

Foster Parents Handbook

A Guide for Indiana Foster Parents on CHINS and Termination Court Proceedings

By:

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About the Agency

Kids' Voice of Indiana

Kids' Voice of Indiana is a 501(c)3 organization which has been committed for more than twenty-five years to promoting, protecting, and preserving the rights and best interest of children across the state of Indiana through three Programs, the Derelle Watson-Duvall Children's Law Center of Indiana, the Bette J. Dick GAL for Kids Program, and the Supervised Parent-Child Visitation Program.

The Indiana law discussed in this Handbook is current as of May, 2011. Indiana law frequently changes due to the published opinions of the Indiana Supreme and Appellate Courts and legislation enacted annually by the Indiana General Assembly.

Disclaimer: Kids' Voice and Children's Law Center staff do not provide legal advice, and neither this publication nor any other communication you have with any of them creates an attorney-client relationship with you. You should consult your own attorney before taking or failing to take any legal action based on the content of this document or any other communications with Kids' Voice or Children's Law Center staff.

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**Foster Parents' Guide To
The Child In Need of Services
and Termination of Parental Rights Process**

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I. Introduction

The purpose of this Handbook is to provide detailed information about Indiana Child in Need of Services (CHINS) and Termination of the Parent-Child Relationship (TPR) legal proceedings for Indiana foster parents. This Handbook is designed to assist foster parents in providing relevant information about their foster children to Indiana judges, Department of Child Services (DCS), the child's Guardian ad Litem/Court Appointed Special Advocate, and service providers so the best possible decisions can be made at each stage of the proceedings. The relevancy of foster parents' information is defined by the factors the Court must consider at each hearing. Increased knowledge about the Court hearings and process will enable foster parents to continue their important work of making a positive difference in the lives of their foster children.

Legal citations to Indiana statutes (laws) are included in this Handbook. Legal citations are in bold type. All of Indiana's current laws may be accessed on the free, public, Indiana General Assembly website, www.in.gov/legislative. Scroll down to the Laws bar on the Indiana General Assembly homepage, then click on Constitution & Statutes. Click on Title 31. Family Law and Juvenile Law for all the citations in this book. From Title 31, click on Article 34 Juvenile Law: Children in Need of Services for CHINS laws. From Title 31, click on Article 35 Juvenile Law: Termination of the Parent-Child Relationship for Termination laws. The laws discussed in this paper are current as of July 10, 2010. Remember that the members of the Indiana General Assembly respond to their constituents' suggestions. Foster parents may contact their legislators about their proposals for changes in laws.

This Handbook provides legal information but is not a substitute for legal advice about a specific situation. Foster parents are free to consult an attorney of their choosing before taking or failing to take any legal action based on the contents of this Handbook. This Handbook does not create an attorney-client relationship.

II. Reporting Child Abuse and Neglect

When DCS substantiates a report of child abuse or neglect and files a Child in Need of Services (CHINS) petition, a child could be placed in foster care. The CHINS process begins with a report of child abuse or neglect that a person has made to DCS. According to Indiana law, anyone who has “reason to believe” that a child is a “victim of child abuse or neglect” shall immediately make an oral report to DCS or a local law enforcement agency. **IC 31-33-5-1. IC 31-33-5-4.**

The “reason to believe” which is required for a person to decide to report child abuse or neglect is “evidence that, if presented to individuals of similar background and training, would cause the individuals to believe that a child was abused or neglected.” **IC 31-9-2-101.** This statute means that the legal duty for reporting child abuse or neglect varies based on the potential reporter’s background. For example, a doctor might believe that a child’s injury was likely caused by abuse or neglect, but a child care worker might not recognize that the same child’s injury was likely caused by abuse or neglect. Therefore, based on the same child’s injury, the doctor would have a legal duty to report child abuse, but the child care worker would not have a legal duty to report child abuse.

The Indiana statutory definition of a “victim of child abuse or neglect” is a child who falls within one or more of the CHINS definitions as described by **IC 31-34-1-1 through IC 31-34-1-5, IC 31-34-1-10, or IC 31-34-1-11.** The applicable Child in Need of Services definitions are:

IC 31-34-1-1: Inability, refusal, or neglect of parent, guardian, or custodian to supply child with necessary food, clothing, shelter, medical care, education, or supervision

Sec. 1. A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and
- (2) the child needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

IC 31-34-1-2: Act or omission of parent, guardian, or custodian seriously endangering child's physical or mental health

Sec. 2. (a) A child is a child in need of services if before the child becomes eighteen (18) years of age:

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

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

(b) Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered.

