on case plans.

See the following termination cases in which parents unsuccessfully argued on appeal that their due process rights were violated due to lack of timeliness by DCS in providing case plans or DCS's failure to negotiate case plans: **C.A. v. Indiana Dept. of Child Services**, 15 N.E.3d 8593 (Ind. Ct. App. 2014) (DCS's failure to provide case plan to Mother did not result in a procedural irregularity so egregious that she was denied due process of law); **Castro v. Office of Family and Children**, 842 N.E.2d 367, 376 (Ind. Ct. App. 2006) (OFC failed to comply with technical time restrictions, but incarcerated Father eventually received copies of plans), *trans. denied*; **In Re Involuntary Term. Paren. of S.P.H.**, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004) (DFC negotiated case plan with Mother, who was not incarcerated; statute does not require that case plan be signed by parent); **Stewart v. Randolph County OFC**, 804 N.E.2d 1207, 1211 (Ind. Ct. App. 2004) (case manager's conferences with Mother and service providers and reviewing case plans with Mother complied with requirement to negotiate case plans), *trans. denied*; **McBride v. County Off. Of Family and Children**, 798 N.E.2d 185, 196 (Ind. Ct. App. 2003) (Mother admitted OFC had given her case plans and she was aware of what was required for reunification to take place). See also **In Re A.H.**, 751 N.E.2d 690, 702 (Ind. Ct. App. 2001), a CHINS case, in which the Court found that alleged procedural irregularities regarding the case plans did not resulted in violations of Parents' due process rights.

VII. PROTECTIVE ORDERS UNDER IC 31-32-13

VII.A. Overview of Protective Orders

IC 31-32-13-1 through 9 outline the procedure to obtain a broad range of protective and injunctive orders affecting the child, and other persons acting in relation to the child. These orders can be issued prior to the filing of a CHINS petition or an adjudication of CHINS, and throughout the CHINS proceeding. A protective order can be effective for up to a year, with a provision for modification and annual extension, or a protective order can be issued on an emergency basis effective for seventy-two hours without a hearing or notice.

Dispositional protective orders at IC 31-34-25-1 through 5 are a means to obtain "no contact" orders once a child has been adjudicated to be a CHINS. IC 31-34-25 authorizes the attorney for DCS, guardian ad litem, or court appointed special advocate to petition the juvenile court for an order prohibiting a party from having direct or indirect contact with a child who has been adjudicated CHINS or a member of a foster family. The dispositional statute, IC 31-34-20-1(7), authorizes the issuance of protective orders against a party to a CHINS proceeding. See Chapter 8 at VII. on dispositional protective orders.

VII.B. Protective Order Statute

IC 31-32-13-1 provides:

> Upon a juvenile court's motion or upon the motion of a child's parent, guardian, custodian, or guardian ad litem, a probation officer, a caseworker, the prosecuting attorney, the attorney for DCS, or any person providing services to the child or the child's parent, guardian, or custodian, the juvenile court may issue an order:
>
> (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 protective order could be issued for any of the following purposes: to obtain admission to the home, school or any other place that the child may be during a child protection investigation, when such admission has been denied, (IC 31-33-8-7); to obtain mental, physical or medical treatment or examination of a child, (IC 31-32-12-1); to prevent anyone from leaving the court's jurisdiction with the child, (IC 31-32-13-1(3)); to restrain the school from expelling a child. See this Chapter at VII.C. for discussion on enjoining school from expelling child.

A protective order has also been used to restrain a person from visiting or being in contact with the child. See **Hallberg v. Hendricks Cty. Office**, 662 N.E.2d 639, 643-44 (Ind. Ct. App. 1996) (juvenile court granted protective order restraining Father from contacting children, despite divorce court order from another county allowing Father to visit).

Arguably, IC 31-32-13-1(1) is broad enough to authorize an examination of the child's parent, guardian, or custodian. An examination order to determine the mental or emotional stability of the parent, guardian, or custodian for purposes of caring for the child could qualify as a protective order to control the conduct of a person in relation to the child. This may be contrary to the seemingly limited authority of the court to order an examination of the parent, guardian or custodian under the dispositional statute (IC 31-34-18-5), which states that an examination may be ordered only "if the person gives consent."

