CHAPTER 9
REVIEW AND PERMANENCY HEARINGS

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I. PERIODIC CASE REVIEW

I. A. Overview

The purpose of the periodic case review is to insure that the child is receiving needed care and treatment and to move the case forward to parent-child reunification or to an alternative court approved permanent plan. The review process can be used to modify existing dispositional orders and to document the progress or failure of the parents' rehabilitation efforts. Both written reports and testimony are needed to develop a good record. The review hearing is also an opportunity to seek discharge of the parties pursuant to IC 31-34-21-11 and termination of DCS wardship when the dispositional goals of the decree have been achieved and it is safe to end court involvement in the case.

In **In Re G.P.**, 4 N.E.3d 1158 (Ind. 2014), the Indiana Supreme Court held that Mother was denied due process of law by the juvenile court's failure to see that court appointed counsel actually appeared to represent Mother at a CHINS review hearing after Mother requested court appointed counsel and was found by the court to be indigent. Id. at 1166. The Court said that, although Mother had waived her right to counsel at the CHINS initial hearing, she was not permanently bound by that decision. Id. at 1164. The Court emphasized that IC 31-34-4-6 does not necessarily compel the trial court to inquire, in each and every case, as to whether the parent wants appointed counsel; the language of IC 31-34-4-6 provides that the parent must affirmatively request this statutory right. Id. at 1163-64 n.7. The Court vacated the subsequent termination of Mother's parental rights due to this denial of due process. Id. at 1169.

Practice Note: Practitioners should be aware of the G.P. opinion in considering the appointment of counsel for indigent parents in case review and permanency hearings. See Chapter 2 at IV.C. for further discussion.

I. B. Time Requirements

IC 31-34-21-2 provides that the court shall conduct a periodic case review hearing in each CHINS case. The review hearing must be conducted at least every six months from the date the child was removed from the home or the date of the dispositional decree, whichever occurred first. The hearing may be held more often than every six months if so ordered by the court. IC 31-34-21-2(d) provides that "[t]he court may perform a periodic case review any time after a progress report is filed as described in section 1 of this chapter." IC 31-34-21-1(b) requires the court to order DCS to file a report on the progress made in implementing the dispositional decree every three months after the decree is entered. The notice requirements of IC 31-34-21-4 discussed in this Chapter at I.C. apply to any periodic case review hearing.

I. C. Notice of the Review Hearing, Manner of Notice, and Right to be Heard

IC 31-34-21-4 requires DCS to give notice of a periodic case review hearing, including a case review that is a permanency hearing under IC 31-34-21-7, at least seven days before the hearing. Notice must be given to the following persons: (1) the child's parent, guardian, or custodian; (2) an attorney who has entered an appearance for the child's parent, guardian, or custodian; (3) a prospective adoptive parent named in a petition for adoption of the child if: (a) each required and properly executed consent to the child's adoption has been filed with the local [DCS] office, (b) the adoption court has determined that the parent's, guardian's, or custodian's consent to adoption is not required, or (c) a petition to terminate the parent-child relationship between the child and any parent who has not consented to adoption has been filed and is pending; (4) the

child's foster parent or long term foster parent [as defined by IC 31-34-21-4.6]; (5) any other person whom DCS knows is caring for the child and who is not required to be licensed; (6) any other suitable relative or person whom DCS knows has had a significant or caretaking relationship to the child; (7) each party to the CHINS proceeding (which would include the child and the guardian ad litem/court appointed special advocate). IC 31-34-21-4(f) states that notice need not be given to the parent of an abandoned child under the age of thirty days who has left the child with an emergency medical services provider or in a newborn safety device as allowed by IC 31-34-2.5-1without disclosing the parent's name.

Practice Note: Practitioners should note that sending a notice of the case review or permanency hearing is different from providing service of process on an involuntary termination of the parent-child relationship case. See Chapter 11 at III.E. for discussion of service of process on parents when a termination petition is filed.

IC 31-34-21-4(c) states that DCS shall give the notices as provided by IC 31-32-1-4. IC 31-32-1-4(a)(1) states that any written notice of a hearing shall be given to a party in a manner provided by Indiana Trial Rule 5. IC 31-32-1-4(a)(2) states that notice to non-party individuals may be given by either personal delivery or by mail as provided by T.R. 5(B). See Chapter 5 at IV.D.2. for further discussion of IC 31-32-1-4.

IC 31-34-21-4(b) states that, at the case review hearing, DCS shall present proof that the required persons were served with notice of the hearing. IC 31-34-21-4(d) states that the court shall provide to the persons who are required to receive notice the opportunity to be heard and to make recommendations to the court at a periodic case review, including a permanency hearing. IC 31-34-21-4(d) states that the right to be heard and make recommendations includes: (1) the right to submit a written statement, which, if served on all parties and persons required to be notified, may be made a part of the court record; (2) the right to present oral testimony; and (3) the right to cross-examine any witnesses.

I. D. Standing of Foster Parents to Seek Party Status

IC 31-34-21-4.5(a) states that a foster parent, a long term foster parent (defined at IC 31-34-21-4.6) or "a person who has been a foster parent" may petition to intervene as a party "to a proceeding described in this chapter." A reasonable interpretation of this statute would allow the foster parent to petition to intervene in a periodic case review hearing or a permanency hearing. A foster parent who has been the subject of a substantiated report of child abuse or neglect or convicted of a nonwaivable offense may not petition the court to intervene under this section. The nonwaivable offenses, which are listed at IC 31-9-2-84.8, are murder, causing suicide, assisting suicide, voluntary manslaughter, reckless homicide, battery within the past five years, domestic battery, aggravated battery, kidnapping, criminal confinement within the past five years, human and sexual trafficking, a felony sex offense under IC 35-42-4, carjacking (repealed) within the past five years, arson within the past five years, incest, neglect of a dependent, child selling, an offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3, a felony involving a weapon under IC 35-47 or IC 35-47.5 within the past five years, a felony relating to controlled substances under IC 35-48-4 within the past five years, a felony under IC 9-30-5 [operating a vehicle while intoxicated] within the past five years, or a substantially equivalent felony in another state.

Civil case law provides guidance on seeking intervention. In **Allstate Ins Co. v. Keltner**, 842 N.E.2d 879 (Ind. Ct. App. 2006), a tort case in which an automobile liability insurer sought intervention, the Court declined to hold that the trial court was required to hold a hearing on the insurer's petition to intervene pursuant to Indiana Trial Rule 24A (intervention of right) in the

absence of a request by one of the parties to do so. Id. at 882. The Court declined to follow Lawyers Title Ins. v. C&S Lathing, Etc., 403 N.E.2d 1156, 1160 (Ind. Ct. App 1980), which might be read as requiring trial courts to schedule, sua sponte, a hearing on every Trial Rule 24 petition to intervene. Allstate at 882. See also **In Re Paternity of E.M.**, 654 N.E.2d 890, 892 (Ind. Ct. App. 1995) (Indiana's three part test for intervention as a matter of right requires the intervener to demonstrate that: (1) he has an interest in the subject of the action; (2) disposition in the action may as a practical matter impede the protection of that interest; and (3) representation of that interest by the existing parties is inadequate).

I. E. Reports and Case Plans

IC 31-34-21-3 and IC 31-34-22-1 provide that DCS shall prepare a progress report for the case review hearing. IC 31-34-21-1(b) requires the juvenile court to order DCS to file a report on the progress made in implementing the decree every three months after the dispositional decree is entered. No hearing is required under the statute, but IC 31-34-21-2(d) states that the court may perform a periodic case review hearing any time after a progress report is filed. A party could request a hearing after receipt of the three month report or the court could set a hearing on its own motion. IC 31-34-21-1(c) states that if, after reviewing the report, the juvenile court seeks to consider modification of the dispositional decree, the court shall proceed under IC 31-34-23 [modification of dispositional decree]. If the court proceeds under IC 31-34-23, IC 31-34-18 and IC 31-34-19 apply to the preparation and use of modification reports. Therefore, the following persons, in addition to DCS, could file modification reports: (1) the child; (2) the child's parent, guardian, or custodian; (3) the child's guardian ad litem/court appointed special advocate.

IC 31-34-22-1(a) provides that the report shall address the "progress made in implementing the dispositional decree, including the progress made in rehabilitating the child, preventing placement out-of-home, or reuniting the family." The report should contain the documentation of family services offered or provided to the child and the parents as required by IC 31-34-21-5(b)(2). IC 31-34-22-1(b) states that before preparing the report, DCS shall consult with the child's foster parent about the child's progress while in the foster parent's care. IC 31-34-22-1(c) states that DCS shall prepare a modification report, if modification of the dispositional order is recommended.

No Indiana statute requires DCS to prepare an updated case plan for the review hearing, but updating case plans is the recommended practice. IC 31-34-21-5(b)(13) requires the court to consider at the review hearing the "extent to which the child's parent, guardian, or custodian has participated or has been given the opportunity to participate in case planning." Case law on the significance of the case plan indicates that updated case plans should be negotiated with and provided to the parties on a regular basis. See **A.P. v. PCOFC**, 734 N.E.2d 1107, 1113-1114 (Ind. Ct. App. 2000), *trans. denied* (original and updated case plans should be provided to parents so they have notice of what is required of them). Case law on termination of the parent–child relationship indicates that updated case plans had been prepared by DCS in several cases. See **Castro v. Office of Family and Children**, 842 N.E.2d 367, 376 (Ind. Ct. App. 2006), *trans. denied*; **In Re Involuntary Term. Paren. of S.P.H.**, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004), **Stewart v. Randolph County OFC**, 804 N.E.2d 1207, 1210-11 (Ind. Ct. App. 2004), *trans. denied*.

See Chapter 8 at I.F. for further discussion on case plans.

I. F. Hearsay in Report and Testimony

IC 31-34-22-3(a) provides that the review report may be "admitted into evidence to the extent that the report contains evidence of probative value even if the evidence would otherwise be

excluded." This statute has been interpreted to allow the admission into evidence of review reports containing hearsay, and the admission of testimony on the hearsay contained in review reports. See **In Re C.B.**, 865 N.E.2d 1068, 1072 (Ind. Ct. App. 2007), *trans. denied*.

I. G. Access to Reports and Opportunity to Controvert Reports

IC 31-34-22-2(a) provides that the report prepared by DCS for the periodic case review hearing shall be made available to the child, the child's foster parent, the child's parent, guardian, custodian, and the child's guardian ad litem/court appointed special advocate "within a reasonable time after the report's presentation to the court or before the hearing." IC 31-34-22-2(b) provides that, if the court determines on the record that the report contains information that should not be released to the child, the foster parent, or the child's parent, guardian or custodian, the full report shall be provided to the attorney for the child, the attorney for the child's parent, guardian, or custodian, and the guardian ad litem/court appointed special advocate. IC 31-34-22-2(c) states that the court may provide a factual summary of the report to the child, foster parent, parent, guardian, or custodian. IC 31-34-22-3(c) provides that the child, the child's parent, guardian, or custodian, any person representing the interests of the state, and any other person who is entitled to receive a report under IC 31-34-22-2 shall be given a fair opportunity to controvert any part of the report admitted into evidence.

I. H. Considerations, Issues, Findings for the Review Hearing

I. H. 1. Considerations

IC 31-34-21-5(b) states that the court shall consider the following at the review hearing;

(1) Whether DCS, the child, or the child's parent, guardian, or custodian has complied with the child's case plan.
(2) Written documentation containing descriptions of:
  (A) the family services that have been offered or provided to the child or the child's parent, guardian, or custodian;
  (B) the dates during which the family services were offered or provided; and
  (C) the outcome arising from offering or providing the family services.
(3) The extent of the efforts made by DCS to offer and provide family services.
(4) The extent to which the parent, guardian, or custodian has enhanced the ability to fulfill parental obligations.
(5) The extent to which the parent, guardian, or custodian has visited the child, including the reasons for infrequent visitation.
(6) The extent to which the parent, guardian, or custodian has cooperated with DCS.
(7) The child's recovery from any injuries suffered before removal.
(8) Whether any additional services are required for the child or the child's parent, guardian, or custodian and, if so, the nature of those services.
(9) The extent to which the child has been rehabilitated.
(10) If the child is placed out-of-home, whether the child is in the least restrictive, most family-like setting, and whether the child is placed close to the home of the child's parent, guardian, or custodian.
(11) The extent to which the causes for the child's out-of-home placement or supervision have been alleviated.
(12) Whether current placement or supervision by DCS should be continued.
(13) The extent to which the child's parent, guardian, or custodian has participated or has been given the opportunity to participate in case planning, periodic case reviews, dispositional reviews, placement of the child, and visitation.

> (14) Whether DCS has made reasonable efforts to reunify or preserve a child's family unless reasonable efforts are not required under IC 31-34-21-5.6 [the reasonable efforts exception provision].
> (15) Whether it is an appropriate time to prepare or implement a plan for the child under IC 31-34-21-7.5 [the requirements and options for a permanency plan].

IC 31-34-21-0.2 states that at the child's first case review hearing, DCS is required to advise the parent, guardian or custodian in writing that a termination petition must be filed if the child has been removed from the parent and has been under DCS supervision for at least fifteen of the most recent twenty-two months. If the parent, guardian, or custodian fails to appear at the hearing, DCS shall make reasonable efforts to send notice of the advisement to the last known address of the parent, guardian, or custodian. IC 31-34-19-6.1 clarifies that the legal preference for DCS recommendations and the accompanying procedures also apply to modification of dispositional decrees. See Chapter 8 at III.C. for discussion of these procedures.

I. H. 2. Required Findings

IC 31-34-21-5(b) requires that the court make written findings at the review hearing. The findings should be based upon the considerations listed at IC 31-34-21-5(b). IC 31-34-21-5(a) provides the court should determine:

> (1) whether the child's case plan, services, and placement meet the special needs and best interests of the child;
> (2) whether DCS has made reasonable efforts to provide family services; and
> (3) a projected date for the child's return home, the child's adoptive placement, the child's emancipation, or the appointment of a legal guardian for the child under IC 31-24-21-7.5(c)(1)(E).

See also **A.P. v. PCOFC**, 734 N.E. 2d 1107, 1116 n.12 (Ind. Ct. App. 2000), *trans. denied* (review hearing statute requires court to make "written findings" in connection with the six month review hearing order).

IC 31-34-21-10(a) and (b) require the juvenile court to review the court's findings under IC 31-34-20-5 [determination and reporting of the child's legal settlement for purpose of school attendance] at the hearing for a child who is placed in a state licensed private or public health care facility, child care facility, or foster home, and determine whether circumstances have changed the legal settlement. IC 31-34-21-10(c) and (e) state that, if the child's legal settlement has changed, the court shall issue an order that modifies the court's findings concerning legal settlement of the child and comply with the reporting requirements of IC 20-26-11-9 [statute on notice of student's legal settlement]. The reporting requirements at IC 20-26-11-9(b) are: (1) not later than ten days after DCS or a probation department places or changes the placement of a student, DCS or a probation department that placed the student shall notify the school corporation where the student has legal settlement and the school corporation where the student will attend school of the placement or change of placement; (2) before September 1 of each year, DCS or a probation department that places a student in a home or facility shall notify the school corporation where a student has legal settlement and the school corporation in which a student will attend school if a student's placement will continue for the ensuing school year. The notifications must be made by DCS if the child is a CHINS. IC 31-34-21-10(d) requires the court to make school legal settlement findings at the case review hearing if those findings have not previously been made.