IC 31-34-1-3: Victim of sex offense

Sec. 3. (a) A child is a child in need of services if before the child becomes eighteen (18) years of age:

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

(A) **IC 35-42-4-1** [rape];

(B) **IC 35-42-4-2** [criminal deviate conduct];

(C) **IC 35-42-4-3** [child molesting];

(D) **IC 35-42-4-4** [child exploitation; possession of child pornography];

(E) **IC 35-42-4-7** [child seduction];

(F) **IC 35-42-4-9** [sexual misconduct with a minor];

(G) **IC 35-45-4-1** [public indecency; indecent exposure];

- (H) **IC 35-45-4-2** [prostitution];
 - (I) **IC 35-46-1-3** [incest]; or
 - (J) the law of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (I); and
- (2) the child needs care, treatment, or rehabilitation that:
- (A) the child is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.
- (b) A child is a child in need of services if, before the child becomes eighteen (18) years of age:
- (1) the child lives in the same household as another child who is the victim of a sex offense under:
- (A) **IC 35-42-4-1** [rape];
 - (B) **IC 35-42-4-2** [criminal deviate conduct];
 - (C) **IC 35-42-4-3** [child molesting];
 - (D) **IC 35-42-4-4** [child exploitation; possession of child pornography];
 - (E) **IC 35-42-4-7** [child seduction];
 - (F) **IC 35-42-4-9** [sexual misconduct with a minor];
 - (G) **IC 35-45-4-1** [public indecency; indecent exposure];
 - (H) **IC 35-45-4-2** [prostitution];
 - (I) **IC 35-46-1-3** [incest]; or
 - (J) the law of another jurisdiction, including a military court, that is substantially

equivalent to any of the offenses listed in clauses (A) through (I);

(2) the child lives in the same household as the adult who committed the sex offense under subdivision (1) and the sex offense resulted in a conviction or a judgment under **IC 31-34-11-2** [CHINS factfinding];

(3) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court; and

(4) a caseworker assigned to provide services to the child:

(A) places the child in a program of informal adjustment or other family or rehabilitative services based upon the existence of the circumstances described in subdivisions (1) and (2) and the assigned caseworker subsequently determines further intervention is necessary; or

(B) determines that a program of informal adjustment or other family or rehabilitative services is inappropriate.

IC 31-34-1-4: Parent, guardian, or custodian allowing child's participation in obscene performance

Sec. 4. A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's parent, guardian, or custodian allows the child to participate in an obscene performance (as defined by **IC 35-49-2-2** or **IC 35-49-3-2**); and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

IC 31-34-1-5: Parent, guardian, or custodian allowing child to commit sex offense

Sec. 5. A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's parent, guardian, or custodian allows the child to commit a sex offense prohibited by **IC 35-45-4** [public indecency, indecent exposure, public nudity, prostitution, patronizing or promoting prostitution, voyeurism]; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

IC 31-34-1-10: Child born with fetal alcohol syndrome or with controlled substance or legend drug in child's body

Sec. 10. Except as provided in **IC 31-34-1-12** and **13** [mother had prescription for drug and made good faith effort to use drug as prescribed], a child is a child in need of services if:

(1) the child is born with:

(A) fetal alcohol syndrome; or

(B) any amount, including a trace amount, of a controlled substance or a legend drug in the child's body; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; or

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

IC 31-34-1-11: Risks or injuries arising from use of alcohol, controlled substance, or legend drug by child's mother during pregnancy

Sec. 11. Except as provided in **IC 31-34-1-12** and **13** [mother had prescription for drug and made good faith effort to use drug as prescribed], a child is a child in need of services if:

(1) the child:

(A) has an injury;

(B) has abnormal physical or psychological development; or

(C) is at a substantial risk of a life threatening condition; that arises or is substantially aggravated because the child's mother used alcohol, a controlled substance, or a legend drug during pregnancy; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; or

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

For purposes of child abuse or neglect reporting, the term “parent” means either a birth or adoptive parent and includes an alleged father whose paternity of the child has not been legally established. The term “guardian” is a person appointed by the Court to have care and custody of a child. The term “custodian” includes (1) a member of the household of the child’s noncustodial parent; (2) an individual who has direct contact, on a regular and continuing basis, with a child for whom care and supervision is provided; (3) a licensed applicant or licensed foster home, residential child care facility, child care center, or child care home; (4) a person who is responsible for care, supervision, or welfare of children at a child care ministry, home, center or facility of a child care provider, or a school; (5) a child caregiver. A foster parent fits within the definition of “custodian” for the purpose of reporting alleged child neglect or abuse by a foster parent.

A person who reports child abuse or neglect or who participates in a court proceeding or other proceeding resulting from or relating to an abuse or neglect report is immune from civil or criminal liability for making the report. **IC 31-33-6-1.** Indiana law presumes that a person who reports child abuse or neglect or who assists in any requirement of Indiana law on child abuse or neglect reporting is presumed to have acted in good faith. **IC 31-33-6-2.** The immunity and good faith presumption laws mean that a person who reports child abuse or neglect or who assists in the reporting process, including testifying or making recommendations in Court, cannot be prosecuted or successfully sued. A person who acts maliciously or in bad faith is not protected by the immunity law. **IC 31-33-6-2.** The good faith presumption law means it must be legally proven that a person acted maliciously or in bad faith, so that the person does not have immunity for reporting.

Because Indiana law requires everyone who has reason to believe that a child is a victim of abuse or neglect must report, Indiana law protects persons who otherwise might be unable to report due to other legal duties owed to patients, clients, or others. Health care providers, social workers, marriage and family therapists, mental health counselors, school counselors, and victim advocates are authorized to report child abuse or neglect even if doing so would require them to divulge confidential information. **IC 31-32-11-1.** Spouses are not exempt from reporting child abuse or neglect by the other spouse. In some situations, attorneys are required to report child abuse or neglect by their clients. Clergy may, in some situations, be required to report child abuse or neglect by members of their congregations.