VII.C. Jurisdiction of Protective Orders

IC 31-30-1-1(7) gives the juvenile court exclusive jurisdiction in "[p]roceedings to issue a protective order under IC 31-32-13." This grant of jurisdiction enables the court to issue protective orders prior to the initiation of a formal CHINS proceeding.

Juvenile court jurisdiction to issue protective orders is not independent of a CHINS case or some other grant of juvenile jurisdiction. In **Davis v. Winston**, 535 N.E.2d 1240 (Ind. Ct. App. 1989), the child had lived with Aunt in Wisconsin for three years from the date of his birth. Mother took the child from Aunt for a visit in Indiana, and when Mother refused to return the child, Aunt filed a motion for injunction under IC 31-6-7-14 (recodified at IC 31-32-13-1) in the Lake County Juvenile Division. After a hearing, the Juvenile Division issued a protective order requiring Mother to return the child to Aunt and ordering visitation for the child with Mother. The Court reversed the trial court's order for lack of subject matter jurisdiction. Id. at 1241. The Court noted that no CHINS, termination proceeding, guardianship, adoption, habeas corpus, paternity, delinquency or divorce action had been initiated and that no endangerment or emergency medical situation was indicated. Id. The Court reiterated the rule that the juvenile court does not acquire jurisdiction over a case in the absence of jurisdictional prerequisites. Id. The Court concluded by ruling that the "juvenile court has no authority to issue a protective order deciding custody unless jurisdiction is acquired in an underlying cause"; therefore, the "juvenile court lacked jurisdiction to take custody from the natural mother and award custody to a non-parent." Id.

Case law has repeatedly affirmed the ability of the court to enjoin the school from expelling a student who is a CHINS or delinquent. In **Matter of P.J.**, 575 N.E.2d 22 (Ind. Ct. App. 1991), the Court affirmed a juvenile court order under IC 31-6-7-14 (recodified at IC 31-32-13-1) prohibiting a school from expelling a fifteen-year-old girl who had been adjudicated a CHINS, against the school's argument that the juvenile court lacked jurisdiction to affect the expulsion and that school law under Title 20 provides the exclusive means for appealing a school expulsion. Id. at 25. In the delinquency case, **West Clark Community Schools v. H.L.K.**, 690 N.E.2d 238 (Ind. 1997), the Indiana Supreme Court ruled that the child's guardian could not petition the juvenile court to block a school expulsion, but the child's probation officer (whose actions were not constrained by the Indiana Disciplinary Code) could obtain an injunction from the juvenile court under IC 31-32-13-1 to prohibit the school from expelling the child. Id. at 242. The Court cautioned that the juvenile court should be restrained in the use of this power and act only when it is in the best interests of the child, with consideration for the interests of the school, and when no other reasonable alternatives are available. Id.

VII.D. Standing to Seek Protective Orders

IC 31-32-13-1 provides that any of the following persons may seek a protective order: juvenile court upon its own motion; child's parent, guardian, custodian, or guardian ad litem; a probation officer; a caseworker; the prosecuting attorney; the attorney for DCS; and any person providing services to the child or the child's parent, guardian, or custodian.

There is no specific provision for the court appointed special advocate to seek a protective order, but the court appointed special advocate qualifies as a person providing services to the child.

VII.E. Procedure for Obtaining Protective Order

This section deals with the procedures required by IC 31-32-13 to obtain protective orders. Procedures for emergency protective orders are outlined in this Chapter at VII.F., and

procedures for protective orders to obtain an examination or treatment of a child are outlined in this Chapter at VIII.