In **McBride v. County Off. Of Family & Children**, 798 N.E.2d 185 (Ind. Ct. App. 2003), a termination of parental rights case, Mother argued that the termination judgment should be reversed due to alleged procedural deficiencies in the CHINS proceedings, including the findings entered during the periodic case review hearings required by IC 31-34-21-5. Mother complained about the adequacy of the case review findings, but the Court found that her argument lacked merit. Id. at 197. The Court noted that the trial court's orders regarding the periodic case review hearings incorporated extensive reports and recommendations filed by the OFC, and the orders contained substantially all of the determinations required under IC 31-34-21-5(a). Id. at 196. The Court opined that a close review of IC 3-34-21-5(b), which lists fifteen factors for the court's consideration, reveals that the court is not required to enter a specific finding regarding each of the fifteen factors listed. Id. at 196-97. The Court said that the statute unambiguously states the "[t]he determination of the court under subsection (a) must be based on findings written *after consideration of*" the listed factors. (Emphasis in opinion.) Id. at 197. The Court found Mother's complaint that no evidence was presented at the periodic case review hearings regarding each of the fifteen factors was untimely. Id. at 198. The Court also found that, although there was an inconsistency in the court's second periodic review order, Mother had not demonstrated how this isolated discrepancy had resulted in a denial of her due process rights. Id. at 197 n.10.

I. H. 3. Modification Issues and Required Findings When Child Removed

Modification may arise at the review hearing in two ways: (1) a party files a motion for modification of the dispositional order prior to the review hearing and the court combines the modification hearing with the review hearing; or (2) the evidence presented at the review hearing indicates the need for modification of the dispositional decree and a party, or the court on its own motion, requests a modification at the review hearing. Modification of a dispositional order requires compliance with the modification statutes at IC 31-34-23. Case law additionally indicates that significant modification orders, particularly those involving removal of the child from the home, should be supported by findings. See **A.P. v. PCOFC**, 734 N.E.2d 1107, 1116 (Ind. Ct. App. 2000), *trans. denied* (Court opined that, in order to give effect to CHINS statutory scheme, written findings and conclusions on record concerning court's reasons for modifying dispositional decree are required, particularly when modification results in out-of-home placement for child).

The modification report statute, IC 31-34-23-4, states that, if a hearing is required, IC 31-34-18 and IC 31-34-19 apply to the preparation and use of a modification report. Since IC 31-34-19-10(b) allows the court to incorporate a finding or conclusion from a predispositional report as a written finding or conclusion in a dispositional decree, it follows that IC 31-34-23-4 allows the court to adopt a finding or conclusion from a modification report in a dispositional modification decree.

If a child is removed from home at a periodic case review hearing that is a modification of disposition, IC 31-34-5-3(b) states the court shall include all findings and conclusions required under Title IV-E of the federal Social Security Act or other federal law. The requirement stated in IC 31-34-5-3(b) is necessary for the cost of the child's placement to be reimbursed by federal funds. IC 31-34-5-3(c) provides that inclusion of language recommended by the Indiana judicial conference in the court order for the child's removal constitutes compliance with IC 31-34-5-3(b). If the periodic case review includes a modification of disposition, the required consideration of and strong legal preference for DCS recommendations outlined at IC 31-19-6.1 also applies.

See Chapter 8 at III.C. for discussion of the procedures for consideration of DCS recommendations established by IC 31-34-19-6.1. See Chapter 8 at X.V. for information on dispositional modification hearings.

I. H. 4. Parental Participation and Financial Responsibility

See Chapter 8 at VIII. and IX. for extensive discussions of parental participation and financial responsibilities. Court orders can be entered on these issues at periodic case review hearings and permanency hearings.

I. H. 5. Discharge of Parties and Ending Wardship

The parties and court may consider the appropriateness of closing the CHINS case at the case review hearing. IC 31-34-21-11 provides that the court shall discharge the child and the child's parent, guardian, or custodian when it finds that the objectives of the dispositional decree have been met. See **Matter of C.B.**, 616 N.E.2d 763, 768 n.2 (Ind. Ct. App. 1993) (discharge statute requires clear finding that the objectives of dispositional decree have been met); and **Lake County FCS v. Charlton**, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994) (wardship shall be terminated when child no longer fits within the legal definition of CHINS neglect).

In **In Re J.B.**, 61 N.E. 308 (Ind. Ct. App. 2016) *on rehearing*, the Court reached the same result as its original opinion but for different reasons. Id. at 312. The Court looked to the policy and purpose of the CHINS statutory scheme, noting that children should not be removed from their parents without giving the parents a reasonable opportunity to participate in services. Id. at 313. The Court found that, in the instant case, the goal of a CHINS case was not furthered. Id. The Court opined that DCS had used the coercive power of the State to insert itself into a family relationship by obtaining a CHINS finding, had the CHINS court modify sole custody to Father, and closed the CHINS case thirty days later, without entering a dispositional decree and without giving Mother a meaningful opportunity to participate in services. Id. The Court reversed that part of the CHINS court's order which discharged the parties and terminated the CHINS case. Id. at 313-14. The Court remanded the case for further proceedings consistent with the CHINS statutes, including any appropriate services for Mother. Id. at 314.

In **In Re J.B.**, 55 N.E.3d 903 (Ind. Ct. App. 2016), Parents shared joint legal and physical custody of their two children pursuant to a paternity order from Elkhart Superior Court 6 (Superior Court). After the order from Superior Court was entered, a CHINS petition was filed for the children in Elkhart Circuit Court (Circuit Court), which had juvenile jurisdiction. The CHINS petition was filed because Mother and the children were involved in a car accident while Mother was using methamphetamine, methamphetamine and needles were found in her purse, and the children were not properly restrained. At the initial hearing, Parents admitted that the children were CHINS, Circuit Court found the children to be CHINS, and a dispositional hearing was scheduled to be held in thirty days. Before the dispositional hearing took place, DCS filed a Motion for Change of Custody in the Circuit Court CHINS case. DCS alleged that there had been a substantial change in one or more of the factors which Circuit Court could consider for purposes of modifying the custody order entered by Superior Court. DCS asked Circuit Court to give Father full custody of the children and to close the CHINS case. Circuit Court held a hearing, following which it entered an order giving Father sole legal and physical custody of the children and giving Mother supervised parenting time with the children. Circuit Court then discharged the children and parents and terminated the CHINS case, one month after the CHINS adjudication. Mother appealed, challenging Circuit Court's jurisdiction to modify custody.

The Court observed that Father did not file an independent action for custody in Superior Court (the paternity court), but DCS sought to modify Superior Court's custody order in Circuit Court, which had jurisdiction over the CHINS case. Citing IC 31-34-2-1(a)(1), the Court opined that a juvenile court's jurisdiction over an adjudicated CHINS and the child's parent ends when the court discharges the child and parent. Id. at 906. The Court concluded that, because it appeared that Circuit Court would not have discharged the parties and terminated the CHINS case unless it thought that Father was awarded full custody, the Court reversed and remanded the case for further proceedings. Id.

In **M.S. v. Indiana Dept. of Child Services**, 999 N.E.2d 1036 (Ind. Ct. App. 2013), the Court found that the evidence supported the trial court's decision to place the child with Father in the state of Washington at the initial/detention hearing and then dismiss the CHINS proceeding shortly after the dispositional hearing when an agency in Washington submitted its positive home study report on Father's home to DCS. Id. at 1041. In a concurring opinion, Judge Brown cited IC 31-34-21-11, which provides that when the juvenile court finds that the objectives of the dispositional decree have been met, the court shall discharge the child and his parent, guardian, or custodian. Id. at 1042. Judge Brown noted that the statute clearly contemplates the achievement of some of the requirements of the dispositional decree. In this case the dispositional decree ordered Father to submit to random drug/alcohol screens, see that the child was enrolled in and attending school, and engage the child in home-based counseling. Id. Judge Brown observed that, in the short span of nineteen days between the entry of the decree and the filing of the motion to dismiss by DCS, there was no opportunity to have the case review hearing and no showing of Father's compliance with any of the terms of that decree. Id. Noting Mother's testimony that Father had been an absent parent and was a "stranger" to the child, Judge Brown believed that the child would have been better served if the court had denied DCS's motion to dismiss and ordered that DCS continue with services for a period of time to monitor Father's parenting and compliance with the terms of the decree. Id. at 1042-43.

In **In Re Infant Girl W.**, 845 N.E.2d 229 (Ind. Ct. App. 2006), *trans. denied sub nom*. In Re Adoption of M.W., 851 N.E.2d 961 (Ind. 2006) (Dickson, J. dissenting), a consolidated CHINS and adoption case, the petition for adoption filed by foster parents (Adoptive Parents) was granted in Marion Superior Court, Probate Division, without the consent of Morgan County OFC which had wardship of the child. The Morgan Juvenile Court held a hearing after the adoption was granted, and Adoptive Parents moved to dismiss the CHINS case. Adoptive Parents argued that the child had been adopted and was no longer a CHINS and there was no new or amended CHINS petition alleging that the child was endangered in the care of Adoptive Parents. The Morgan Juvenile Court denied Adoptive Parents' motion to dismiss the CHINS case. The Morgan Juvenile Court ordered that the child should remain a CHINS under the placement and care of OFC, the child should be placed with a different pre-adoptive family, and the child's Birth Mother should provide the court with information on relatives willing to care for the child. The Court concluded the Morgan Juvenile Court erred in treating the Marion Probate Court's adoption decree as void and erred in refusing to dismiss the Morgan County CHINS petition. Id. at 246-47. The Court opined that the dispositional goal of adoption had been met and the child no longer met the statutory standard for a CHINS because there was universal agreement that the child was being well cared for by Adoptive Parents. Id. at 245. The Court quoted IC 31-34-21-11, stating that Morgan Juvenile Court was statutorily required to dismiss the CHINS case. Id. But see **In Re Adoption of C.B.M.**, 992 N.E.2d 687 (Ind. 2013), in which the Indiana Supreme Court strongly suggested that DCS's best practice would be to leave the underlying CHINS case open until any related termination appeal is completed. Id. at 696. See also IC 31-19-11-6,

which states that a court may not grant a child's adoption if the parent-child relationship has been terminated, and the time for filing an appeal has not yet elapsed, an appeal is pending, or an appellate court is considering a request for transfer or certiorari.

I. H. 6. Suspending Reunification Efforts

IC 31-34-21-5.6(c) states that during or at any time after the first periodic case review of a CHINS proceeding, the court may make a finding suspending reasonable reunification efforts pending disposition of the parent's, guardian's, or custodian's criminal charge for an offense listed at IC 31-34-21-5.6(b)(3). This statute applies if the court finds that a parent, guardian, or custodian has been charged with and is awaiting trial for the offense. The offenses listed at IC 31-34-21-5.6(b)(3) are: battery as a Class A, B, C, or Level 2, 3, 4, or 5 felony; aggravated battery; criminal recklessness as a Class C or Level 5 felony; neglect of a dependent as a Class B or Level 1 or 3 felony; felony promotion of human trafficking, promotion of human trafficking of a minor, sexual trafficking of a minor, or human trafficking of a minor or a comparable offense under federal law or in another state, territory, or country *when* the victim of the offense is the alleged offender's biological or adopted child or stepchild.

I. H. 7. Request for Permanency Hearing

IC 31-34-21-5(b)(15) requires the court to consider at the periodic case review hearing whether it is an appropriate time to prepare or implement a permanency plan for the child under IC 31-34-21-7.5. This statute reflects the position that DCS and the juvenile court should have an indication of the ultimate permanency plan for the child (i.e., whether reunification is still a feasible option or an alternative plan is needed) at the time of the six month periodic case review hearing. If evidence is clear at the review hearing that reunification efforts are not likely to be successful, DCS can petition for an expedited permanency hearing to seek an alternative permanency plan. See IC 31-34-21-7(a)(3) (permanency hearing can be set at any time by the court).

II. PERMANENCY HEARING

In **In Re G.P.**, 4 N.E.3d 1158, 1163 (Ind. 2014), the Indiana Supreme Court held that IC 31-34-4-6 gives the right to court appointed counsel to parents in CHINS cases who request the appointment of counsel and who are found by the trial court to be indigent. The Court also held that a parent who elects to waive counsel is not permanently bound by that decision. Id. at 1164. Practitioners should be aware of the need to appoint counsel to represent an indigent parent at a permanency hearing if the parent requests the appointment of counsel.

II. A. When is Permanency Hearing Required?

IC 31-34-21-7(a) provides that a permanency hearing is required in any of the following situations: (1) within thirty days of a court finding entered in accordance with IC 31-34-21-5.6 that reasonable efforts toward reunification are not required; (2) every twelve months after the child was removed from his parent, guardian, or custodian or the date of the original dispositional decree, whichever occurred first; or (3) more often if ordered by the juvenile court. Although there is a tendency to think of the permanency hearing as taking place at twelve months after the child's removal or the entry of the dispositional decree, IC 31-34-21-7(a)(3) clearly provides that the permanency hearing may be held at an earlier date upon the order of the court. The parties can move the court for a permanency hearing prior to the twelve month period if parents have not made reunification efforts. If the efforts necessary for reunification have been completed, parents or another party can move for a discharge of the child and closing of the CHINS case under IC 31-34-21-11.

In **A.P. v. PCOFC**, 734 N.E. 2d 1107 (Ind. Ct. App. 2000), *trans. denied*, the Court noted that the trial court erred in failing to hold a twelve month permanency hearing as required by IC 31-34-21-7. The Court stated:

> The record contains no indication that such a [permanency] hearing was ever held in this matter. The primary purpose of such a hearing may be to reduce uncertainty and anxiety surrounding a young child's life, from both the child's and parents' perspectives by requiring production of a "permanent plan" for the child. Furthermore, a court during a permanency hearing "shall...examine procedural safeguards used by the county office of family and children to protect parental rights." IC 31-34-21-7(b)(6) (previously 31-6-4-19(c)). No such judicial examination occurred here. Had it taken place, the trial court, for example, might have discovered and taken steps to remedy the PCOFC's failure to provide Appellants with copies of A.P.'s case plans and modifications thereto.

Id. at 1115.

The Court found Mother's argument that her due process rights had been violated because the court held the permanency hearing fourteen months, rather than twelve months, after the children's removal lacked merit in **McBride v. County Off. Of Family & Children**, 798 N.E.2d 185, 197-98 (Ind. Ct. App. 2003), a termination of parental rights case. The Court noted that within the relevant twelve-month period, OFC had filed its Twelve-Month Periodic Review and Permanency Report, and the trial court had granted OFC's motion for permission to file its termination petition. Id. at 198. The Court was not persuaded by Mother's argument that it was error for the court to conduct a review hearing and the permanency hearing simultaneously, noting that Mother provided no authority to support her contention. Id. at 197.

II. B. Seven Days Notice of Permanency Hearings to Parents, Foster Parents and Others, and Right to be Heard

IC 31-34-21-4 requires DCS to give notice of a permanency hearing at least seven days before the hearing to the following persons: (1) the child's parent, guardian, or custodian; (2) an attorney who has entered an appearance for the child's parent, guardian, or custodian; (3) a prospective adoptive parent named in a petition for adoption of the child if: (a) each required consent to the child's adoption has been filed with the local [DCS] office, (b) the adoption court has determined that the parent's, guardian's, or custodian's consent to adoption is not required, or (c) a petition to terminate the parent-child-relationship between the child and any parent who has not consented to adoption has been filed and is pending; (4) the child's foster parent or long term foster parent; (5) any other person caring for the child who is not required to be licensed; (6) any other suitable relative or person whom DCS knows has had a significant or caretaking relationship to the child; (7) each party to the CHINS proceeding (which would include the child and the guardian ad litem/court appointed special advocate). IC 31-34-21-7(c)(1) states that DCS shall provide notice of the permanency hearing to a child who is at least sixteen years of age if the proposed permanency plan provides for another planned permanent living arrangement. IC 31-34-21-7(c)(2) states that the court shall also provide the child an opportunity to be heard and to make recommendations in accordance with IC 31-34-21-4(d).