A person who knows about child abuse or neglect but fails to report it is committing a crime under Indiana law. **IC 31-33-22-1.** Knowing and intentional false reporting of child abuse or neglect is also a crime. **IC 31-33-22-3.** Knowingly and intentionally making a false report is very different from mistakenly reporting child abuse or neglect. Mistakenly reporting child abuse or neglect occurs when the reporter has a good faith belief that the child is a victim of abuse or neglect and is

not a crime. Even when DCS fails to substantiate abuse or neglect, this does not mean the report is a knowing and intentional false report.

III. The Department of Child Services Abuse/Neglect Assessment

DCS must initiate an appropriately thorough child protection assessment of every report of known or suspected child abuse or neglect. **IC 31-33-8-1**. The term “investigation” rather than “assessment” was used before July 1, 2009. The purpose of the assessment is to determine whether the child is a victim of abuse or neglect. “Assessment” is defined at **IC 31-9-2-9.6** as:

An initial and ongoing investigation or evaluation that includes:

- (1) a review and determination of the safety issues that affect a child and;
 - (A) a child’s parents, guardians, or custodians; or
 - (B) another individual residing in the residence where the child resides or is likely to reside;
- (2) an identification of the underlying causes of the safety issues described in subdivision (1);
- (3) a determination whether child abuse, neglect, or maltreatment occurred; and
- (4) a determination of the needs of a child’s family in order for the child to:
 - (A) remain in the home safely;
 - (B) return to the home safely; or
 - (C) be placed in an alternative living arrangement.

DCS prepares a written document detailing information given by the person who reports child abuse or neglect. **IC 31-33-7-4**. This document is called a 310 report. The 310 report is made available to the prosecutor and law enforcement and to the coroner in the case of a child’s death. **IC 31-33-7-5**.

Law enforcement may conduct a criminal investigation on the same situation which DCS is assessing, and the two agencies frequently work together. **IC 31-33-8-2**. The primary purpose of law enforcement investigations is to determine whether a crime has been committed, identify an alleged perpetrator, and give information to the county prosecutor’s office. The county prosecutor will decide whether to file a criminal charge. The decision to file criminal charges is not made by the child victim, the victim’s family, or DCS. Sometimes there will be a criminal case as well as a CHINS case involving the child abuse or neglect of the same child.

The assessment of a child abuse or neglect report shall be initiated immediately and no later than twenty-four (24) hours after receipt of the report if abuse is alleged. If DCS has reason to believe that the child is in imminent danger of serious bodily harm, an immediate onsite assessment shall be initiated within one hour. **IC 31-33-8-1**. Neglect assessments shall be initiated within a reasonably prompt time, but not later than five days. **IC 31-33-8-1**. When the immediate well-being or safety of the child appears to be endangered, an assessment shall be initiated regardless of the time of day.

If the report alleges that the child lives with a parent who is married to or lives with a person who has been convicted of child neglect, battery, or is required to register as a sex or violent offender, DCS shall initiate a reasonably prompt assessment, but not later than five days. **IC 31-33-8-1.** The assessment must include the following, to the extent that is reasonably possible: (1) the nature, extent, and cause of the known or suspected abuse or neglect; (2) the identity of the alleged perpetrator; (3) the names and conditions of other children in the home; (4) an evaluation of the parent, guardian, custodian or other person responsible for the child's care; and (5) the home environment and the relationship of the child to the parent, guardian, custodian, or other persons responsible for the child's care. The assessment may include a visit to the child's home, an interview with the child, and a physical, psychological, or psychiatric examination of any child in the home. **IC 31-33-8-7.**

DCS may also conduct a forensic interview with the child. A forensic interview is performed by a person who has received special training in gathering information from children without suggesting answers to the interviewer's questions. In cases of physical abuse, DCS or the law enforcement agency shall arrange for color photographs of the child of visible areas of trauma and for a radiological examination if medically indicated. **IC 31-33-8-3.** DCS may seek the assistance of the Court to obtain admission by the case manager to the child's home or school. The Court may order a medical or physical examination or treatment of the child. **IC 31-32-12-1.** DCS or law enforcement can request a court order to remove the child from the parent's home prior to the completion of the assessment if the immediate removal is necessary to protect the child from further abuse or neglect. **IC 31-33-8-8.** It is a class A misdemeanor criminal offense for a person to knowingly or intentionally obstruct or interfere with a child abuse assessment. **IC 31-33-22-2.**

After the assessment is completed, DCS shall classify reports as either substantiated or unsubstantiated. **IC 31-33-8-12.** A written report of the assessment is made on state form 311. **IC 31-33-18-4** requires DCS to give verbal and written information, stating that completed assessment reports relating to the abuse/neglect investigation are available upon request, to each parent, guardian, or custodian of the child. Parents, guardians, or custodians can access the report and investigation information by signing a written release form that outlines what information is requested. **IC 31-33-18-4.** The only prerequisite that can be placed on the parties obtaining the investigation information is to pay copying costs. **IC 31-33-18-4.** Other persons about whom a report is made, including foster parents who have been assessed for child abuse or neglect, can also have access to DCS records. **IC 31-33-18-2.**

“Substantiated” is defined at **IC 31-9-2-123** and “means a determination regarding the status of a child abuse or neglect report whenever facts obtained during an assessment of the report provide a preponderance of evidence that child abuse or neglect has occurred.” “Unsubstantiated” is defined at **IC 31-9-2-132** and “means a determination regarding the status of a child abuse or neglect report made whenever facts obtained during an assessment of the report provide credible evidence that child abuse or neglect has not occurred.”