VII.E. 1. Motion for Protective Order

IC 31-32-13-1 does not specify a format for the protective order motion. Based on the language of IC 31-32-13-1, it is recommended that the motion "specifically describe in reasonable detail the acts or persons to be regulated under the order" and include a factual statement (by affidavit if possible) supporting a finding of "good cause" for the granting of the order. The statute does not require that the motion be in writing, although a written motion is recommended. Because a written motion is not specifically required, nothing prohibits the parties from orally moving the court to issue a protective order during a CHINS hearing. The court could proceed directly to a hearing on the oral motion, if the person whose conduct would be regulated by the proposed order was present in the courtroom and the court was assured that the person received adequate notice. See IC 31-32-13-2 (court can consider a motion for protective order at any proceeding or hearing authorized under the juvenile code).

VII.E. 2. Notice

IC 31-32-13-3 requires that the juvenile court give notice of the date and time of the hearing to "any person whose conduct will be regulated by an order issued under section 1 of this chapter." Although this section seems to narrowly require notice only to the person "whose conduct will be regulated" by the protective order, it is recommended that notice be given to all parties.

VII.E. 3. Hearing, Evidence, Standard of Proof, and Order

A hearing must be held on the motion for protective order. See IC 31-32-13-2 (court must set motion for hearing or consider issue at other juvenile hearing). The moving party must present evidence of "good cause" for the order. If the court is asserting the motion on its own, the court should state on the record the evidence supporting the order. The court record should reflect findings and reasons for issuance of the protective order. See **A.P. v. PCOFC**, 734 N.E.2d 1107, 1116-17 (Ind. Ct. App. 2000), *trans. denied* (juvenile court erred in failing to state findings on the record supporting the no contact order between Father and the child).

IC 31-32-13-4 provides that the court "may also consider any other evidence presented in other proceedings or hearings authorized under this article [which would presumably include CHINS, termination, delinquency, or paternity actions] concerning the child as the basis for the issuance of the order." Under this broad "other evidence" provision, copies of orders from related Indiana cases, such as custody, parenting time, or protective order cases, could be admitted into evidence. Due process should require the judge to advise the parties if the judge intends to consider evidence from non-CHINS hearings, so that argument can be made regarding that evidence. Copies of court records are admissible under Ind. Evidence Rule 803(8). Courts may take judicial notice of records of another Indiana court pursuant to Ind. Evidence Rule 201(b). See the following cases regarding judicial notice: **In Re D.K.**, 968 N.E.2d 792 (Ind. Ct. App. 2012) (if trial court takes judicial notice of records of another court proceeding, there must be effort made to include copies of those records in the proceeding currently before the trial court); **In Re Paternity of P.R**., 940 N.E.2d 346 (Ind. Ct. App. 2010) (trial court properly took judicial notice of protective order Mother had obtained against her former boyfriend); **Christie v. State**, 939 N.E.2d 691 (Ind. Ct. App. 2011) (trial court properly took judicial notice of defendant's new conviction and therefore had sufficient evidence that defendant had violated conditions of his community correction placement). See Chapter 11 at VI.E. for other case law on Evid. R. 201. IC 31-32-13-5 provides that the

protective order issued by the court must specifically describe in reasonable detail the acts or person to be regulated.

VII.E. 4. Filing Copy of Protective Order

Upon the issuance of a protective order, IC 31-32-13-9 requires that the petitioner file a confidential form with the clerk, and the clerk of the court must comply with IC 5-2-9. The Indiana protective order registry, an Internet based electronic depository for protective orders, was established at IC 5-2-9-5.5.

VII.E. 5. Extension and Modification of Orders

IC 31-32-13-6 provides that a protective order remains in effect for one year. The juvenile court may extend the order for additional one year periods after an annual review of the order, or the court may modify or dissolve an order at any time after a showing that the original circumstances concerning the order have changed or new circumstances have developed.

VII.E. 6. Violations of Protective Orders

IC 35-46-1-15.1 provides that a person who violates a protective order issued under IC 31-34-20 (CHINS dispositional protective order statute) or IC 31-32-13 (CHINS protective order statute) commits a Class A misdemeanor invasion of privacy. IC 35-46-1-15.1 provides that the offense is a level 6 felony if the person has a prior unrelated conviction for the offense.