See this Chapter at I.C. for more discussion on the manner of notice and specific rights included in the right to be heard at permanency hearings and periodic case review hearings.

II. C. Progress Report for Permanency Hearing and Opportunity to Controvert Report

IC 31-34-21-8 states that DCS shall prepare a progress report for the permanency hearing. The report should contain the recommended permanency plan for the child. IC 31-34-22-1(b) states

that DCS shall consult the child's foster parent about the child's progress before preparing the report. The report shall comply with the procedures for reports in review hearings as set out at IC 31-34-22. IC 31-34-22-3(a) states that any report may be admitted into evidence even if it contains evidence that otherwise would be inadmissible, such as hearsay.

IC 31-34-22-2(a) provides that the DCS permanency hearing report shall be made available to: (1) the child; (2) the child's foster parent; (3) the child's parent, guardian, or custodian; (4) the child's guardian ad litem/court appointed special advocate; and (5) any other person who is entitled to receive notice of the periodic case review or permanency hearing. IC 31-34-22-2(a) also states that the report shall be made available within a reasonable time after the report is presented to the court or before the hearing. IC 31-34-22-2(b) states that the court is not required to make the report available if the court determines on the record that the report contains information which should not be released to any person entitled to receive a report. The court shall provide a copy of the permanency report to each attorney and guardian ad litem/court appointed special advocate representing the child and to each attorney representing the parent, guardian, or custodian. IC 31-34-22-2(c) states that the court may provide a factual summary of the report to the child, or the child's foster parent, parent, guardian, or custodian. IC 31-34-22-3(c) provides that the child, the child's parent, guardian, or custodian, the person representing the interests of the state, and any other person who is entitled to receive a report under IC 31-34-22-2 shall be given a fair opportunity to controvert any part of the report admitted into evidence.

II. D. Issues for the Permanency Hearing and Required Findings

IC 31-34-21-7(b) states that the court shall do the following at the permanency hearing: (1) make the determination and findings required for the six month periodic case review at IC 31-34-21-5; (2) consider whether juvenile jurisdiction should continue and whether the dispositional decree should be modified; (3) consider the recommendations of persons required to be given notice of the permanency hearing under IC 31-34-21-4; (4) consult with the child in person or through an interview or written statement or report from the child's guardian ad litem/court appointed special advocate, case manager, or a person with whom the child is living and who has primary responsibility for the child's care and supervision; (5) consider and approve a permanency plan for the child that complies with IC 31-34-21-7.5; (6) determine whether an existing permanency plan must be modified; and (7) examine procedural safeguards used by DCS to protect parental rights.

IC 31-34-21-7(c) requires the court to provide specific opportunities and safeguards for a child who is at least sixteen years old and whose proposed permanency plan is another planned permanent living arrangement. See this Chapter at II.D.3. and II.D.4. for more information.

In **Carter v. KCOFC**, 761 N.E.2d 431 (Ind. Ct. App. 2001), Mother, whose parental rights had been terminated, unsuccessfully argued that it was fundamentally unfair for the trial judge who had previously approved a permanency plan recommending termination to preside over the termination hearing. The Court found that approval of the permanency plan did not indicate that the trial judge was prejudiced against Mother's parental abilities to the extent that he would necessarily terminate Mother's parental rights at a subsequent hearing. Id. at 436. The Court found the record revealed that, at the termination hearing, the trial judge took his responsibility of deciding to terminate Mother's rights very seriously. Id. The Court noted that the judge: (1) appointed a guardian ad litem; (2) conducted a two-day hearing at which testimony of numerous witnesses was heard and considered; (3) took the decision under advisement for two months; and (4) issued findings of fact and conclusions thereon which demonstrated that he had carefully balanced the interests of Mother and the child. Id. The Court opined that, in the absence

of any evidence to the contrary, the trial judge's impartiality and objectivity must be presumed, and Mother had failed to meet her burden of proving otherwise. Id.

II. D. 1. Rebuttable Presumption to End Jurisdiction

IC 31-34-21-7(d) states that there is a rebuttable presumption that juvenile court jurisdiction over a Child in Need of Services proceeding continues for not longer than twelve months after the child was removed from the home or the date of the dispositional decree, whichever occurred first. At the permanency hearing, DCS may rebut the presumption and show that jurisdiction should continue by "proving that the objectives of the dispositional decree have not been accomplished, that a continuation of the decree with or without any modifications is necessary, and that it is in the child's best interests for the court to maintain its jurisdiction over the child." If DCS does not sustain its burden for continued jurisdiction, the court shall direct DCS to establish a permanency plan within thirty days or discharge the child and the parents, guardian or custodian. The statute also provides that the court may retain jurisdiction to the extent necessary to effectuate a permanency plan. Unless DCS believes that the child is ready to be safely discharged to a parent at the permanency hearing, DCS will seek to overcome the rebuttable presumption in order to maintain jurisdiction over the child regardless of whether the proposed permanency plan is reunification or some alternative plan.

II. D. 2. Permanency Plan

IC 31-9-2-22.1(a) defines "concurrent planning", for purposes of IC 31-34 [CHINS proceedings] and IC 31-35 [termination of the parent-child relationship proceedings] as the establishment of a case plan with concurrent permanency plan goals, including reunification or placement with the child's noncustodial parent; adoptive placement; placement with a permanent relative custodian; appointment of a legal guardian; or another planned, permanent living arrangement if the child is at least sixteen years old. IC 31-9-2-22.1(b) states that "concurrent planning', for purposes of IC 31-34, requires the identification of two permanency plan goals and simultaneous reasonable efforts toward both goals with knowledge of all participants. IC 31-34-21-7(b)(5) makes it clear that a permanency plan containing one of the permanency options listed in IC 31-34-21-7.5 must be presented and approved by the court at the permanency hearing. Although a subsequent permanency hearing might be required if the court rejects the permanency option proposed by DCS at the permanency hearing, DCS is certainly obligated to propose a plan for every permanency hearing. See this Chapter at III. for a more detailed discussion on permanency plan and permanency options.

If the child is placed in a child caring institution, group home, or private secure facility, IC 31-25-2-23(a) states that DCS shall establish a permanency roundtable which shall review the child's permanency plan and make recommendations to the court. The permanency roundtable is defined at IC 31-9-2-88.7 and means "an intervention designed to facilitate the permanency planning process for youth placed out-of-home by identifying solutions for permanency obstacles."

IC 31-25-2-23(b) states that DCS shall establish a residential placement committee (as defined in IC 31-9-2-109.5). IC 31-9-2-109.5 defines "residential placement committee", for purposes of IC 31-25-2-23, as "a committee that reviews the placement of youth in a child caring institution, a private secure facility, or a group home licensed by the department [DCS] to ensure that the placement is in the least restrictive, most family like, and most appropriate setting available and close to the parent's home, consistent with the best interests and special needs of the child." IC 31-25-2-23(b)(1) states that before a case plan is approved by DCS or the court, the residential placement committee shall review a child's

placement in a child caring institution, group home, or private secure facility under IC 31-34-15-2 [CHINS case plan]. IC 31-25-2-23(b)(2) states that in a delinquency case, before a case plan is approved by DCS or the court, the residential placement committee shall review the child's placement in a child caring institution, group home, or private secure facility if the placement is contrary to DCS's recommendations. For both of the circumstances listed in IC 31-25-2-23(b), the residential placement committee shall make recommendations to the court.

II. D. 3. Special Consideration for Children Sixteen and Older

IC 31-34-21-7(c) states that, if the child is at least sixteen (16) years old and the proposed permanency plan is another planned, permanent living arrangement (APPLA), the court has a number of obligations at each permanency hearing. The court must require DCS to: (1) provide the child with notice of the permanency hearing; (2) document or provide testimony regarding the intensive and ongoing efforts made by DCS to return the child home or to secure a placement for the child with a fit and willing relative, legal guardian, or adoptive parent, as well as any efforts to locate biological or adoptive family members for the child through the use of technology such as social media; and (3) document or provide testimony regarding what steps DCS has taken to ensure that the child's placement is exercising the "reasonable and prudent parent standard", the child's opportunities to engage in "age or developmentally appropriate" activities during the placement. The court must also consult with the child about the opportunities to participate in the activities. The "reasonable and prudent parent standard", defined at IC 31-9-2-101.5, means "the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child." "Age or developmentally appropriate", defined at IC 31-9-2-8.5, means "(1) activities or items that are generally: (A) accepted as suitable for children of the same chronological age or level of maturity; or (B) determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and (2) in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child." IC 31-34-21-7(c)(2) states that the court must also give the child an opportunity to be heard and make recommendations at the hearing in accordance with IC 31-34-21-4(d). IC 31-34-21-7(c)(4) states that the court must ask the child about his or her desired permanency outcome and document the child's response. Pursuant to IC 31-34-21-7(c)(5), the court must make a judicial determination why, as of the date of the hearing, a plan of APPLA is in the child's best interests and provide compelling reasons why it continues to not be in the child's best interests to return home, be placed for adoption or with a legal guardian, or be placed with a fit and willing relative. IC 31-34-21-7.5(c)(E) provides that a child who is less than sixteen years of age may not have the plan of another planned, permanent living arrangement (APPLA) as the permanency plan.

II. D. 4. Opportunity to Be Heard and Make Recommendations

IC 31-34-21-4(b) states that, at the permanency hearing, DCS shall present proof that the required persons were served with notice of the hearing. IC 31-34-21-4(d) states that the court shall provide to the persons who are required to receive notice the opportunity to be heard and to make recommendations to the court at a permanency hearing. IC 31-34-21-4(d) states that the right to be heard and make recommendations includes: (1) the right to submit a written statement, which, if served on all parties and persons required to be notified, may be made a part of the court record; (2) the right to present oral testimony; and (3) the right to cross examine any witnesses. IC 31-34-22-3(c) provides that the child, the child's parent, guardian, or custodian, the person representing the state, and any other person who is entitled

to receive a report under IC 31-34-22-2 shall be given a fair opportunity to controvert any part of the permanency report that is admitted into evidence.

II. D. 5. Admissibility of Hearsay and Standard of Proof

IC 31-34-21-8 requires that a written progress report be prepared for the permanency hearing consistent with the requirements and procedures for review hearing reports at IC 31-34-22. IC 31-34-22-3(a) provides that a report may admitted into evidence even if it contains evidence that would otherwise be inadmissible (such as hearsay), if the evidence is probative. IC 31-34-12-3 provides that, except for involuntary termination proceedings, juvenile court findings must be based on a preponderance of the evidence standard. Therefore, the burden of proof required for a permanency hearing order is the preponderance of the evidence standard.

II. D. 6. Request to End Reunification Services

If DCS is offering an alternative to reunification as the permanency plan, it may file a motion pursuant to IC 31-34-21-5.8 to end reunification efforts. IC 31-34-21-5.8 applies only if the court has approved a permanency plan for the child under IC 31-34-21-7(b)(5). IC 31-34-21-5.8 (b) does not require DCS to discontinue all services to the parents when an alternative plan is selected. DCS could concurrently deliver services to the parents while also making necessary arrangements for a potential adoption or guardianship placement if such services are not inconsistent with the permanency plan. IC 31-34-21-5.8(c) states that when the child's approved permanency plan is placement for adoption or another planned, permanent living arrangement, periodic progress reports, case reviews, and postdispositional hearings to determine whether reasonable efforts have been made for reunification and whether the child is placed in close proximity to the parent's home are not required.

Practice Note: IC 31-34-21-5.8(c) does not eliminate the required hearings, but reunification and placement close proximity to the parents' home do not need to be addressed at the hearings. See this Chapter at I.H.6. on suspending reunification efforts at a case review hearing or thereafter pending disposition of a parent's, guardian's, or custodian's criminal charge for specific felonies listed at IC 31-34-21-5.6(b). See this Chapter at IV.B.1. for further discussion on ending reunification efforts when inconsistent with permanency plan.

In **In Re A.D.W.**, 907 N.E.2d 533 (Ind. Ct. App. 2008), a termination case, the trial court approved a permanency plan for Mother's children which included termination of Mother's parental rights, and DCS then filed termination petitions. Both parties requested and received a number of continuances, and Mother was incarcerated for eight months. After her release, when the approved permanency plan of termination of her parental rights had been in effect for a year, Mother requested CHINS services and visits with the children. The trial court denied Mother's requests, and Mother's parental rights were terminated. In her appeal of the court's termination order, Mother argued that the trial court's denial of her motion for parenting services was an abuse of discretion. The Court looked to IC 31-34-21-5.8, which states that DCS is not required to provide reunification services if it is contrary to the permanency plan adopted by the trial court. Id. at 538. The Court held that the trial court did not abuse its discretion in denying Mother's motion for services because her request was made after the date when the trial court had changed the permanency plan from reunification to termination. Id. See also **In Re Tr. S.**, 63 N.E.3d 1065 (Ind. Ct. App. 2016) discussed in this Chapter at II.D.8.

II. D. 7. Required Findings and Reasonable Efforts Findings

IC 31-34-21-7(b) requires that, at the permanency hearing, the court must make the determinations and written findings required for the periodic case review hearing, which are found at IC 31-34-21-5. The court must consider whether DCS has made reasonable efforts to reunify or preserve the child's family, unless the court has made a finding pursuant to IC 31-34-21-5.6 that reasonable efforts are not required. Federal law also requires that the court make a reasonable efforts finding at the permanency hearing. Federal regulation 45 C.F.R.1356.21(b)(2)(i) requires that the State obtain a "judicial determination that it [the State] has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care." Either reasonable efforts toward reunification or reasonable efforts to finalize another permanency plan will qualify as "reasonable efforts to finalize a permanency plan."

In **McBride v. County Off. Of Family & Children**, 798 N.E.2d 185 (Ind. Ct. App. 2003), a termination of parental rights case, the Court found Mother's contention that alleged CHINS procedural deficiencies denied her due process lacked merit. Id. at 198. Mother complained that the findings at the combined periodic case review and permanency hearing were inadequate. The Court opined that the findings required under the permanency hearing statute are the same as those required under IC 31-34-21-5, the periodic review hearing statute. Id. at 197. The Court had already determined that the findings under that statute were adequate. Id. at 196.