DCS maintains the computerized Child Protection Index to organize and access information on substantiated child abuse and neglect assessment reports. **IC 31-33-26-2.** Substantiated reports concerning foster parents as well as birth parents, guardians, and other custodians are included in the Index. Not later than thirty days after DCS enters a substantiated child abuse or neglect report into the Index, DCS shall notify the parent, guardian, or custodian of the child named in the report and any perpetrator identified by DCS who is not a parent, guardian, or custodian, that DCS has entered the report into the Index. The identified perpetrator, including the child's parent, guardian, custodian, or foster parent may request an administrative hearing. **IC 31-33-26-8.** The reason for the administrative hearing is to give the identified perpetrator the opportunity to convince the administrative hearing officer that the substantiation by DCS of abuse or neglect is not correct. The identified perpetrator's request for an administrative hearing must be made within thirty days of DCS service of notice to the identified perpetrator, unless the identified perpetrator demonstrates that failure to request an administrative hearing was due to excusable neglect or fraud. **IC 31-33-26-8.**

At the administrative hearing, DCS must prove by a preponderance of the evidence that the identified perpetrator is responsible for the child's abuse or neglect. **IC 31-33-26-9.** The administrative hearing officer shall not exclude hearsay evidence, but a determination shall not be based solely on hearsay evidence. **IC 31-33-26-9.** After listening to the evidence, the administrative hearing officer can order DCS to change or expunge the substantiated report. **IC 31-33-26-9.** The administrative hearing officer can also order DCS to amend a substantiated report by deleting the name of the alleged perpetrator if the hearing officer finds that the person was not the perpetrator of child abuse or neglect that occurred. **IC 31-33-26-15.**

The administrative hearing shall not take place while there is a pending CHINS case or if criminal charges are filed against the perpetrator based on the same facts and circumstances on which DCS classified the report as substantiated. **IC 31-33-26-11. IC 31-33-26-12.** If the juvenile court determines that the alleged abuse or neglect did not occur or the person was not a perpetrator, the perpetrator is not entitled to an administrative hearing. **IC 31-33-26-11.** If the perpetrator is convicted of the criminal charges where the facts provided the basis for the substantiated report, the perpetrator is not entitled to an administrative hearing. **IC 31-33-26-12.** A perpetrator is also not entitled to an administrative hearing if the juvenile court has already determined that the child is a CHINS based on a report that names the perpetrator as the individual who committed the abuse or neglect. **IC 31-33-26-8.**

DCS shall expunge an unsubstantiated assessment report within six months of the date the report was entered into the Index. **IC 31-33-26-15.** If there is a CHINS determination by the Court based on a substantiated report, the report shall be expunged not later than twenty years after the Court makes the CHINS determination. **IC 31-33-26-15.** If the Court in the CHINS case or the administrative hearing officer determines that abuse or neglect did not occur, DCS shall expunge the substantiated report within ten working days. **IC 31-33-26-15.**

A CHINS case may be filed only if child abuse or neglect is substantiated. If child abuse or neglect is unsubstantiated, DCS cannot take formal legal action. DCS may assist parents by making a safety plan or providing referrals for services.

If child abuse or neglect is substantiated, DCS may, but is not required to, enter into an Informal Adjustment or file a CHINS petition in juvenile court. When DCS determines in a child abuse or neglect investigation that the child will be safe if left in the home and the parents are willing to receive services to remedy the neglect or abuse situation, then DCS may negotiate with the parents to provide services through an Informal Adjustment program. The obvious advantage of the Informal Adjustment over a CHINS case is the limited intervention into the family and the lessened use of state resources. A problem with DCS use of an Informal Adjustment is that the Informal Adjustment may neither adequately protect the child nor fully resolve a neglect or abuse situation.

The Informal Adjustment is signed by DCS and the child's parents and lists a program of Court ordered services in which the parents and child will participate to remedy substantiated abuse or neglect. **IC 31-34-8-1.** The Informal Adjustment is approved by the Court, and usually lasts for six months, but may be extended for an additional three months. **IC 31-34-8-6.** DCS monitors the parents' compliance with the Informal Adjustment and submits a report to the Court five months after the Informal Adjustment begins. **IC 31-34-8-7.** If the Court extends the Informal Adjustment for the additional three months, DCS will file a supplemental report on compliance. **IC 31-34-8-7.** The Court may find parents in contempt for failing to comply with the services and requirements in the Informal Adjustment. **IC 31-34-8-3.** The child will not be placed in foster care under an Informal Adjustment. Sometimes DCS will try an Informal Adjustment, and then file a CHINS petition later. A CHINS petition may be filed if there are new allegations of abuse or neglect, the parents are not complying with the Informal Adjustment, or DCS determines that the child is endangered and meets the definition of a Child in Need of Services. *See this Handbook at II for the Child in Need of Services definitions.*

When the child's safety requires the formality of a CHINS case, DCS can file an intake, preliminary inquiry, and request for the Court's authorization to file a CHINS petition. **IC 31-34-7-3.** The DCS attorney makes the decision to request the Court's authorization to file a CHINS petition. **IC 31-34-9-1.** The Court shall authorize the filing of the CHINS petition if the Court finds probable cause to believe that the child is a Child in Need of Services. **IC 31-34-9-2.** The Court's finding of probable cause does not mean that the Court has already decided that the child is a Child in Need of Services. The probable cause finding means that there is enough evidence for the Court to hear the case.