VII.F. Procedure for Obtaining 72 Hour Emergency Protective Order

IC 31-32-13-7 provides that the juvenile court judge or any of the persons designated in IC 31-32-13-1 has standing to request an emergency order. The order can be issued without notice to the persons who will be affected by the order and without a hearing. The judge can issue an order upon review of the court record and a determination that an emergency exists. Other movants must present sworn testimony or an affidavit of an emergency. The order is effective for seventy-two hours (excluding weekends and legal holidays), but IC 31-32-13-8 provides that the time period can be extended on "good cause shown upon the record for the extension."

Presumably, the petitioner who obtains an emergency order will immediately file a motion for a non-emergency protective order, seeking an early court date, but asking for extension of the emergency order if the permanent protective order hearing cannot be held within the seventy-two hour time limit.

Emergency protective orders should be filed with the clerk and follow the requirements of IC 31-32-13-9.

In **Hallberg v. Hendricks Cty. Office**, 662 N.E.2d 639 (Ind. Ct. App. 1996), the Hendricks Circuit Court conducted an emergency hearing (without notice to Father) to determine if a protective order should be issued under the CHINS statute, IC 31-6-7-14 (recodified at IC 31-32-13-1), based upon the allegations that Father, the noncustodial parent, had molested the girls during visitation. The court found probable cause to believe the children were CHINS, issued a protective order prohibiting Father from having contact with the children, and sent notice to Father of the order and a final hearing date. The Court ruled it was not error for the Hendricks Circuit Court to issue a protective order without notice to Father, relying on the authority of the juvenile court under IC 31-6-7-14(a)(1) (recodified at IC 31-32-13-1(1)) to issue an order "to control the conduct of any person in relation to the child." Id. at 644.

VIII. TREATMENT AND EXAMINATION ORDERS FOR CHILDREN

IC 31-32-12-1 provides for mental and physical examination and treatment of a child at three different points in time: (1) before the filing of a CHINS petition is authorized; (2) after a CHINS petition has been authorized; and (3) after a child has been adjudicated CHINS. IC 31-32-12-2 provides that the juvenile court may order confinement for up to fourteen days, excluding Saturdays, Sundays, and legal holidays, to complete the mental or physical examination of a child. IC 31-32-12-1 provides that the procedures outlined in the protective order statute, IC 31-32-13-1, are a prerequisite to an examination or treatment order. Specifically, IC 31-32-12-1 states: "If the procedures under IC 31-32-13-1 are followed, the juvenile court may authorize mental or physical examinations or treatment."

VIII.A. Pre-Petition Emergency Examination or Treatment

IC 31-33-8-7 indicates that IC 31-32-12-1 is an appropriate mechanism for obtaining a court ordered examination of the child during the DCS assessment. IC 31-33-8-7(c)(2) states that if admission to the home, school, or anyplace that the child may be or permission of the parent, guardian, custodian, or other person responsible for the child for the physical, psychological, or psychiatric examination of the child under IC 31-33-8(b) cannot be obtained, the juvenile court, upon good cause shown, shall follow the procedures under IC 31-32-12.

An examination or treatment of a child may be ordered on an emergency basis prior to the court authorizing the filing of a CHINS petition. IC 31-32-12-1 states:

> If the procedures under IC 31-32-13 [protective order statutes] are followed, the juvenile court may authorize mental or physical examinations, including drug and alcohol screens, or treatment under the following circumstances:
>
> (1) If the court has not authorized the filing of a petition but a physician certifies that an emergency exists, the court:
>
> (A) may order medical or physical examination or treatment of the child; and
>
> (B) may order the child detained in a health care facility while the emergency exists.
>
> (2) If the court has not authorized the filing of a petition but a physician certifies that continued medical care is necessary to protect the child after the emergency has passed, the court:
>
> (A) may order medical services for a reasonable length of time; and
>
> (B) may order the child detained while medical services are provided.