II. D. 8. Appeal of Permanency Hearing Order

In **In Re Tr. S.**, 63 N.E.3d 1065 (Ind. Ct. App. 2016), Mother appealed the trial court's order on a review and permanency hearing which: (1) continued the court's previous suspension of Mother's visitation with her two children; (2) found that DCS was no longer required to provide reunification services to Mother except for random drug screens;
(3) changed the children's permanency plan from reunification to termination of the parent-child relationship; and (4) found that DCS should initiate proceedings for termination of the parent-child relationship. The Court dismissed Mother's appeal because the review and permanency hearing order was not a final appealable judgment, and Mother had not followed the proper procedure to seek a discretionary interlocutory appeal. Id. at 1069. The Court noted it has repeatedly held that such orders are not final appealable orders, citing In Re D.W., 52 N.E.3d 839, 841 (Ind. Ct. App. 2016), *trans. denied* and In Re K.F., 797 N.E.2d 310, 315 (Ind. Ct. App. 2003). Tr.S. at 1067-68. The Court observed that Mother was appealing the denial of reunification services, which she correctly contended was an issue that would not be available for review in a subsequent appeal from the involuntary termination of her parental rights. Id. at 1068. The Court said that Mother could challenge the trial court's decision to terminate reunification services by filing an interlocutory appeal. Id. The Court explained that Indiana Appellate Rule 14(B)(1)(c)(iii) contemplates the very situation Mother described; namely, "that the remedy by appeal is otherwise inadequate." Id. The Court concluded it lacked subject matter jurisdiction over Mother's appeal. Id. at 1069.

In **In Re R.H.**, 55 N.E.3d 304 (Ind. Ct. App. 2016), the Court declined to dismiss Mother's appeal of the juvenile court's order finding that reasonable efforts to reunify her with her child were not required. Id. at 309. Mother claimed that DCS had unlawfully discriminated against her, and argued that she was entitled to reasonable accommodation under the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA) for her undiagnosed

disabilities. The Court considered Mother's appeal on its merits. Id. At the time of the child's birth, a CHINS proceeding was in progress for two of Mother's other children. The child was taken into custody immediately after birth, and a CHINS petition was filed. The juvenile court ordered that the child continue in foster care placement with supervised parenting time between the child and Mother. After the CHINS adjudication, DCS filed a motion pursuant to IC 31-34-21-5.6 for a no reasonable efforts exception because Mother's parental rights to two of her children had previously been involuntarily terminated in separate termination proceedings which took place in 2006 and 2007. After hearing evidence, the court granted DCS's motion. The juvenile court suspended Mother's parenting time with the child, held a permanency hearing, and then issued an order changing the permanency plan from reunification to adoption. Mother appealed, raising the issue of whether the court erred in granting DCS's motion for a reasonable efforts exception. DCS asserted that Mother's appeal was premature and should be dismissed because there was no dispositional order. The Court found no specific dispositional order in the record, and said it was unclear why no dispositional order had been entered within thirty days of the CHINS finding, as required by IC 31-34-19-1. Id. at 308. Citing In Re J.V., 875 N.E.2d 395, 399 (Ind. Ct. App. 2007), *trans. denied*, the Court observed that the dispositional order is the final appealable order from a CHINS proceeding. R.H. at 307-08. The Court looked to the effect of the orders which the court had entered prior to Mother's notice of appeal, noting that: (1) the court had determined that the child was a CHINS and placed her in foster care; (2) in addition to finding that DCS need not make reunification efforts, the no reasonable efforts order suspended Mother's visitation with the child; and (3) the permanency order changed the plan from reunification to adoption. Id. at 308. The Court found that the court's orders as a whole served the purpose of a dispositional decree, ended the relationship between Mother and the child, and allowed DCS to move forward with termination proceedings. Id. The Court said that, whether the court's orders were technically a final judgment, they operated as one. Id. at 309. The Court concluded that Mother was not denied services or reasonable accommodation because of a disability and the trial court did not violate her rights by entering an order that DCS was not required to make reasonable efforts. Id. at 311.

In **In Re D.W.**, 52 N.E.3d 839 (Ind. Ct. App. 2016), *trans. denied*, the Court dismissed Mother's appeal of the trial court's order denying her motion to modify the permanency plan. Id. at 842. Mother's three-year-old child was placed in foster care and later found to be a CHINS because Mother was arrested and charged with four felony counts of criminal confinement, two felony counts of battery, and six felony counts of neglect of a dependent. The charges apparently related to another of Mother's children. Visitation between Mother and the child was suspended ten months after the CHINS adjudication. A year after the CHINS adjudication, the trial court changed the child's permanency plan to termination of parental rights. Before the termination petition was heard, the trial court held multiple hearings on Mother's motion for modification of the permanency plan, for reinstatement of visitation, and for a bonding assessment. The trial court denied Mother's motion to modify the permanency plan, granted DCS's motion to discontinue visitation, ordered that all parenting time between Mother and the child cease, and ordered counsel to coordinate with the trial court regarding a termination hearing. Mother appealed the trial court's order, characterizing it as a final, appealable judgment. The Court looked to Indiana Appellate Rule 2(H), which states that a judgment is a final judgment if: (1) it disposes of all claims as to all parties; (2) the trial court in writing expressly determines under Trial Rule 54(B) or 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment; (3) it is deemed final under Trial Rule 60(C); (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed; or (5) it is otherwise deemed final by law. The Court found that the trial court's order did not meet any of the qualifications

listed at Appellate Rule 2(H). Id. at 841. The Court, citing In Re K.F., 797 N.E.2d 310, 314-15 (Ind. Ct. App. 2003), said it held under similar circumstances that such orders are not final appealable judgments. D.W. at 841. Although Mother argued that her appeal should be addressed based on the Court's decision in In Re E.W., 26 N.E.3d 1006 (Ind. Ct. App. 2015), the Court found that the E.W. case was not applicable. D.W. at 842. The Court explained that the E.W. case was distinguishable from the D.W. case. D.W. at 841. The Court noted that the child in D.W. was much younger than the child in E.W., termination of parental rights was unlikely to be raised in E.W., and another planned, permanent living arrangement (APPLA) was not the child's permanency plan in the D.W. case. D.W. at 842. The Court concluded that the trial court's order was not a final judgment; therefore, the Court lacked subject matter jurisdiction over Mother's appeal. Id.

In **In Re E.W.**, 26 N.E.3d 1006 (Ind. Ct. App. 2015), the trial court had determined that a permanency plan of APPLA (another planned, permanent living arrangement) was in the fourteen-year-old child's best interests. After the permanency hearing, the trial court held another hearing on whether the child should have ongoing contact with Mother. The trial court ordered that all contact between Mother and the child cease. Mother appealed. The Court first considered whether Mother's appeal was from a final judgment, thereby allowing the Court of Appeals to have jurisdiction over the case. Id. at 1008. The Court noted that "typically, a child whose plan is changed to APPLA is an older teenaged child who is unlikely or unwilling to be adopted, who has no relatives able or willing to act as a custodian or guardian, and whose parents are unable or unwilling to become safe and appropriate caregivers." Id. at 1009. The Court explained that, by ordering all contact between Mother and the child cease, the trial court was effectively ending that relationship until the child became a legal adult. Id. The Court concluded that, whether or not the trial court's order was technically a final judgment, it certainly operated as one. Id. The Court decided to consider Mother's appellate argument. Id. The Court affirmed the order ceasing Mother's visits with the child. Id. at 1010.

In **In Re K.F.**, 797 N.E. 2d 310 (Ind. Ct. App. 2003), the Court held that the permanency plan order did not dispose of all claims as to all parties and thus was not an appealable final judgment. Id. at 315. Parents' appeal of the permanency order was dismissed. Id. The La Porte County Office of Family and Children had filed a CHINS petition for two children due to failure to thrive, medical neglect, and an unsanitary home environment. The children were placed in foster care, Parents admitted the allegations in the CHINS petition, and an agreement for reunification was ordered as the disposition. Six months later, OFC filed a permanency report and permanency hearings were held thereafter. The trial court's order from the permanency hearing was that it was in the children's best interests that OFC proceed with termination of parental rights. Parents formed their appellate argument as if the court had already terminated their parental rights. The Court noted that appellate jurisdiction is defined by Indiana Appellate Rule 5, which provides for jurisdiction in appeals from final judgments, interlocutory orders, and agency decisions. Id. at 314. The Court opined that the permanency order was not an agency decision nor had Parents proceeded under Indiana Appellate Rule 14 governing interlocutory appeals. Id. The Court further stated that the permanency plan order was not final because it did not dispose of the essential issue which Parents challenged on appeal, namely the propriety of terminating their parental rights, and that Parents had not yet been adversely affected by the permanency plan with regard to the issue they presented on appeal. Id. at 315. The Court opined that Parents had not been prejudiced unless and until termination of their parental rights occurred. Id.

III. PERMANENCY PLAN AND PERMANENCY OPTIONS

III. A. Permanency Plan

IC 31-9-2-22.1(b) defines "concurrent planning", for purposes of IC 31-34, as the identification of two permanency plan goals and simultaneous reasonable efforts toward both goals with knowledge of all participants. IC 31-34-21-7.5(c) requires that the permanency plan, or plans, if concurrent planning, include: (1) the intended permanent or long term arrangements for care and custody of the child; (2) a time schedule for implementing the applicable provisions of the permanency plan; (3) provisions for temporary or interim arrangements for the care and custody of the child, pending completion of implementation of the permanency plan; and (4) other items that are required to be in a case plan under IC 31-34-15 or federal law, consistent with the permanent or long term arrangements described by the permanency plan.

IC 31-34-21-7.5(b) states that, before requesting court approval of a permanency plan, DCS shall conduct a criminal history check (as defined in IC 31-9-2-22.5) of persons residing in the home where the child would be placed for a permanency plan of third party custodianship, appointment of a legal guardian, or another planned permanent living arrangement. The criminal history check is required if it has not previously been done for temporary placement (IC 31-34-4-2), the predispositional report (IC 31-34-18-6.1), or the dispositional hearing (IC 31-34-20-1.5). IC 31-34-21-7.5(a) states that, if a person who is currently residing in the residence has committed an act resulting in a substantiated child abuse or neglect report or has a criminal conviction or juvenile adjudication for a nonwaivable offense, as defined in IC 31-9-2-84.8, the juvenile court may not approve the placement as a permanency plan except as provided in IC 31-34-21-7.5(d). The nonwaivable offenses listed at IC 31-9-2-84.8 are: murder, causing suicide, assisting suicide, voluntary manslaughter, reckless homicide, battery within the past five years, domestic battery, aggravated battery, kidnapping, criminal confinement within the past five years, human and sexual trafficking, felony sex offenses 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, arson within the past five years, incest, neglect of a dependent, child selling, a felony involving a weapon under IC 35-47 or IC 35-47.5 within the past five years, a felony relating to controlled substances under IC 35-48-4 within the past five years, an offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3, a felony under IC 9-30-5 [operating a vehicle while intoxicated] within the past five years, or a substantially equivalent felony in another state. The permanency plan, or plans, if concurrent planning, are described at IC 31-21-7.5(c)(1) and listed in this Chapter at III. B.

IC 31-34-21-7.5(d) allows the court to approve a permanency plan even though a household resident has a criminal conviction, a juvenile adjudication, or committed substantiated child abuse or neglect in some situations. IC 31-34-21-7.5(d)(2) states that the court may approve a permanency plan if the person's commission of the offense, delinquent act, or act of abuse or neglect is not relevant to the person's present ability to care for the child and approval of the permanency plan is in the best interest of the child. IC 31-34-21-7.5(e) states that, in making its written finding approving the permanency plan, the court shall consider: (1) the length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect; (2) the severity of the offense, delinquent act, or abuse or neglect; (3) evidence of the person's rehabilitation, including cooperation with a treatment plan, if applicable. IC 31-34-21-7.5(d)(1)(B) states that the convictions or delinquency adjudications of a household resident which do not prevent the placement of the child in the home as a permanency plan are: (1) battery; (2) criminal confinement; (3) carjacking (repealed); (4) arson; (5) a felony weapons conviction under IC 35-47 or a felony involving controlled explosives under IC 35-47.5; (6) a felony relating

to controlled substances under IC 35-48-4; (7) a felony under IC 9-30-5 [operating a vehicle while intoxicated]; and (8) a substantially equivalent felony in another state. *The convictions or adjudications must also not have occurred within the past five years*. The court may not approve a permanency plan if the person has been criminally convicted of or had a juvenile adjudication for a nonwaivable offense which is not specifically excluded in IC 31-34-2-7.5(d)(1)(B).

III. B. Overview of Permanency Options under Indiana Law

Quoting from IC 31-34-21-7.5(c)(1), the possible options for a permanency plan or plans may include any one or two, if concurrent planning, of the following arrangements:

(A) Return to or continuation of existing custodial care within the home of the child's parent, guardian, or custodian or placement of the child with the child's noncustodial parent.
(B) Placement of the child for adoption.
(C) Placement of the child with a responsible person, including:
(i) an adult sibling;
(ii) a grandparent;
(iii) an aunt;
(iv) an uncle;
(v) a custodial parent of a sibling of the child; or
(vi) another relative;
who is able and willing to act as the child's permanent custodian and carry out the responsibilities required by the permanency plan.
(D) Appointment of a legal guardian. The legal guardian appointed under this section is a caretaker in a judicially created relationship between the child and caretaker that is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child:
(i) Care, custody, and control of the child.
(ii) Decision making concerning the child's upbringing.
(E) A supervised independent living arrangement or foster care for the child with a permanency plan of another planned, permanent living arrangement. However, a child less than sixteen (16) years of age may not have another planned, permanent living arrangement as the child's permanency plan.

III. C. Reunification

IC 31-34-21-7.5(1)(A) provides that reunification of the child with the custodial or noncustodial parent is a valid permanency option. IC 31-34-21-7.5(c)(1)(A) assumes that DCS need not reunite the child with the custodial parent if the noncustodial parent is the better and safer parent. Usually, reunification should be selected as the ongoing permanency plan at the twelve month hearing only if there is strong evidence that a parent has made the changes necessary to safely care for the child, and the child has been returned to a parent's home on a trial basis, or the conditions indicate that returning the child to a parent's home will occur in the near future.

IC 31-34-21-5.5(c) states that DCS, before the reunification of the child with a parent, guardian, or custodian, may conduct a criminal history check (as defined by IC 31-9-2-22.5) of the child's parent, guardian, custodian, or a household member of the parent, guardian, or custodian. IC 31-34-21-5.5(d) states that DCS may use the results of the criminal history check to decide whether it is safe for the child to return home.

IC 31-30-1-12 [dissolution case] and IC 31-30-1-13 [paternity case] also affect the reunification plan if the parents were divorced or paternity was established in a separate court proceeding and a custody order was made before the juvenile court assumed jurisdiction over the child due to a

CHINS case. For dissolution cases, IC 31-30-1-12(a) and (b) provide that the dissolution court has concurrent original jurisdiction with the juvenile court for the purpose of modifying custody, parenting time, or child support of a child who is the subject of a CHINS or delinquency proceeding, but whenever the dissolution court modifies custody, the modification is effective only when the juvenile court having jurisdiction of the child in the CHINS or delinquency proceeding: (1) enters an order adopting and approving the child custody modification; or (2) terminates the CHINS or delinquency case. IC 31-30-1-12(c) states that if a juvenile court modifies child custody, child support, or parenting time and then terminates the CHINS or delinquency case, the order modifying the child custody, child support, or parenting time order survives the termination of the CHINS or delinquency case until the dissolution court which had concurrent original jurisdiction shall assume or reassume primary jurisdiction of the case to address all issues. IC 31-30-1-12(d) provides that the dissolution court which assumes or reassumes jurisdiction of a case may modify custody, child support, or parenting time in accordance with applicable modification statutes.