Although DCS conducts many assessments each month, only a few of the assessments result in the filing of a CHINS case. Even if a CHINS case is filed, the child may not be removed from the home. DCS may work with the parents and child in the parents' home.

DCS is also required to prioritize consideration of relative homes for placement of Children in Need of Services who have been removed from their parents. **IC 31-34-4-2.** Relatives must be suitable and willing to accept placement of the child and must also successfully pass a criminal history check and a DCS records check. Stepparents and de facto custodians must also be considered for placement. A de facto custodian is a person who has been the primary caregiver and financial supporter of a child who has resided with the person for six months if the child is under three years old or for one year if the child is over three years old. **IC 31-9-2-35.5.** A foster parent is not included in the definition of a de facto custodian.

IV. Rights of Children and Parents in CHINS and Termination Cases

A. Children's Rights

IC 31-34-9-7 provides that the child is a legal party to the CHINS case and the termination of the parent-child relationship case. The child has many other rights to notice, access to reports, and to provide information in the courtroom, which are discussed below. Due to the child's age and special needs, it is very difficult for the child to use his legally given rights without adult assistance. In addition, the Court may order the child excluded from the CHINS or termination hearing for good cause. **IC 31-32-6-8.** If the child has been excluded, the child will not need to attend the Court hearings. Some counties routinely exclude children who are below a certain age from the Court hearings. Foster parents should ask the DCS family case manager whether the child should attend a Court hearing.

Indiana law provides for a Guardian ad Litem or Court Appointed Special Advocate to assist children. **IC 31-34-10-3** requires the Court to appoint a Guardian ad Litem or Court Appointed Special Advocate for every child at the CHINS Detention and Initial Hearing. **IC 31-35-2-7** requires the Court to appoint a Guardian ad Litem or Court Appointed Special Advocate for the child if the parent objects to termination of the parent-child relationship. The Court may reappoint the Guardian ad Litem or Court Appointed Special Advocate who served the child in the CHINS case to serve the child on the termination case. **IC 31-35-2-7.** The Guardian ad Litem or Court Appointed Special Advocate does not represent the child's wishes, but instead represents and protects the child's best interests. The Guardian ad Litem or Court Appointed Special Advocate may be a trained community volunteer, a staff person from a county program, or an attorney appointed by the Court. The Guardian ad Litem or Court Appointed Special Advocate may research, examine, advocate, facilitate, and monitor the child's situation (**IC 31-9-2-50; IC 31-9-2-28**) and serves until the CHINS case is closed (**IC 31-32-3-8**). The Indiana State Office of Guardian ad Litem or Court Appointed Special Advocate is part of the Division of State Court Administration of the Indiana Supreme Court. The State Office certifies county programs that provide Guardian ad Litem or Court Appointed Special Advocate services on CHINS and

termination cases. The State Office also provides education and training for county program directors and volunteers, and distributes state funding to certified county programs. A county program directory and other information may be found on the Indiana Supreme Court website, www.in.gov/judiciary, Agencies & Programs.

Other rights which the child has include:

- the right to cross-examine witnesses, subpoena witnesses and evidence, and introduce evidence unless excluded from the hearing. **IC 31-32-2-1.** (**IC 31-32-4-2** allows but does not require the Court to appoint an attorney to represent the child.)
- the right to receive a CHINS summons and notices of the CHINS detention hearing (**IC 31-34-5-1**), initial hearing (**IC 31-34-10-2**), dispositional hearing (**IC 31-34-19-1.3**), dispositional modification hearing (**IC 31-34-23-3**), periodic case review hearing (**IC 31-34-21-4**), and permanency hearing (**IC 31-34-21-4**).
- the right to have access to reports prepared for the dispositional (**IC 31-34-18-6**), dispositional modification (**IC 31-34-23-3**), periodic case review (**IC 31-34-22-2**), and permanency (**IC 31-34-22-2**) hearings unless the Court determines on the record that the report should not be released to the child. The child's Guardian ad Litem or Court Appointed Special Advocate and an attorney appointed to represent the child will always receive a copy of the report prepared for any hearing.
- the right to be given a fair opportunity to controvert the dispositional report (**IC 31-34-19-2**), dispositional modification report (**IC 31-34-23-4**), periodic case review report (**IC 31-34-21-3**), and permanency hearing report (**IC 31-34-21-3**).
- the right to request DCS to permit sibling visitation if the child or the child's sibling, or both, receive foster care. **IC 31-28-5-3.** DCS shall permit sibling visitation and establish a sibling visitation schedule if DCS finds that sibling visitation is in the child's best interests **IC 31-28-5-3.** If DCS denies the request for sibling visitation, the child's Guardian ad Litem or Court Appointed Special Advocate may petition the juvenile court for an order requiring sibling visitation. **IC 31-28-5-4.** If the juvenile court determines it is in the child's best interests to have sibling visitation, the juvenile court shall order the visitation and establish a schedule. **IC 31-28-5-4.**

- the right to a case plan as required by federal law. **IC 31-34-15-1.**
- the opportunity to be heard and make recommendations to the court at the permanency hearing if the child is at least sixteen years old and the proposed permanency plan is for the child to transition from foster care to independent living. **IC 31-34-21-7.**