Compliance with the procedures for the protective order statute at IC 31-32-13 are required to obtain a treatment or examination order. The relevant protective order provision for obtaining an emergency order is IC 31-32-13-7. Combining the requirements of IC 31-32-13-7 with the requirements of the treatment and examination statute at IC 31-32-12-1, the procedures outlined in the following two paragraphs are necessary to obtain a pre-petition emergency examination or treatment order.

The moving party should file a protective order motion for examination or treatment of the child, (see IC 31-32-13-1(2); IC 31-32-12-1(1) and (2)), and a physician's certification that there is an emergency. If done in the proper form, this certification should suffice as sworn testimony or an affidavit that an emergency exists as required by IC 31-32-13-7. In **Matter of Lemond**, 413 N.E.2d 228 (Ind. 1980), the Indiana Supreme Court stated that the juvenile court has jurisdiction to issue emergency protective orders for the examination or treatment of the child, but it must comply with the requirements of IC 31-6-7-12(a), recodified at IC 31-32-12-1. Id. at 249. The Court found that "no physician ever examined Michelle [the child] relative to this case, and no

physician ever certified that an emergency existed which warranted an examination or detention." Id. The Court stated that there must be "probative, substantial, and specific evidence of a clear emergency." Id.

Notice and hearing are not required for the emergency order. IC 31-32-13-7. If the examination or treatment exceeds seventy-two hours (the period of the emergency under IC 31-32-13-8), then the court must give notice and hold a hearing to continue the protective order. An additional physician's certification is required if inpatient medical treatment is needed for the protection of the child, even after the emergency has passed. IC 31-32-12-1(2). See also **In Re F.S.**, 53 N.E.3d 582 (Ind. Ct. App. 2016), in which the Court reversed the trial court's order requiring Mother to allow the Crawford County local DCS office to interview her two oldest children as part of a child abuse and neglect assessment. Id. at 585. The Court noted that IC 31-32-13-4 allows the trial court to issue orders to control the conduct of a person in relation to a child after a hearing "if the court finds good cause to issue the order is shown upon the record." Id. at 589. The Court observed that good cause is an admittedly imprecise standard, stating, "[w]hile an exact definition of good cause is somewhat elusive, it is clear that a mere allegation of need and a summary statement alleging that the information cannot be obtained from another source will not be sufficient to surmount a 'good cause' hurdle." Id. at 597.

VIII.B. Examination and Treatment After the CHINS Petition Has Been Authorized

After the filing of the CHINS petition has been authorized, any of the persons listed in IC 31-32-13-1 can move the court for a physical or mental examination of the child to provide information for the dispositional hearing. IC 31-32-12-1(3) states:

> If the court has authorized the filing of a petition alleging that a child is a delinquent child or a child in need of services, the court may order examination of the child to provide information for the dispositional hearing. The court may also order medical examinations and treatment of the child under any circumstances otherwise permitted by this section.

VIII.C. Post-Adjudication Examination or Treatment

IC 31-32-12-1(4) provides that after a child has been adjudicated a CHINS the court may use the dispositional options available at IC 31-34-20 to provide for the treatment or examination of a child. The dispositional statute at IC 31-34-20-1(2) provides that the court may order the child to receive outpatient treatment at a social service agency or a psychological, a psychiatric, a medical, or an educational facility, or from an individual practitioner. IC 31-34-20-1 authorizes removal of the child from home and allows DCS to place the child in another home, shelter care facility, child caring institution, group home, or secure private facility where treatment could be received.

IX. DUAL STATUS CHILD

IX. A. Definition and Screening Tool

"Dual status child" is defined at IC 31-41-1-2 and means any child who: (1) is alleged to be or presently adjudicated to be CHINS and is alleged to be or presently adjudicated to be a delinquent child; (2) is presently named in a CHINS informal adjustment and adjudicated to be a delinquent child; (3) is presently named in a delinquency informal adjustment and is adjudicated to be a CHINS; (4) was previously adjudicated to be a CHINS or participated in a CHINS informal adjustment that concluded before the current delinquency petition; (5) was previously adjudicated to be a delinquent child and participated in a program of delinquency informal adjustment that concluded prior to a CHINS proceeding; or (6) is 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.