For paternity cases, IC 31-30-1-13(a) and (b) provide that a court which has jurisdiction in a paternity proceeding has concurrent original jurisdiction with the juvenile court for the purpose of the establishment or modification of paternity, custody, parenting time, or child support of a child who is a subject of a CHINS or delinquency proceeding, but whenever the paternity court modifies custody, the modification is effective only when the juvenile court: (1) enters an order adopting and approving the child custody modification or (2) terminates the CHINS or delinquency case. IC 31-30-1-13(c) states that, if a juvenile court establishes or modifies paternity, custody, child support, or parenting time of a child and then terminates the CHINS or delinquency case, the order establishing or modifying paternity, custody, child support, or parenting time survives the termination of the CHINS or delinquency case until the court having concurrent original jurisdiction assumes or reassumes primary jurisdiction of the case to address all other issues. IC 31-30-1-13(d) provides that the paternity court which assumes or reassumes jurisdiction of a case may modify child custody, child support, or parenting time in accordance with applicable modification statutes. See **In Re J.B.**, 55 N.E.3d 903 (Ind. Ct. App. 2016) and in **In Re J.B.**, 61 N.E.3d 308 (Ind. Ct. App. 2016) *on rehearing*, which are discussed in this Chapter at I.H.5. In **In Re J.B.**, 61 N.E.3d at 310-312, the Court discussed two possible interpretations of the meaning of IC 31-30-1-13(d). The Court found problems with the two readings of IC 31-30-1-13(d). Id. at 312. The Court said that "we will not guess what the legislature meant when it said that [a]n order establishing or modifying *paternity* of a child by a juvenile court survives the termination of the [CHINS] proceeding." (Emphasis in opinion.) Id. The Court asked the legislature to take a deeper look at IC 31-30-1-12 and IC 31-30-1-13. Id.

Practice Note: IC 31-30-1-12 and 31-30-1-13 were amended in 2017 legislation, but there still appear to be drafting errors in both statutes. As amended, IC 31-30-1-12(b) refers only to the situation when a dissolution court which has concurrent jurisdiction with a juvenile court *modifies child custody*, but does not include the modification of child support or parenting time by the dissolution court. IC 31-30-1-13(b) refers only to the situation when a paternity court which has concurrent jurisdiction with a juvenile court *modifies child custody*, but does not include the establishment or modification of paternity, child support, or parenting time by the paternity court.

If reunification with the noncustodial parent is the child's permanency plan, the custody modification statutes for dissolution of marriage (IC 31-17-2-21) or paternity (IC 31-14-13-6) must be considered to complete the safest and most secure permanent reunification plan. Both statutes require the person seeking custody modification to prove that modification is in the best interests of the child and that there is a substantial change in one or more of the custody factors

which the court shall consider. The custody factors are listed at IC 31-17-2-8 (dissolution of marriage). The factors are:

(1) the age and sex of the child;
(2) the wishes of the child's parent or parents;
(3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age;
(4) the interaction and interrelationship of the child with:
    (A) the child's parent or parents;
    (B) the child's sibling; and
    (C) any other person who may significantly affect the child's best interests;
(5) the child's adjustment to the child's
    (A) home;
    (B) school; and
    (C) community;
(6) the mental and physical health of all individuals involved;
(7) evidence of a pattern of domestic violence by either parent;
(8) evidence that the child has been cared for by a de facto custodian [defined at IC 31-9-2-35.5], and if the evidence is sufficient, the court shall consider the factors described in IC 31-17-2-8.5 [dissolution] or IC 31-14-13-2.5 [paternity].
(9) a designation in a power of attorney of:
    (A) the child's parent; or
    (B) a person found to be a defacto custodian of the child.

Factor (9) was added to IC 31-17-2-8 effective July 1, 2017, but is not listed in the paternity custody statute, IC 31-14-13-2.

When reunification or custody modification is the permanency plan for a child, it is important to evaluate the child's safety needs in determining parenting time with the noncustodial parent, particularly when that parent has been identified as the perpetrator of child abuse or neglect. The substantiated abuse or neglect may preclude the award of Indiana Parenting Time Guidelines access to the parent who is the substantiated perpetrator or when the substantiated perpetrator is a member of that parent's household; therefore, the amount and type of parenting time awarded to the parent should be part of the permanency plan. The Indiana Parenting Time Guidelines, originally adopted by the Indiana Supreme Court effective March 31, 2001, and amended most recently effective January 1, 2017, are applicable to all custody situations, but "are not applicable to situations involving family violence, substance abuse, risk of flight with a child, or any other circumstances the court reasonably believes endanger the child's physical health or safety, or significantly impair the child's emotional development. In such cases one or both parents may have legal, psychological, substance abuse or emotional problems that may need to be addressed before these Guidelines can be employed." See Parenting Time Guidelines, C. Scope of Application at 1. There is a presumption that the Indiana Parenting Time Guidelines are applicable in all cases covered by the Guidelines. Any deviation from the Guidelines by either the parties or the court must be accompanied by a written explanation indicating why the deviation is necessary or appropriate. See Parenting Time Guidelines, C. Scope of Application at 3. IC 31-17-4-1 (dissolution of marriage) and IC 31-14-14-1 (paternity) both provide that a parent who is not granted custody of a child is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development. Case law has interpreted the term "might" to require evidence that parenting time "would" endanger or impair the physical or

mental health of the child. See **Perkinson v. Perkinson**, 989 N.E.2d 758, 763 (Ind. 2013). See also Chapter 8 at VI.A. and B. for further discussion on parenting time.

IC 31-17-2-11(a) requires the court in dissolution proceedings to appoint a conditional temporary custodian for the child if the court: (1) requires supervision during the noncustodial parent's parenting time privileges; or (2) suspends the noncustodial parent's parenting time privileges. IC 31-7-2-11(b) states that a temporary custodian named by the court under this section receives temporary custody of a child upon the death of the child's custodial parent. The temporary custodian may petition the court having probate jurisdiction over the estate of the child's custodial parent for an order under IC 29-3-3-6 naming the temporary custodian as the temporary guardian of the child pursuant to IC 31-17-2-11(c).

Although paternity legislation does not contain a statute comparable to IC 31-17-2-11, it can be argued that dissolution and paternity law are *in pari materia* and that similar orders can be made in paternity custody and parenting time cases. See **Sills v. Irelan**, 663 N.E.2d 1210, 1214 (Ind. Ct. App. 1996).

In **Reynolds v. Dewees**, 797 N.E.2d 798 (Ind. Ct. App. 2003), a CHINS petition was filed in juvenile court, and the child was removed from Mother's home due to failure to thrive, lack of supervision, and verbal abuse. Paternity was subsequently established, and the parties agreed that Mother would have custody of the child. Two years after the filing of the CHINS petition, the child was temporarily placed with Father by the juvenile court. Later the juvenile court issued an order permanently placing the child with Father in the CHINS case. Father then filed a petition for change of custody in the paternity case while the CHINS case was still pending. After a trial in the paternity case, Father's petition to modify custody of the child was granted, and he was awarded custody of the child. Mother appealed, arguing that the paternity court lacked jurisdiction to make a custody determination while the CHINS case was still pending. The Court held that, as a matter of first impression, the General Assembly intended to extend custodial decision-making authority to paternity courts during the pendency of a CHINS proceeding when it amended IC 31-30-1-1 and added IC 31-30-1-13. Id. at 800-01. The Court further noted that the authority of a court with paternity jurisdiction to modify child custody during the pendency of a CHINS action is not without limits, because IC 31-30-1-13(b) provides that the paternity custody modification order takes effect only when the juvenile court with jurisdiction over the CHINS proceeding enters an order approving the child custody modification or terminates the CHINS proceeding. Id. at 802.

III. D. Adoption

In selecting a permanency option for a child, adoption is often considered the best choice when reunification with a parent has been ruled out. Under Indiana law adoption is the most "permanent" of the options, since it cannot be attacked by a parent who subsequently files a legal action seeking modification of the child's custody, as allowed in custody cases, or requesting to terminate the guardianship, as allowed in guardianship cases. When a child is adopted, the adoptive parents assume all the rights and responsibilities previously held by the natural parents. IC 31-19-11-6 states that the court may not grant a petition for adoption if the parent-child relationship has been terminated and one or more of the following apply: (1) the time for filing an appeal (including a request for transfer or certiorari) has not yet elapsed; (2) an appeal is pending; (3) an appellate court is considering a request for transfer or certiorari.

The child's consent to adoption is needed if the child is more than fourteen years of age. See **In Re Adoption of J.E.H.**, 859 N.E.2d 388 (Ind. Ct. App. 2006), in which the Court affirmed the denial of Stepmother's petition to adopt her two stepsons because the older stepson, age fourteen,

had not consented to the adoption. Id. at 390. The trial court had also denied the petition for the adoption of the younger stepson, age ten, because the court determined that it would not be in the best interests of the younger stepson to have a different mother than his older brother.

See Chapter 13 for a detailed discussion of adoption issues.

III. E. Custodianship with Relative or Another Adult

IC 31-34-21-7.5(c)(1)(C) creates the concept of a permanent custodian. This option seemingly would not apply to all relative placements, but only to placements with adults who are willing to make a commitment to a permanent relationship. IC 31-34-21-7.5(c)(1)(C) provides that the child may be placed with a responsible person, including: (1) an adult sibling; (2) a grandparent; (3) an aunt; (4) an uncle; (5) a custodial parent of the child's sibling; or (6) another relative who is willing and able to act as the child's permanent custodian and carry out the responsibilities required by the permanency plan.

If the approved permanent custodian files a custody proceeding in a court which does not have jurisdiction over the CHINS case, IC 31-17-2-25 provides the following procedures:

> (a) This section applies if a custodial parent or guardian of a child dies or becomes unable to care for the child.
> (b) Except as provided in subsection (d), if a person other than a parent files a petition:
> (1) seeking to determine custody of the child; or
> (2) to modify custody of the child;
> that person may request an initial hearing by alleging, as part of the petition, or in a separate petition, the facts and circumstances warranting emergency placement with a person other than the noncustodial parent, pending a final determination of custody.
> (c) If a hearing is requested under subsection (b), the court shall set an initial hearing not later than four (4) business days after the petition is filed to determine whether emergency placement of the child with a person other than the child's noncustodial parent should be granted, pending a final determination of custody.
> (d) A court is not required to set an initial hearing in accordance with this section if:
> (1) it appears from the pleadings that no emergency requiring placement with a person other than the noncustodial parent exists;
> (2) it appears from the pleadings that the petitioner does not have a reasonable likelihood of success on the merits; or
> (3) manifest injustice would result.

Indiana law requires that notice be given to the court which has jurisdiction over a custody case that involves: (1) a child who has been determined to be a CHINS or who has been involved in an informal adjustment; (2) a child who has been the subject of a substantiated report of child abuse or neglect; or (3) a party to the case who has been determined to be a perpetrator of a substantiated report of child abuse or neglect. If any of the three listed circumstances apply, IC 31-17-2-26(a) states that any person who is a party to the custody proceeding and has knowledge of any of the listed circumstances shall submit the information to the court in writing under seal. IC 31-17-2-26(b) states that a court reviewing a petition to establish or modify custody of a child may request information from DCS regarding the CHINS case, informal adjustment case, or the substantiated report of child abuse or neglect. DCS shall provide the response to the court's request for information under seal not later than ten days after DCS receives the court's request. See IC 31-14-14-6, which applies to paternity cases and contains the same provisions as IC 31-17-2-26.

IC 31-30-1-2.5 states that the juvenile court may not appoint a person to serve as the guardian or custodian of a child or permit a person to continue to serve as a guardian or custodian if the person is a sexually violent predator (as described in IC 35-38-1-7.5) or has been convicted of specific crimes which are listed at IC 31-30-1-2.5(2) and (3). See this Chapter at III.G. for a list of the crimes. See this Chapter at III.A. for further discussion of limitations on the court's approval of a permanency plan when a person residing in the home has criminal convictions, delinquency adjudications, or has committed an act of substantiated child abuse or neglect.

In **In Re Custody of M.B.**, 51 N.E.3d 230 (Ind. 2016), the Indiana Supreme Court held that Aunt and Uncle had standing to petition for custody of the child. Id. at 232-33. Citing IC 31-17-2-3(2), the Court observed that any person "other than a parent" has standing to initiate a cause of action for custody, so long as the question of custody over the child is not incidental to dissolution of marriage, legal separation, or an action for child support. Id. at 233. The Court also held that the circuit court had subject matter jurisdiction to hear Aunt and Uncle's petition for custody while a CHINS matter was pending, but the circuit court could not exercise that jurisdiction until the CHINS matter was concluded. Id. at 234-35. The Court determined that, although the CHINS and custody proceedings differed in form, they related to the same subject matter, namely custody and care of the child. Id. at 235. Observing a possible exception for a motion pursuant to Ind. Trial Rule 12(B)(8), the Court advised that a circuit court "may allow the parties to file an independent custody action while a CHINS proceeding is pending in juvenile court," but the circuit court is required by law to abstain from the exercise of that jurisdiction until the CHINS proceeding has concluded. Id. at 236.

In **In Re Custody of G.J.**, 796 N.E.2d 756 (Ind. Ct. App. 2003), *trans. denied*, the Court held that, as a matter of apparent first impression: (1) the child's paternal Uncle had standing to file a direct action pursuant to IC 31-17-2-3(2) for custody of the child; and (2) the child custody statute allows any person other than a parent to seek custody of the child by initiating an independent cause of action for custody that is not incidental to a marital dissolution, legal separation, or child support action. Id. at 762-64. The child's parents filed for dissolution of their marriage. Father died before the dissolution was final and Mother remarried. Uncle filed a petition for custody of the child, alleging that the child's new stepfather was a convicted child molester who collected child pornography; that a court order in the dissolution proceeding between the parents had prohibited Mother from allowing contact between the child and stepfather; and that Mother had lost custody of other children to the Tippecanoe County Office of Family and Children. On the day that the hearing was scheduled, Mother moved to dismiss Uncle's petition, arguing that he lacked standing. The trial court granted the motion, concluding that IC 31-17-2-3 related only to dissolution of marriage, and indicating its belief that Uncle would properly file under the guardianship statute. The Court reversed the trial court's dismissal of Uncle's petition and concluded that he had standing to file a direct action for custody of the child. Id. at 764. The Court opined that allowing a third party to seek custody of a child by filing a direct cause of action pursuant to child custody statutes is wholly consistent with Indiana public policy. Id. at 762. The Court said that public policy has long recognized that if a parent is unfit or otherwise unable to care for a child, it may be in the child's best interests to be placed in the custody of a third party. Id., citing Gilchrist v. Gilchrist, 75 N.E.2d 417, 419 (1947).

The Indiana Supreme Court considered the legal standard for appointing a guardian for a child when a parent has not consented to the guardianship in **In Re Guardianship of B.H.**, 770 N.E.2d 283 (Ind. 2002). The Court held that, before placing a child in the custody of a person other than a natural parent, a trial court "must be satisfied by clear and convincing evidence that the best interests of the child requires such placement. Id. at 287. The trial court must be convinced that placement with a person other than the natural parent represents a substantial and significant

advantage to the child. Id. The Court further found that the approach of Turpen v. Turpen, 537 N.E.2d 537 (Ind. Ct. App. 1989) was "inadequate." B.H. at 287. The Court said that evidence establishing the natural parent's unfitness or acquiescence or demonstrating that a strong emotional bond has formed between the child and the third party would, of course, be important, but the trial court is not limited to these criteria. Id.