B. Parents' Rights

Parents, including alleged fathers whose paternity has not been established, and non-custodial parents, are legal parties to CHINS and termination cases. **IC 31-34-9-7.** Legally appointed guardians (and sometimes others who are custodians of the child, such as stepparents) are also legal parties to the CHINS case. Parents do not have the right to free court appointed attorneys in all CHINS cases, but the Judge may appoint an attorney for a parent in a CHINS case. **IC 31-32-4-3.** The Judge decides whether to appoint an attorney for a parent in a CHINS case on an individual basis, considering the parent's income and the complexity of the case. The Judge is required by federal law to appoint an attorney for a parent who is on duty with U.S. Armed Forces. Judges frequently appoint attorneys for parents who are under the age of eighteen, mentally disabled, or incarcerated. In some counties, Judges appoint attorneys for all parents in CHINS cases. There is no right to a jury trial in CHINS or termination cases. The Judge alone makes decisions on CHINS and termination cases.

If DCS removes the child, the custodial parent has the right to be notified of the removal. **IC 31-34-3-1** through **IC 31-34-3-4.** DCS must also notify the parent of the detention hearing, initial hearing, and all other CHINS hearings unless the Court has already given the parent notice of later hearings when the parent was present at a CHINS hearing. **IC 31-32-1-4.** Foster parents should advise the DCS family case manager and the child's Guardian ad Litem or Court Appointed Special Advocate if foster parents receive information on the whereabouts of an absent parent. This information could be received from relatives, other parents, or the child. Providing newly discovered contact information for absent parents will assist DCS in notifying parents of hearings and involving them in the CHINS process and assist the Guardian ad Litem or Court Appointed Special Advocate in representing the child's best interest.

Parents in CHINS cases have the right to receive the CHINS summons and petition. **IC 31-34-10-2.** DCS has the duty to inform parents in writing of the following legal rights:

- the right to have a detention hearing within 48 hours of the child's removal by DCS and to request the child's return
- the right to cross-examine witnesses and present evidence

- the right not to make statements that are incriminating and to be informed that an incriminating statement may be used in the CHINS court proceeding
- the right to be advised that a petition to terminate the parent-child relationship must be filed whenever the child has been removed from the parent and has been under the supervision of DCS for at least fifteen of the most recent twenty-two months. **IC 31-34-4-6.**

Parents also have the right to have access to reports prepared for the dispositional (**IC 31-34-18-6**), dispositional modification (**IC 31-34-23-3**), periodic case review (**IC 31-34-22-2**), and permanency hearings (**IC 31-34-22-2**) unless the Court determines on the record that the report should not be released to the parents. The Court may provide a factual summary of the report to the parents. **IC 31-34-18-6.** The parents' attorney will always be given access to a copy of the report. **IC 31-34-18-6.** Parents also have the right to be given a fair opportunity to controvert the dispositional report (**IC 31-34-19-2**), dispositional modification report (**IC 31-34-23-4**), periodic case review report (**IC 31-34-21-3**), and permanency hearing report (**IC 31-34-21-3**). Parents also have the opportunity to be heard at Court and to make recommendations to the Judge at all CHINS hearings.

Case law from the United States Supreme Court and the Indiana Supreme and Appellate Courts emphasizes parents' fundamental U.S. Constitutional rights to raise their children without undue interference from state government. The Fourteenth Amendment to the U.S. Constitution requires DCS and the Courts to provide fundamental fairness and due process to parents in CHINS and terminations cases. Indiana law provides that it is the policy of the State of Indiana to "strengthen family life by assisting parents to fulfill their parental obligations" and "to remove children from their families only when it is in the child's best interest or in the interest of public safety." **IC 31-10-2-1.** Both federal and state law requires DCS to exert reasonable efforts to preserve families and to reunite parents with their children unless a legal exception applies. **IC 31-34-21-5.5. IC 31-34-21-5.6.** *See this Handbook at XI for more information on Reasonable Efforts.*

Parents who wish to contest an involuntary termination of the parent-child relationship case always have the right to a free court appointed attorney who can represent them without a conflict of interest. **IC 31-32-2-5. IC 31-32-4-3.** Parents do not have the right to choose their free court appointed attorney. The Judge determines which court appointed attorney or agency shall represent the parents. The Indiana Supreme Court held in 2010 that parents in termination cases usually have the right to a free court appointed attorney to appeal the trial court's ruling in a termination case to the Indiana Court of Appeals. *See this Handbook at XVI for information on Appeals.*

V. CHINS Detention and Initial Hearings

A. Detention Hearing

The CHINS detention hearing and initial hearing are held at the same time. **IC 31-34-10-2.** The purpose of the detention hearing is for the Court to determine the child's temporary placement. The purpose of the initial hearing is for the Court to be sure that parents are informed of the specific CHINS allegations and to protect the parents' and child's rights.