"Dual status screening tool" is defined at IC 31-41-1-3 as a factual review of a child's status and history conducted either by the child's case manager or by the child's probation officer. The review is used to determine whether the child meets the criteria for being designated a dual status child.

IX. B. Dual Status Assessment and Team

"Dual status assessment" is defined at IC 31-41-1-4 and refers to a review by the dual status assessment team of the child's status, best interests, need for services, and the level of needs, strengths, and risks of the child. Pursuant to IC 31-41-2-1, 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.

"Dual status assessment team" is defined at IC 31-41-1-5 and means "a committee assembled and convened by a juvenile court to recommend the proper legal course for a dual status child." IC 31-41-2-2 states who is included in the team. Required team members include the DCS case manager or, if there is no assigned case manager, a representative of DCS appointed by the DCS local office director; the child's probation officer or, if the child does not have an assigned probation officer, a probation officer appointed by the court; and a meeting facilitator, who may be one of the required team members or a person appointed by the court. IC 31-34-41-2-2(b) also permits others to be included in the team, including the child (if the court deems the child is age appropriate); the child's attorney; the child's parent, guardian, or custodian; the parent's attorney; a prosecutor; an attorney for DCS; a court appointed special advocate or a guardian ad litem; a representative from the department of correction; a school representative; an educator; a therapist; the child's foster parent; and a service provider appointed by the team or by the juvenile court.

IC 31-41-2-3 requires the team to meet within ten days of the date ordered by the court, in a meeting convened by the facilitator as defined in IC 31-41-2-2(a)(5). The team must consider any allegations of abuse or neglect, as well as any allegations that the child is delinquent.

Under IC 31-41-2-5, the dual status assessment team is required to consider the best interests and well-being of the child, including the child's mental health and diagnosis; the child's school records, including attendance and achievement level; the child's statements; statements from the child's parent, guardian, or custodian; the impact of the child's behavior on any victim; community safety; the child's needs, strengths, and risks; the need for a parent participation plan; the efficiency and availability of services and community providers; whether appropriate supervision of the child can be achieved by combining a delinquency adjudication or informal adjustment with a CHINS petition; whether appropriate supervision of the child can be achieved by dismissal of a delinquency adjudication in deference to a CHINS adjudication; the child's placement needs; restorative justice; whether a CHINS petition or informal adjustment should be filed or dismissed; whether a delinquency petition or informal adjustment should be filed or dismissed; the availability of coordinated services regardless of whether the child is adjudicated to be a CHINS or a delinquent child; whether the team recommends the exercise of dual adjudication and the lead agency to supervise the child; and any other information considered appropriate by the team. Under IC 31-41-2-4, all statements communicated in a dual status assessment team are inadmissible as evidence against the child in any judicial proceedings, and are not discoverable in any litigation.

IC 31-41-2-6 requires the team to designate a member to write and submit the team's report to the court, and to provide recommendations, including whether the court should proceed with an additional initial hearing on the CHINS case and dismiss the pending delinquency petition or informal adjustment at the conclusion of the CHINS adjudication; whether the court should proceed with an additional hearing on the delinquency petition and dismiss the pending CHINS petition or informal adjustment upon conclusion of the delinquency adjudication; whether the court should proceed with an initial hearing and adjudication on the CHINS petition and the delinquency petition; what agency should be the lead agency to supervise the child; and other relevant matters, including any services to be included in the dispositional decree. Recommendations must be consistent with the funding provisions of IC 31-37, if the probation department is chosen as the lead agency.

IX. C. Determination of Lead Agency

IC 31-41-3-1 explains the process by which the juvenile court determines whether DCS or the probation department will be the lead agency for a dual status child. The final determination rests solely with the court and requires that the court consider the child's social and family situation; the child's experiences with DCS; the child's prior delinquency adjudications; recommendations of the dual status assessment team; and the needs, strengths, and risks of the child. The court may require DCS and the probation department to work together for supervision of the child. The court may order any services that would be available to a CHINS or to a delinquent child.

IX. D. Impact on CHINS Procedures and Hearings

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)).