The B.H. standard has been applied and quoted in the following third party custodianship cases: **T.H. v. R.J.**, 23 N.E.3d 776, 786 (Ind. Ct. App. 2014) (juvenile court correctly omitted de facto custodian factors from its order because it deemed Grandparents had failed to overcome presumption in favor of Mother as natural parent); **In Re Paternity of A.S.**, 984 N.E.2d 646 (Ind. Ct. App. 2013) (finding evidence did not support trial court's conclusion that Grandmother had overcome the parental presumption, Court reversed and remanded with instructions that trial court vacate award of physical custody to Grandmother), *trans. denied*; **Parks v. Grube**, 934 N.E.2d 111(Ind. Ct. App. 2010 (Court affirmed trial court's order granting custody of children to paternal Grandparents after custodial Father's death; although evidence that natural parent is unfit is important, it is not the only criteria that court may consider); **In Re Paternity of L.J.S.**, 923 N.E.2d 458 (Ind. Ct. App. 2010) (Court reversed trial court's order granting custody of child to maternal Grandparents and remanded with instructions to grant custody of child to Father; the trial court's findings were nothing more than a generalized finding that placement with Grandparents was in child's best interests), *trans denied*; **In Re Paternity of T.P.**, 920 N.E.2d 726 (Ind. Ct. App. 2010) (Court held that child's caretakers did not present clear and convincing evidence to overcome presumption that child's best interests were served by placement with Mother), *trans. denied*; **In Re Custody of J.V.**, 913 N.E.2d 207 (Ind. Ct. App. 2009) (case remanded for trial court to enter findings required to support third party custody determination; third party must rebut parental presumption); **K.I. ex rel. J.I. v. J.H.**, 903 N.E.2d 453 (Ind. 2009) (Grandmother had burden of overcoming parental presumption and failed in that effort); **Truelove v. Truelove**, 855 N.E.2d 311 (Ind. Ct. App. 2006) (maternal Grandparents rebutted parental presumption with evidence that Grandparents had been primary caretakers of children for two and one-half years; neither parent had paid regular child support; Mother's visits to children were frequently cut short; neither parent had full-time employment; Mother moved frequently, sometimes to shelters; two of Mother's five children were in foster care; parents had been homeless and moved in with Grandparents on several occasions); **Allen v. Proksch**, 832 N.E.2d 1080 (Ind. Ct. App. 2005) (Grandmother rebutted natural parent presumption with evidence of Father's sporadic contact, Father's refusal of visitation, child's special emotional and behavioral needs and Grandmother's ability to provide stable lifestyle; child's best interests were substantially and significantly served by placement with Grandmother); **In Re Paternity of V.M.**, 790 N.E.2d 1005 (Ind. Ct. App. 2003) (custodial Grandfather rebutted parental presumption with evidence of Father's past unfitness, voluntary abandonment, and long acquiescence in Grandfather's custody).

See also the following third party custody opinions decided prior to B.H., 770 N.E.2d 283: **Francies v. Francies**, 759 N.E.2d 1106 (Ind. Ct. App. 2001) (trial court did not abuse discretion in awarding custody to paternal Grandmother because Mother had voluntarily relinquished custody and it was in child's preeminent best interest to be in custody of Grandmother), *trans. denied*; **Harris v. Smith**, 752 N.E.2d 1283 (Ind. Ct. App. 2001) (Grandparents had not successfully rebutted Mother's presumptively superior right to custody with clear and persuasive showing that Mother was presently unfit).

Securing court ordered parenting time which is safe for the child when abuse or neglect has occurred is also an issue in establishing custody in a third party. See this Chapter at III.C. and

Chapter 8 at VI for further discussion on parenting time statutes and case law. See Chapter 14 for a detailed discussion of guardianship and third-party custody statutes and case law.

III. E. 1. Third Party Custody in Dissolution and Paternity Proceedings

IC 31-17-2-3 provides that a custody proceeding can be initiated by non-parents. The statute states:

> A child custody proceeding is commenced in the court by:
> (1) a parent by filing a petition under IC 31-15-2-4, IC 31-15-3-4, or IC 31-16-2-3; or
> (2) a person other than a parent by filing a petition seeking a determination of custody of the child.

Case law indicates that non-parents have been awarded custody of children in both divorce and paternity custody proceedings. Indiana case law granting non-parents custody has traditionally held that proof of one of the following three conditions was necessary to overcome the presumption that custody should remain with the natural parent: (1) unfitness of the natural parent; (2) long acquiescence in the child living in the care of others; or (3) voluntary relinquishment of custody of the child to others such that the affections of the child and the third party have become so interwoven that to sever them would seriously endanger the future happiness of the child. An award of custody of the child to a non-parent must also present a substantial and significant advantage to the child. See **In Re Guardianship of B.H.**, 770 N.E.2d 283, 287 (Ind.2002).

It is important to note that even when a third party custody order is secured, the child's placement with the third party custodian still lacks the permanency of an adoption because it is subject to modification upon the request of the natural parent to regain custody or to be awarded additional parenting time. The burden of proving why the parent should not regain custody always rests on the third party. The standard of proof which the third party custodian must meet when a parent requests custody modification is clear and convincing. See **K.I. Ex Rel. J.I. v. J.H.**, 903 N.E.2d 453, 460-61 (Ind. 2009).

IC 31-34-21-5.8(b)(2) states that if continuation of reunification efforts are inconsistent with the permanency plan, DCS shall complete whatever steps are necessary to finalize the permanent placement of the child in a timely manner. A reasonable interpretation of this statute could include offering the case manager's testimony and/or evidence from DCS records as evidence in a dissolution or paternity custody modification case to facilitate the custodianship permanency plan.

III. E. 2. De Facto Custodian in Dissolution and Paternity Proceedings

A de facto custodian is defined at IC 31-9-2-35.5 as a person who has been the primary caregiver and the financial support of a child who has resided with the person for six months if the child is under three years of age, and for one year if the child is at least three years of age. In a divorce custody proceeding, IC 31-17-2-8.5(c) provides that if the court determines by clear and convincing evidence that the child has been cared for by a de facto custodian, the court shall make the de facto custodian a party to the proceeding. IC 31-17-2-8.5(b) states that the court shall also consider: (1) the wishes of the de facto custodian; (2) the extent to which the child has been cared for, nurtured, and supported by the de facto custodian; (3) the intent of the child's parent in placing the child with the de facto custodian; and (4) the circumstances under which the child was allowed to remain in the custody of the de facto

custodian, including whether the child was placed with the de facto custodian to allow the parent to seek employment, work, or attend school. IC 31-17-2-8.5(d) states the court shall award custody to the de facto custodian if, after considering the required factors, the court determines that such an award is in the best interests of the child. IC 31-14-13-2 and IC 31-14-13-2.5 are the comparable statutes for paternity custody determinations on de facto custodians. Case law clarifies that the legal presumption in favor of birth parents having custody of their children prevails despite the de facto custodian statute. See **In Re Guardianship of L.L.**, 745 N.E.2d 222, 230 (Ind. Ct. App. 2001).

In **Fry v. Fry**, 8 N.E.3d 209 (Ind. Ct. App. 2014), the Court affirmed the trial court's order modifying primary physical custody of Mother's daughter to Mother's former husband. Id. at 217. Mother's former husband was not the child's biological father, but he exercised parenting time with the child for seven years when he had exercised parenting time with the son of his marriage to Mother pursuant to the parties' divorce agreement. The Court said that Mother's former husband would be entitled to consideration in custody matters as a de facto custodian. Id. at 216. See Chapter 14 at III.B.1. for further discussion of the case.

In **In Re Paternity of T.P.**, 920 N.E.2d 726 (Ind. Ct. App. 2010), the Court affirmed the trial court's conclusion that Caretakers did not qualify as the child's de facto custodians. Id. at 731. The Court also affirmed the trial court's denial of Caretakers' petition seeking joint legal custody and permanent physical custody of the child. Id. at 736. When the child was two years old, Mother and Father asked Caretakers to care for the child and signed a notarized statement consenting to Caretakers' care of the child. Two months later, Mother reported the child missing to authorities, and the child was found to be a CHINS. Mother filed a paternity action against Father, who was ordered to pay child support and have parenting time. Caretakers continued to provide care for the child "many days out of the month" and to provide Mother and the child with food and money. Caretakers cared for the child a total of 244 days in a sixteen month period while Mother lacked proper housing and admitted to having used drugs. Caretakers argued that they were de facto custodians, but the trial court concluded that Caretakers were not the child's primary caregivers and de facto custodians. The Court held that Caretakers failed to demonstrate that the trial court's findings were clear error. Id. at 731. The Court noted that Caretakers claimed they had cared for the child 244 days during a sixteen-month period, but this did not constitute a majority of the child's total needs and support. Id. The Court also observed that, even if Caretakers had qualified as de facto custodians, they were still required to overcome the natural parent presumption in order to gain custody of the child. Id. The Court held that Caretakers had failed to present clear and convincing evidence to overcome the presumption that the child's best interests were served by placement with Mother. Id. at 732-34.

In **In Re Custody of J.V.**, 913 N.E.2d 207 (Ind. Ct. App. 2009), a paternity proceeding, the Court held that the evidence supported the trial court's conclusion that Grandmother was the child's de facto custodian. Id. at 210-211. The Court noted evidence that: (1) the child had resided in Grandmother's home for ten months, during which time Grandmother was the child's primary caregiver and provided necessities, including food, diapers, and clothing; (2) when the child returned to live with Mother and alleged Father, the child continued to reside with Grandmother at least three to four days per week; and (3) Grandmother provided financial support, took the child to doctor's appointments, and paid for babysitters when Grandmother was working. Id. at 211. The Court remanded the trial court's award of third-party custody to Grandmother with instructions to enter findings required to support its award of custody to Grandmother. Id.

In **A.J.L. v. D.A.L.**, 912 N.E.2d 866 (Ind. Ct. App. 2009), a dissolution proceeding, relying on In Re L.L. & J.L., 745 N.E.2d 222, 230 (Ind. Ct. App. 2001), the Court held that the trial court did not err when it concluded that paternal great aunt and great uncle (Aunt and Uncle) were the children's de facto custodians and awarded them custody of the children. Id. at 875. The Court opined that clear and convincing evidence showed Mother had relinquished care and control of the children to Aunt and Uncle for significant periods of time and the affections between the children and Aunt and Uncle were completely interwoven. Id. The Court found the evidence supported the trial court's conclusion that Aunt and Uncle had rebutted the presumption that Mother, as natural parent, should have custody of the children. Id.

In **Nunn v. Nunn**, 791 N.E.2d 779 (Ind. Ct. App. 2003), a dissolution of marriage case, the Court reversed the trial court's decision concerning custody of a child born while Husband and Wife were dating prior to their marriage. Id. at 785. When the child was four years old Wife petitioned for dissolution of marriage. Husband then petitioned to establish his paternity of the child, but genetic testing revealed that Husband was not the child's biological father. The trial court found that it did not have jurisdiction to consider awarding custody of the child to Husband because the child was not a child of the marriage. The Court, in reversing and remanding part of the dissolution decree, looked to the de facto custodian statutes and found that the statutes "are intended to vest a trial court with jurisdiction to determine whether a third-party is a de facto custodian entitled to consideration in a custody dispute." Id. at 784. The Court noted the following evidence tending to rebut the parental presumption and supporting the conclusion that a custody award to Husband was in the child's best interest: (1) Husband had been a father figure for the child's entire life; (2) Husband and child had developed a deep father-daughter bond; (3) Husband had been instrumental in child's daily care and financial support. Id. at 785. The Court remanded the case for a determination whether Husband should be granted custody of the child as a de facto custodian. Id.

III. E. 3. Legal Authority of Custodians and Natural Parents

The authority of the custodian in a custody case is set out at IC 31-17-2-17 (dissolution) and IC 31-14-13-4 (paternity), which state that the custodian may determine the child's upbringing, including the child's education, health care, and religious training. In some situations the court can limit the custodian's authority.

The natural parents are entitled to visitation in a third party custody case. Paternity and divorce law provide that the noncustodial parent is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development. See IC 31-17-4-1(dissolution); IC 31-14-14-1 (paternity). Third party custody orders should also include specific orders regarding parenting time for both parents which are consistent with the child's safety. Restricted or supervised parenting time may be required when custodianship is the permanency plan for the child. See this Chapter at III.C. and Chapter 8 at VI. for further information regarding parents' rights to parenting time.

IC 16-37-2-2.1(j)(2)(B) states that fathers of children born out of wedlock who have signed a paternity affidavit have the right to parenting time with the children in accordance with the Indiana Parenting Time Guidelines. The paternity affidavit may be executed at the hospital within 72 hours of the child's birth or through a local health department by the parents at any time before the child has reached emancipation. See IC 16-37-2-2.1(a) and (c). IC 16-37-2-2.1(j) states that the execution of a paternity affidavit "establishes paternity" without a court proceeding. IC 16-37-2-2.1(j) also provides that, unless another court determination is made

under IC 31-14, or the mother and the paternity affiant father agree to share joint legal custody as described in IC 16-37-1-2.1(h), the child's mother has sole legal custody and primary physical custody of the child. A previous version of IC 16-37-2-2.1, enacted effective July 1, 2006, gave paternity affiant fathers the right to "reasonable parenting time". A reasonable interpretation of the statutes providing for reasonable and guideline parenting time for paternity affiant fathers is that these statutes apply only to paternity affidavits executed after July 1, 2006. The parenting time rights provided to paternity affiant fathers by the execution of the paternity affidavit apply unless another determination is made by a court in a proceeding under IC 31-14-14, the paternity visitation chapter. Permanency plans for third party custody should include consideration of appropriate parenting time orders for paternity affiant fathers as well as mothers.

See Chapter 12 at VII. for further discussion of the paternity affidavit.

III. E. 4. Modifying Custody After CHINS Petition is Filed

It may be possible to consolidate or bundle the CHINS case and the dissolution or paternity custody proceeding pursuant to Indiana Trial Rule 42 so the CHINS case review hearing or permanency hearing and the requested dissolution or paternity custody modification can be heard together, thereby saving time and money for the parties and promoting judicial economy. A family court model could also allow for the cases to be heard together. See **In Re V.C.**, 867 N.E.2d 167 (Ind. Ct. App. 2007), in which the juvenile court granted adjudicated Father's motion to consolidate the CHINS case and the paternity case in which Father had filed a petition for custody modification. The juvenile court held one factfinding hearing on all issues relating to the child and granted Father's custody modification petition. On appeal, Mother argued that the court erred in consolidating the CHINS and paternity actions because she had insufficient notice of the consolidation prior to the factfinding hearing. The Court found that Mother had waived appellate review of this issue because she had twenty-three days before the factfinding hearing to either object to the consolidation or request a continuance and did neither. Id. at 177. See also **In Re Custody of M.B.**, 51 N.E.3d 230 (Ind. 2016), discussed in this Chapter at III.F. and **In Re J.B.**, 55 N.E.3d 903 (Ind. Ct. App. 2016) and **In Re J.B.**, 61 N.E.3d (Ind. Ct. App. 2016) *on rehearing*, discussed in this Chapter at I.H.5.

III. E. 5. Financial Assistance

It appears that TANF (Temporary Aid to Needy Family) benefits would be available to relative custodians caring for children, if the custodians meet the eligibility requirements. Relative custodians could also apply for Medicaid and food stamps for the children.

III. F. Guardianship

Guardianships can be established for children who are under the age of eighteen. It is not necessary to terminate parental rights for the court to appoint a guardian. The natural parent may retain the right to have parenting time with the child, unless the court determines that parenting time would endanger the child's physical health or significantly impair the child's emotional development. A guardian is often appointed by the court with the consent of the parents. If the parent contests the appointment of a guardian, the person who seeks to be appointed guardian must overcome, by clear and convincing evidence, the legal presumption that it is in the best interest of the child to be placed in the custody of the parent. The guardianship petitioner must also prove that the child's placement with the guardian presents a substantial and significant advantage to the child. Relative guardians can seek financial subsidies in certain specified situations. A guardianship is not as permanent as an adoption, because a parent can bring a

petition to terminate the guardianship at any time, alleging that the parent is fit to have the care of the child and/or that the guardianship is no longer necessary. The guardian can also file a request with the court to be removed as guardian at any time, and the court may appoint a successor guardian if needed. See IC 29-3-12-4(b).

IC 31-30-1-1(10) states that the juvenile court has jurisdiction over guardianship proceedings for a child: (A) who has been adjudicated a CHINS; (B) for whom juvenile court has approved a permanency plan under IC 31-34-21-7 that provides for the appointment of a guardian of the person; and (C) who is the subject of a pending CHINS proceeding. IC 31-30-2-1(d) states that, except as provided in IC 31-30-2-1(g), the juvenile court's jurisdiction over a guardianship described in IC 31-30-1-1(10) continues until the juvenile court either terminates the guardianship or the child becomes eighteen years old (or nineteen years old if the child is a fulltime student in a secondary school or the equivalent level of vocational, career, or technical education). IC 31-30-2-1(d) also states that, if the guardianship continues after the child reaches the age of eighteen or nineteen, the juvenile court shall transfer the guardianship case to the court's probate docket or to the court which has probate jurisdiction in the county where the guardian resides. IC 31-30-2-1(f) states that, with the consent of a probate court, the juvenile court may transfer the guardianship of the person proceeding and any child support order initiated in the juvenile court to the probate court. IC 31-30-2-1(g) states that the juvenile court may retain jurisdiction over an older youth (defined at IC 31-28-5.8-4 as an eighteen-year-old or a nineteen-year-old) who is the recipient of kinship guardianship assistance or other financial assistance.

IC 31-34-21-7.7(a) gives the juvenile court authority to appoint a guardian for the child in accordance with the child's permanency plan, and subsection (b) mandates that a probate court presiding over guardianship of a child who is the subject of a CHINS proceeding transfer the case to the juvenile court. IC 31-34-21-7.7(d) states that a guardianship granted by the juvenile court survives closure of the related CHINS case, and IC 31-34-21-7.7(e) gives the probate court authority to assume or resume jurisdiction over the guardianship case once the CHINS case has closed.

When the juvenile or probate court appoints a guardian for the child as a permanency plan, IC 31-34-21-7.7(c) allows the court to include in its order the requirements, terms, and conditions described in IC 29-3-8-9(a). IC 29-3-8-9 addresses the establishment, modification, and termination of guardianships. IC 29-3-8-9(a) states that a probate or juvenile court may include in its order creating a guardianship of a minor: (1) a requirement that the minor must reside with the guardian until the guardianship is modified or terminated; and (2) any terms or conditions that a parent must meet in order to seek modification or termination of the guardianship. IC 29-3-8-9(b) states that, except as provided in IC 29-3-12 [termination of guardianship], if an order creating a guardianship contains terms and conditions described in IC 29-3-8-9(a)(2), the court may modify or terminate the guardianship only if the parent (1) complies with the terms and conditions; and (2) proves the parent's current fitness to assume all parental obligations by a preponderance of the evidence. IC 29-3-8-9(c) states that, if a petition is filed for modification, resignation, or removal of a guardian or termination of guardianship before the parent complies with the court ordered terms and conditions, and the child was the subject of a CHINS petition or an informal adjustment, the court shall refer the petition to DCS for DCS to determine the child's placement in accordance with the child's best interests. IC 29-3-8-9(d) and (e) also address the situation of a child who was the subject of a CHINS petition or an informal adjustment before the guardian was appointed. These statutes require the court to: (1) notify DCS of hearings if a petition to modify or terminate the guardianship or a petition regarding the death, resignation, or removal of the guardian is filed; (2) consider the position of DCS; and (3) upon the request of DCS, permit DCS to present evidence on whether the guardianship should be modified or terminated; the fitness of

the parent to provide for the child's care and supervision at the time of the hearing; the appropriate care and placement of the child; and the child's best interests. IC 29-3-8-9(f) states that DCS or the proposed guardian shall notify the court if DCS has approved financial assistance to a guardian for the child's benefit, and, if assistance has been approved, the court shall order the guardian to provide financial support to the child to the extent that guardianship property, child support, or DCS assistance payments do not fully support the child.

Practice Note: In situations when the child has been adjudicated a CHINS or was the subject of an informal adjustment, using the options presented in IC 29-3-8-9 provides increased safety for children when guardianship is the permanency plan. A proposed order appointing a guardian should include the options available in IC 29-3-8-9(a), when relevant, to promote safety and stability for the child.

IC 29-3-7-7 states that the court may not appoint a person to serve as guardian, or permit a person to continue to serve as guardian, if the person is a sexually violent predator (as described in IC 35-38-1-7.5) or has been convicted of child molesting or sexual misconduct with a minor when the offender was at least eighteen years old, the victim was under sixteen years of age, and the crime was committed by using or threatening to use deadly force; while armed with a deadly weapon; or the crime resulted in serious bodily injury. A person who was under the age of eighteen and was convicted as an adult of one of the sex crimes listed at IC 29-3-7-7(3), including an attempt or conspiracy to commit the crime, may not be appointed guardian of a child, or allowed to continue to serve as guardian. The crimes listed at IC 29-3-7-7(3) are: rape, criminal deviate conduct (before its repeal), level 1, 2, 3, or 4 or class A or B felony child molesting, level 2, 3, or 4 or class A or B felony vicarious sexual gratification and a substantially equivalent crime under the laws of another jurisdiction, including a military court.

IC 31-28-3-2 states DCS shall maintain a record of medical care provided to a foster child. IC 31-28-3-3(a) states that DCS shall issue a medical passport to the child when the child isplaced in foster care. IC 31-28-3-3(c) states DCS shall provide the medical passport to the child or the child's legal guardian after the CHINS case or the collaborative care case is closed.

In **In Re Guardianship of B.H.**, 770 N.E.2d 283 (Ind. 2002), the Indiana Supreme Court enunciated the following standard that before placing a child in the custody of a person other than a natural parent, a trial court

> must be satisfied by clear and convincing evidence that the best interests of the child requires such placement. The trial court must be convinced that placement with a person other than the natural parent represents a substantial and significant advantage to the child…evidence establishing the natural parent's unfitness or acquiescence, or demonstrating that a strong emotional bond has formed between the child and the third person, would of course be important, but the trial court is not limited to these criteria. The issue is not merely the fault of the natural parent. Rather, it is whether the important and strong presumption that a child's interests are best served by placement with the natural parent is clearly and convincingly overcome by evidence proving that the child's best interests are substantially and significantly served by placement with another person.

Id. at 287.

In **In Re B.W.**, 17 N.E.3d 299 (Ind. Ct. App. 2014), a CHINS case, the Court reversed the trial court's order appointing guardians over the two children. Id. at 31. When the younger child was eight months old, Mother observed that the younger child's right arm was swollen. Five days later, Mother took the child to her pediatrician, who ordered x-rays, which revealed a fracture.

The child was also diagnosed with four other fractures that "were in different stages of healing, indicating that they may have occurred on more than one occasion." A doctor concluded that the injuries had been caused by child abuse. DCS removed both children from Mother's care and placed them in foster care. At the fact-finding hearing, Mother and her husband stipulated that the younger child received injuries that would not have occurred but for the act or omission of a parent or custodian and that "there is no adequate explanation for such injuries." Mother and her husband stipulated that the children were CHINS. Mother participated in weekly therapy and was reported to be very insightful and making significant progress. According to her home-based case manager, Mother also was doing "a wonderful job of applying the skills she is learning in home-based services to her interactions with her children during supervised visits." A DCS progress report stated that Mother had changed her story about the younger child's injuries and that DCS was uncertain whether Mother could keep the children safe. DCS requested that the permanency plan be changed to termination of parental rights, but the court ordered that the plan remain reunification. Later, the trial court held a permanency hearing and issued an order appointing guardians for the children. In support of its order, the trial court observed that (1) Mother's explanation of the cause of the younger child's injuries had changed more than once; (2) Mother had delayed seeking medical care for the younger child; (3) Mother had been unwilling to take a polygraph; (4) the cause of the injuries remained unexplained; (5) despite Mother's cooperation in services, there was evidence that she was still unwilling to put her children's interests and needs before her own; (6) the court appointed special advocate had served on the case for seventeen months and continued to have concerns that the younger child would not be safe in Mother's care; and (7) the court appointed special advocate's testimony was credible and her conclusions were rationally related to the evidence. The Court held that the trial court abused its discretion when it appointed guardians for the children. Id. at 311. The Court reviewed IC 31-34-21-7, which provides that, when the trial court holds a permanency hearing in a CHINS proceeding, it shall make the determinations and findings required by IC 31-34-21-5. Id. at 305. The Court also looked to the factors listed at IC 31-34-21-5 and In Re Guardianship of B.H., 770 N.E.2d 283 (Ind. 2002). Id. at 306. The Court found the evidence was undisputed that Mother had successfully completed every requirement of the parental participation plan, and noted that both the home-based case manager and therapist had consistently recommended reunification. Id. at 307-309. The Court said that DCS and the trial court ignored this undisputed evidence. Id. at 310. The Court observed that there was substantial evidence that Mother had the present ability to provide a safe home for her children. Id. The Court noted that DCS had failed to present evidence that there was anything but a strong familial bond between Mother and the children, and had failed to overcome the presumption that a child's best interests are ordinarily served by placement in the natural parent's custody. Id. at 311.

Guardianship cases include: **In Re Guardianship of B.W.**, 45 N.E.3d 860, 867 (Ind. Ct. App. 2015) (Court reversed and remanded trial court's order awarding custody of child to Great Aunt, who had petitioned to be appointed the child's guardian; Court held that trial court's findings failed to support judgment that Great Aunt had clearly and convincingly overcome presumption in favor of Mother); **In Re M.N.S.**, 23 N.E.3d (Ind. Ct. App. 2014) (Court affirmed trial court's order granting Father's motion to terminate guardianship; Father was incarcerated when he consented to the guardianship, but was employed, married, and had custody of the child's younger sister when guardianship was terminated); **In Re I.E.**, 997 N.E.2d 358 (Ind. Ct. App. 2013) (Court opined that trial court did not abuse its discretion in concluding that the guardians failed to present evidence that child's best interests would be substantially and significantly served by continued placement with guardians to overcome the strong presumption that Father should have custody of the child); **In Re Guardianship of L.R.T.**, 979 N.E.2d 688 (Ind. Ct. App. 2012) (Court affirmed termination of guardianship, stating that, in a custody dispute between parent and third party, even where the parent seeks to re-obtain custody, burden of proof is

always on third party), *trans. denied*; **In Re Guardianship of A.L.C.**, 903 N.E.2d 343 (Ind. Ct. App. 2009) (Court said paternal Grandparents were not entitled to be appointed co-guardians as a matter of law by virtue of Father's nomination that they be appointed guardians of child's person and estate; best interest of the child is the overriding factor the trial court must consider when appointing a guardian); **In Re M.K.**, 867 N.E.2d 271 (Ind. Ct. App. 2007) (Court reversed and remanded trial court's denial of Mother's petition to terminate guardianship of her two children; Court found that parental presumption in favor of Mother obtaining custody of her daughters was not rebutted); **In Re Guardianship of J.K.**, 862 N.E.2d 686 (Ind. Ct. App. 2007) (Crone, J., dissenting), (Court affirmed termination of guardianship of child where trial court concluded circumstances warranting guardianship had changed; Court could not say guardians proved by clear and convincing evidence that guardianship should continue; evidence of current fitness of parents was conflicting; and Court could not reweigh evidence and judge witnesses' credibility); **Hinkley v. Chapman**, 817 N.E.2d 1288 (Ind. Ct. App. 2004) (Court affirmed appointment of Aunt and Uncle as guardians due to educational neglect of child by Mother); **In Re Guardianship of A.R.S.**, 816 N.E.2d 1160 (Ind. Ct. App. 2004) (Court reversed order denying Mother's request to terminate guardianship because generalized best interests finding was not adequate to support order); **Roydes v. Cappy**, 762 N.E.2d 1268 (Ind. Ct. App. 2002) (Court affirmed trial court's denial of parents' petition to terminate guardianship because evidence showed Mother was incapable of caring for child). Indiana Appellate Courts have also cited third party custody cases in guardianship opinions.

DCS policy indicates that eligible relatives who want to be appointed guardians of children as the CHINS permanency plan may apply to DCS for financial help through the Guardianship Assistance Program before the guardianship petition is granted by the court. The child may also be eligible for nonrecurring expenses associated with the guardianship process, including legal fees for the guardianship. The Guardianship Assistance Program agreement must be signed by DCS and the guardian prior to the entry of the court order appointing a legal guardian. Relatives should ask the DCS case manager about the application process. See Chapter 14 at X. for further information.

See this Chapter at III.E. for discussion of third party custodianship case law. See Chapter 14 for a comprehensive discussion of Guardianship and Third Party Custody.

III. G. Another Planned, Permanent Living Arrangement (APPLA)

IC 31-34-21-7.5(c)(E) states that another planned, permanent living arrangement (APPLA) is an option only for children ages sixteen years and older. IC 31-25-2-7(a)(9) states that DCS is responsible for administering successful adulthood services (as described in 42 U.S.C. § 677 et seq.). IC 31-9-2-123.5 defines "successful adulthood services", for purposes of IC 31-25 and IC 31-28 as "services for youth that are designed to assist youth who will age out of foster care with the skills and abilities necessary or desirable to be self-reliant, including housing, job placement and support, daily living skills, budgeting and financial management skills, substance abuse prevention, preventative health activities, and counseling."

IC 21-12-6.5-1 and IC 21-12-5.6-2 state that a child may apply for the Twenty-First Century Scholars Program if the child is receiving foster care, is in grades nine through twelve, and is a resident of Indiana at the time of the application. The Twenty-First Century Scholars Program is administered by the Indiana Commission for Higher Education. The program gives tuition scholarships to eligible students for post-secondary education at Indiana colleges. Other requirements for participation in the Twenty-First Century Scholars Program are delineated at IC 21-12-6-5. IC 21-12-6-14(b) requires a DCS caseworker to give information to a student before or during the student's placement in grade 7 or grade 8 if the student has been placed in

foster care, with a relative or unlicensed caretaker, or in a child caring institution or group home. The caseworker shall also provide the student with information concerning: (1) Pell grants; (2) Chafee grants; (3) federal supplement grants; (4) the Free Application for Federal Student Aid; (5) individual development accounts (as described under IC 4-4-28); and (6) the Commission for Higher Education's programs under IC 21-18.5-3-1. A student who receives this information shall sign a written acknowledgement of receipt of the information, which shall be placed in the student's case file. IC 21-12-6-14(c).

A child who is at least sixteen years old, under DCS care and supervision, and who obtains the approval of the juvenile court may contract for a motor vehicle insurance policy. IC 27-2-11.1-3. A child who is less than eighteen years old, under DCS care and supervision, and provides proof of ownership of a motor vehicle insurance policy does not need the signature of a parent or guardian to obtain an Indiana driver's license. IC 9-24-9-4.1.The Indiana Bureau of Motor Vehicles may not charge a fee to a child who is under DCS care and supervision for a learner's permit or a driver's license. IC 9-24-7-1(d); IC 9-24-3-1(e).

Congress passed the Foster Care Independence Act of 1999, 42 U.S.C.A. § 1305, which promotes an Improved Independent Living Program. Section 101(a)(1) and (5) state that Congress finds the following:

> (1) States are required to make reasonable efforts to find adoptive families for all children, including older children, for whom reunification with their biological family is not in the best interests of the child. However, some older children will continue to live in foster care. These children should be enrolled in an Independent Living program designed and conducted by State and local government to help prepare them for employment, postsecondary education, and successful management of adult responsibilities.
>
> (5) The Nation's State and local governments, with financial support from the Federal Government, should offer an extensive program of education, training, employment, and financial support for young adults leaving foster care, with participation in such program beginning several years before high school graduation and continuing, as needed, until the young adults emancipated from foster care establish independence or reach 21 years of age.

The purposes of the John H. Chafee Foster Care Independence Program, 42 U.S.C.A. § 677 (a)(1) through (a)(8) are:

> (a) PURPOSE.—The purpose of this section is to provide States with flexible funding that will enable programs to be designed and conducted—
>
> (1) to identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);
> (2) to help children who are likely to remain in foster care until 18 years of age receive the education, training, and services necessary to obtain employment;
> (3) to help children who are likely to remain in foster care until 18 years of age prepare for and enter postsecondary training and education institutions;

> (4) to provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults;
> (5) to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood;
> (6) to make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care;
> (7) to provide the services referred to in this subsection to children who, after attaining 16 years of age, have left foster care for kinship guardianship or adoption; and
> (8) to ensure children who are likely to remain in foster care until 18 years of age have regular, ongoing opportunities to engage in age or developmentally-appropriate activities as defined in section 675(11) of this title.

DCS makes Chafee independent living services available to eligible children in need of services who are ages sixteen to twenty-one years of age. Chafee services are also available to former foster youth who are ages eighteen to twenty-one if the youth was adopted or placed in guardianship at age sixteen or older. Chafee independent living services include: (1) youth conferences; (2) computer camps where youth are given laptop computers and receive computer instruction; (3) emancipation goods and services; (4) room and board services; (5) the Education and Training Voucher (ETV) Program. The ETV Program provides grants for tuition, books, living expenses, and other education-related expenses for the following young adults who are: (1) U.S. citizens or qualified non-citizens; (2) whose personal assets are not worth more that $10,000; (3) who have been accepted into or enrolled in a degree, certificate or other accredited program at a college, university, technical or vocational school and show progress towards a degree or certificate; and (4) are aged 18, 19, or 20 when they first apply to the ETV Program. In addition to the above, young adult applicants must fall into one of the following three categories to apply: (1) their foster care case will be closed on or after their eighteenth birthday or they were in foster care on their eighteenth birthday; (2) they are in foster care, age seventeen or older, and have a high school diploma, GED, or Vocational Certificate; or (3) they were adopted or placed in a guardianship from foster care after their sixteenth birthday. Applications for the ETV Program may be made at www.indianaetv.org. Applications must be made yearly, and a transcript must be sent to ETV every semester. Applicants must maintain a 2.0 grade point average to remain in good standing with the program.

DCS will also provide transitional services to children in foster care who have reached the age of seventeen years and six months or within six months of the closure of the CHINS case after the child reaches the age of eighteen. IC 31-25-2-21(a) states that a transitional services plan provides information regarding education, employment, housing, health care (including information on eligibility and participation in the Medicare program), development of problem solving skills, and available local, state, and federal financial assistance. IC 31-25-2-21(b) states DCS shall implement a program that provides a transitional services plan to: (1) an individual who has become or will become eighteen years of age or emancipated while receiving foster care; and (2) an individual who is eighteen or nineteen years old and who is receiving collaborative care under IC 31-28-5.8. IC 31-25-2-21(c)(1) requires the transitional services plan to include a document that describes the individual's rights to education, health, visitation, and court participation; the right to be provided with medical documents and other medical information; and the right to stay safe and avoid exploitation. IC 31-25-2-21(c)(2) provides that the transitional services plan includes a signed acknowledgement that the individual has been given the required documents and the individual's rights have been explained in an age appropriate manner. IC 31-

25-2-21(d) states that the child representative selected under IC 31-34-15-7 [child's rights in case plan or transitional services plan] may participate in the development of a transitional services plan.

IC 31-34-21-7.6 requires DCS to provide a state issued driver's license or identification card, an official or certified copy of a birth certificate, a social security card, insurance records, copies of medical records, and information on the person's enrollment in the Medicaid program to a person who has been in foster care for at least six months and who is leaving foster care because he or she is eighteen or older. IC 12-15-2-16.2(a) provides that a person who is eighteen years old or emancipated and less than twenty-six years old is eligible to receive Medicaid as set forth in 42 U.S.C. § 1396(a)(10)(A)(i)(ix) [a person under twenty-six years of age who was in foster care under the responsibility of the State on the date of attaining eighteen years of age and was enrolled in the state Medicaid plan or under a waiver of the plan while in foster care]. The Indiana Office of Family and Social Services shall assist DCS in the enrollment of the person before the person becomes eighteen years of age or is emancipated from foster care. IC 12-15-2-16.2(c) states that the Office of Family and Social Services may not require the person to submit eligibility information after enrollment in the Medicaid program during the person's eligibility for the Medicaid program under this statute.

IC 31-28-5.8-1 defines "collaborative care" as any services or payment for services that DCS provides for an older youth under the terms of a collaborative care agreement while the older youth is residing in a licensed foster home, licensed child caring institution, licensed group home, host home (defined at IC 31-28-5.8-3), or supervised independent living arrangement approved by DCS. IC 31-28-5.8-2 states that a "collaborative care agreement" is a voluntary agreement that: (1) is signed by DCS, a guardian ad litem/court appointed special advocate participating with the older youth's consent, and the older youth; (2) is approved by the juvenile court; (3) includes provisions required or authorized under DCS rules; and (4) may be amended by agreement between DCS, the guardian ad litem/court appointed special advocate participating with the older youth's consent, and the older youth without review or approval by the court. IC 31-27-5.8-5(a) and (b) state that an older youth (age eighteen or nineteen) who received foster care under a court order on the date of the youth's eighteenth birthday is eligible to receive collaborative care services at any time until the youth becomes twenty years old and may ask DCS to petition the juvenile court for approval of a collaborative care agreement. IC 31-28-5.8-5(c) states that the court may grant a petition for collaborative care, consistent with DCS rules, if the court finds that the older youth is employed; attending school or a vocational or educational certificate or decree program; participating in a program or activity designed to promote, or remove barriers to employment; or incapable of the listed activities due to a documented medical condition. IC 28-5.8-5(d) states that a child who is at least seventeen and six months old, is receiving foster care under a court order, and expects to be eligible for collaborative care may request DCS to start the process of planning for collaborative care. IC 31-28-5.8-5.5 states that DCS may conduct a criminal history check of each person who is currently residing with an older youth in a host home or supervised independent living situation. IC 31-28-5.8-6 provides for collaborative care case plans and IC 31-28-5.8-7 requires periodic review by the court at least once every six months in a formal hearing for which DCS shall prepare a written progress report. IC 31-28-5.8-8 sets out the means by which a collaborative care agreement may be closed. IC 31-28-5.8-8(b) allows the older youth or his guardian ad litem/court appointed special advocate to petition the court for a hearing if DCS terminates a collaborative care agreement before its expiration date without the concurrence of the older youth.

In **In Re E.W.**, 26 N.E.3d 1006 (Ind. Ct. App. 2015), the trial court had determined that a permanency plan of APPLA (Another Planned Permanent Living Arrangement) was in the

fourteen-year-old child's best interests. The Court observed that "typically, a child whose plan is changed to APPLA is an older teenaged child who is unlikely or unwilling to be adopted, who has no relatives able or willing to act as a custodian or guardian, and whose parents are unable or unwilling to become safe and appropriate caregivers." Id. at 1009. See this Chapter at II.D.8. for discussion on Court's consideration of Mother's appeal on termination of her contact with the child and Chapter 8 at IV.C.1. for discussion of criteria for ending Mother's contact with the child.

In **Lang v. Starke Cty. Office of Fam. Children**, 861 N.E.2d 366 (Ind. Ct. App. 2007), the Court affirmed the termination judgment where the satisfactory plan for the children was adoption or independent living. The Court opined that the trial court's finding that termination was in the children's best interests was not clearly erroneous. Id. at 373-74. The Court noted testimony of the DCS case workers and court appointed special advocate that the children did not wish to return home due to fear of the father and that termination would ease the children's anxiety about the possibility of returning home. Id. at 374.

IV. FINALIZING THE PERMANENCY PLAN

IV. A. Finalizing a Plan for Reunification: Discharge of Child and Parent

If the permanency plan continues to be reunification, the Court should issue orders and time lines necessary to reach that goal. A case review hearing should be scheduled within six months, or the parties may jointly agree to discharge the child and parents prior to that date, if approved by the court. IC 31-34-21-11 provides that "[w]hen the juvenile court finds that the objectives of the dispositional decree have been met, the court shall discharge the child and the child's parent, guardian, or custodian." See **Matter of C.B.**, 616 N.E. 2d 763, 768-769 (Ind. Ct. App. 1993) ("discharge" statute requires a finding that the objectives of the dispositional decree have been met); **Lake County FCS v. Charlton**, 631 N.E. 2d 526, 528 (Ind. Ct. App. 1994) (error to deny Division's motion to end wardship because evidence showed child no longer fit within the definition of CHINS since parents could provide for his medical expenses, even though doing so was a hardship).

IV. B. Finalizing a Plan for an Alternative Permanency Option

IC 31-34-21-7.5(c) provides that the permanency plan must include:

> (2) A time schedule for implementing the applicable provisions of the permanency plan.
> ...
> (4) Other items required to be included in a case plan under IC 31-34-15 or federal law, consistent with the permanent or long term arrangements described by the permanency plan.

The federal Adoption and Safe Families Act provides at 42 U.S.C. § 675(1)(E) that the child's case plan should include:

> In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.

IV. B. 1. Judicial Determination to End Reunification Efforts When Inconsistent With Permanency Plan

IC 31-34-21-5.8 applies only if a court has approved a permanency plan for the child. IC 31-34-21-5.8(b) provides that if continuation of reasonable efforts to preserve and reunify the family is inconsistent with the child's permanency plan, DCS shall make reasonable efforts to:

(1) with court approval, place the child in an out-of-home placement in accordance with the permanency plan; and
(2) complete whatever steps are necessary to finalize the permanent placement of the child in a timely manner.

IC 31-34-21-5.8(c) provides that when the court approved permanency plan is placement of the child for adoption or another planned, permanent living arrangement, then "[p]eriodic progress reports, case reviews, and postdispositional hearings" to determine whether or the extent to which the following have occurred are not required:

(1) Whether reasonable efforts have been made to eliminate the need for removal of the child from the child's home or to make it possible for the child to safely return to the child's home.
(2) Whether the child is placed in close proximity to the home of the child's parent, guardian, or custodian.

It is important to note concerns regarding ending reunification efforts prior to a petition for, or judgment of, termination of the parent-child relationship. Parents may argue that reunification services should not be terminated until parental rights are terminated, but it is clear that state law envisions that reasonable efforts toward reunification may be discontinued if they are inconsistent with the child's permanency plan. See **In Re Tr. S.**, 63 N.E.3d 1065 (Ind. Ct. App. 2016) and **In Re A.D.W.**, 907 N.E.2d 533 (Ind. Ct. App. 2008), which are discussed in this Chapter at II.D.

Practice Note: Practitioners should note that IC 31-34-21-5.8(b)(2), which authorizes DCS to "complete whatever steps are necessary to finalize the permanent placement of the child in a timely manner", could allow DCS to use its resources to facilitate guardianships, third party custodianships, adoptions, and other court approved permanency plans.

IV. B. 2. Discharge of CHINS Jurisdiction When Adoption Petition Granted

In **In Re Adoption of C.B.M.**, 992 N.E.2d 687 (Ind. 2013), the Indiana Supreme Court found that the children's adoption by their foster parents must be set aside because the trial court's termination of parental rights order which allowed the adoption to be completed without Birth Mother's consent had been reversed by the Court of Appeals in Moore v. Jasper Cnty. Dep't. of Child Servs., 894 N.E.2d 218 (Ind. Ct. App. 2008). C.B.M. at 689-90. The Court instructed the adoption court to vacate the decree of adoption within seven days of the Court's opinion being certified and to reset the adoption petition for a contested hearing. Id. at 697. The Court was "all too aware of the harsh effects" its decision may have on the children in the case and on future children who find themselves similarly situated through no fault of their own, so the Court offered guidance for avoiding these harsh effects in future cases. Id. at 695. The Court strongly suggested that, in the future, DCS's best practice would be to leave the underlying CHINS case open until any related termination appeal is completed. Id. at 696. The Court observed that: (1) children may have a particularly great "need of services" when a termination judgment is reversed on appeal because they will have been removed from the parents' home for a substantial time and will be bonding into a new home; (2) the natural

parent, even if not unfit, may also be in need of services before the children could appropriately return to their original home; (3) without a CHINS case, there is no ready means to provide the support all the parties will require while reexamining the children's status in light of the termination reversal. Id.

IC 31-19-11-6, enacted after **In Re Adoption of C.B.M.**, 992 N.E.2d 687 (Ind. 2013), states that the court may not grant a petition for adoption of a child if the parent-child relationship has been terminated and one or more of the following apply with respect to the termination: (a) the time for filing an appeal (including a request for transfer or certiorari) has not elapsed; (b) an appeal is pending; (c) an appellate court is considering a request for transfer or certiorari.

In **In Re Infant Girl W.**, 845 N.E.2d 229 (Ind. Ct. App. 2006), *trans. denied sub nom*. In Re Adoption of M.W., 851 N.E.2d 961 (Ind. 2006) (Dickson, J. dissenting), a consolidated CHINS and adoption appeal, the child had been adjudicated a child in need of services in the Morgan Circuit Court, Birth Mother sought to place the child for adoption, and the Marion Superior Court, Probate Division granted the petition for adoption filed by the child's same-sex foster parents. Morgan County DFC had refused to consent to the adoption and Morgan Circuit Court refused to recognize Marion Superior Court, Probate Division's authority to grant the adoption. The Morgan Circuit Court refused to dismiss the CHINS case. The Court of Appeals concluded that the adoption petition had been properly granted. Id. at 246. The Court opined that the child's dispositional goal of adoption had been met, citing IC 31-34-21-7.5(c). Id. at 245. The Court found that Morgan Circuit Court's "unqualified statutory obligation to discharge its CHINS jurisdiction is not tolled by possible or actual appeals of an adoption decree that remains in force." Id. at 246. The Court said that if the adoption were set aside on direct appeal, the OFC was free to initiate a new CHINS action if warranted, but the Morgan Circuit Court was required to dismiss the pending CHINS action. Id.

Practice Note: The fact situation in **Infant Girl**, 845 N.E.2d at 233-235 indicates that the child's Birth Mother decided to place the child for adoption and voluntarily terminated her parental rights. In **C.B.M.**, 992 N.E.2d at 690 the Birth Mother's parental rights were involuntarily terminated.