If DCS removes the child from parents, the Court must hold a detention hearing within forty-eight hours. **IC 31-34-5-1.** Saturdays, Sundays, and legal holidays for State employees are not included in computing the time period by which the detention hearing must be held. Although the Indiana statute uses the term "detention hearing," Children in Need of Services are placed in out-of-home placements such as foster care for their protection and may not be detained in a juvenile detention center. **IC 31-34-6-1.** An exception to this rule is when the child is charged with committing a delinquent act. The child's foster parents must be notified of the date, time, and place of the detention hearing, and have the opportunity to be heard at Court and to make recommendations. Foster parents can give the Court their personal observations about the child's physical condition and emotional state to help the Court make the best decision about continuing protective placement. **IC 31-34-5-1.** The Court may order the child to be continued in "detention" (out-of-home protective placement) if the Court finds that there is probable cause (a good legal reason) to believe that the child is a CHINS and that one of the following is true:

- the child's out-of-home placement is necessary to protect the child;
- the child is unlikely to appear at Court for later hearings;
- the child has a reasonable basis for requesting not to be returned to parents;
- the parent cannot be located or is unwilling or unable to take custody of the child;
- due to the child's safety, services cannot be used to prevent the child's removal from parents.

IC 31-34-5-3. If the Court does not find that there is probable cause to believe the child is a CHINS and that one of the criteria listed above is true, the Court must order the child released to the parents. If the Court releases the child to the parents, the Court can impose conditions on the parents to ensure the child's safety. **IC 31-34-5-3.5.** The Court can schedule an additional detention hearing. **IC 31-34-5-4.** The Court and DCS are required to consider placing the child with an appropriate family member before considering any other placement (such as foster care) for the child. **IC 31-34-6-2.** If the child is removed from parents, DCS shall exercise due diligence

within thirty days to identify the child’s adult relatives (including relatives suggested by either parent) and all siblings over the age of eighteen. **IC 31-34-3-4.5.** DCS must send notices to the adult relatives and siblings to inform them of:

- the child’s removal from parents;
- the relatives’ options for placement of the child;
- requirements for relatives to become foster parents; and
- services available to the child in foster care.

B. The CHINS Petition

The CHINS petition must be filed before the detention hearing is held. **IC 31-34-5-1.** The CHINS petition includes the specific facts about child abuse and neglect that have been learned by the DCS family case manager who performed the assessment. *See this Handbook at III for more information about the assessment.* The DCS attorney makes the decision to proceed with the CHINS petition, but must also request and receive the Court’s permission to file the CHINS petition. **IC 31-34-7-3. IC 31-34-9-1.** The Court will decide whether there is probable cause to believe the child is a CHINS. **IC 31-34-9-2.** If the Court does not authorize the filing of the CHINS petition, the case cannot proceed and the child must be returned to parents. DCS cannot take action to protect the child by the CHINS proceeding. If a later report of suspected abuse or neglect is made and DCS substantiates child abuse or neglect, DCS may make another request for Court authorization to file a CHINS petition at that time.

C. Initial Hearing

The Court’s first step at the initial hearing is to verify that each parent has received a copy of the CHINS petition and summons. **IC 31-34-10-2.** The Court will also inquire as to the whereabouts of parents who are not present at the hearing and order DCS to arrange for legal service of the CHINS petition and summons to those parents, including incarcerated parents. DCS will send copies of the CHINS petition and summons to the superintendent of the jail or prison who will give these documents to the incarcerated parent.

If a parent’s address remains unknown, after a diligent inquiry has been made, the Court may order DCS to publish a legal notice to the parent in a newspaper about the CHINS proceeding. This is called “service by publication.” Service by publication is the least desirable form of service.

Failure to provide parents with the CHINS petition and summons can result in a decision by the

Court of Appeals to send the CHINS or termination case back to the trial court for another trial. Foster parents who receive information about the whereabouts of absent parents should give this information to the DCS family case manager and to the child's Guardian ad Litem or Court Appointed Special Advocate as soon as possible. DCS then has the legal duty to ensure that the parent receives a copy of the CHINS petition and summons. The Court may also schedule an additional initial hearing within thirty days of the first initial hearing to be certain that all parents and other legal parties have received the CHINS petition and summons.

The Court will also do the following at the initial hearing:

- Appoint a Guardian ad Litem or Court Appointed Special Advocate to represent and protect the child's best interests. **IC 31-34-10-3.**
- May appoint an attorney to represent the parents. **IC 31-32-4-3.** *See II of this Handbook for more information on parents' rights to a court appointed attorney.*
- Inform the child (if the child is at an age of understanding) and parents of the nature of the allegations in the CHINS petition and the dispositional alternatives available to the Court. **IC 31-34-10-4.**
- Inform parents that they may be required to participate in services and may be held financially responsible for services. **IC 31-34-10-5.**
- Determine whether the parents admit or deny the allegations of the CHINS petition. **IC 31-34-10-6.**

If the parents admit the allegations in the CHINS petition, the Court will find the child to be a CHINS, and schedule a dispositional hearing within thirty days. **IC 31-34-10-8.** If a parent denies the allegations of the CHINS petition, the Court will schedule a factfinding hearing, which is usually held within sixty days. **IC 31-34-10-9. IC 31-34-11-1.**

The foster parent shall be notified by DCS of the date and time of the initial hearing and any additional initial hearings and shall be given an opportunity to be heard by the Court and to make recommendations to the Court. **IC 31-34-10-2.**

VI. Case Plans, Child and Family Team Meetings, and CHINS Facilitations and Mediations

A. Case Plans

Every Child in Need of Services must have a case plan. **IC 31-34-15-1.** The case plan shall be completed within sixty days of the child's first out-of-home placement or the date of the dispositional decree, whichever occurs first. **IC 31-34-15-2.** The case plan is a description and discussion of the child's placement needs, DCS efforts to provide family services, and the permanent plan for the child. **IC 31-34-15-4** states that the case plan must include:

- A permanent plan for the child and an estimated date for achieving the goal of the plan
- The appropriate placement for the child based on the child's special needs and best interests
- The least restrictive family-like setting that is close to the home of the child's parent, custodian, or guardian, if out-of-home placement is recommended. If an out-of-home placement is appropriate, DCS shall consider whether a child in need of services should be placed with the child's suitable and willing blood or adoptive relative caretaker, including a grandparent, an aunt, an uncle, or an adult sibling, before considering other out-of-home placements for the child
- Family services recommended for the child and parents
- Efforts already made to provide family services to the child and parents
- Efforts that will be made to provide family services that are ordered by the court
- A plan for ensuring educational stability for the child while in foster care

DCS shall negotiate with the child's parents in preparing the case plan. **IC 31-34-15-2.** Case plans are frequently developed at Child and Family Team Meetings, which are discussed below. Each foster parent shall cooperate in the development of the case plan for the child. **IC 31-34-15-5.** DCS shall discuss with at least one foster parent the foster parent's role regarding:

- Rehabilitation of the child and parents
- Visitation arrangements
- Services required to meet the child's special needs

It is very important for foster parents to provide detailed information on the child's issues, special needs, and adjustment to visitation to the DCS family case manager and the Guardian ad Litem or

Court Appointed Special Advocate so the best case plan can be developed. DCS usually requests that foster parents sign the case plan and gives foster parents a copy of the case plan. DCS will also include the Guardian ad Litem or Court Appointed Special Advocate in developing the case plan. A copy of the completed case plan shall be sent to the parents within ten days of the completion of the plan. **IC 31-34-15-3**. DCS will also provide a copy of the case plan to the Court. Case plans will be prepared at least every six months.

B. Child and Family Team Meetings

Child and Family Team (CFT) meetings are not discussed in Indiana statutes, but have been included in DCS policy. The CFT meeting process focuses on the underlying needs of the family and assists families with building a support system that will remain in place after the CHINS case has been closed. The CFT meetings are voluntary for the parents. The child may also be included in the CFT meeting. DCS policy requires DCS to convene a CFT meeting when the child reaches the age of fifteen and one-half years to develop the Independent Living Transition Plan.

CFT meetings are scheduled by DCS at critical times when important decisions must be made about the child's case. Parents may identify who is allowed to participate in CFT meetings. Parents may choose to exclude foster parents and/or the Guardian ad Litem or Court Appointed Special Advocate from the CFT meetings. DCS family case managers will encourage parents to include the foster parents and the Guardian ad Litem or Court Appointed Special Advocate in CFT meetings. Usually case plans are developed at CFT meetings. A separate case plan meeting will take place if parents refuse to allow foster parents and the Guardian ad Litem or Court Appointed Special Advocate to attend the CFT meeting.

The DCS family case manager will schedule the CFT meetings and notify foster parents of the date, time, and place of the CFT meetings. Foster parents who are invited to participate in a CFT meeting must sign a DCS confidentiality form before the meeting. The form states that all information received in the meeting is confidential and must not be communicated to any other person, unless authorized to do so in a release signed by the child's parents who designated the foster parents as team members, or unless required in a juvenile or other Court proceeding. The DCS family case manager will complete the CFT meeting notes and distribute them to those persons who have signed the confidentiality agreement, including foster parents.

C. CHINS Facilitations and Mediations

Some Indiana juvenile Courts provide CHINS facilitation and/or mediation services. These services help DCS, the parents, the Guardian ad Litem or Court Appointed Special Advocate, and

other legal parties to make written agreements about CHINS cases. The goals of CHINS facilitations or mediations are to:

- Decrease the number of factfinding hearings
- Encourage the development of dispositional goals and services that meet the parents' and child's individual needs
- Achieve more timely permanence for children

It can be very helpful for the child if an agreement is reached in the CHINS case because the child will not need to testify about abuse or neglect at a factfinding hearing. Parents who agree to participate in services may also be more likely to follow through with the agreed services.

VII. CHINS Factfinding Hearing

If a parent denies the allegations in the CHINS petition, the Court must hold a factfinding hearing. **IC 31-34-11-1.** The factfinding hearing must usually be held within sixty days of the filing of the CHINS petition, but the time period to complete the factfinding hearing may be extended to 120 days if all parties agree to the extension. **IC 31-34-11-1.**

Foster parents shall be notified of the factfinding hearing by DCS. **IC 31-34-11-1.** DCS is required to give foster parents written notice of the date and time of the factfinding hearing. **IC 31-32-1-4.** The written notice should be handed to the foster parents or mailed to them at least five days before the hearing. **IC 31-32-1-4.** Written notice by DCS is not required if the Court gave verbal notice of the hearing date and time at an earlier hearing which the foster parents attended. Foster parents have the opportunity to be heard by the Court at the factfinding hearing, but no specific statute gives foster parents the opportunity to make recommendations at the factfinding hearing. **IC 31-34-11-1.**

The purpose of the factfinding hearing is for the Court to determine whether the allegations of the CHINS petition are true and whether the child is a CHINS. The Court makes this determination by listening to the testimony of witnesses and considering other evidence such as photographs and documents at the factfinding hearing.

The DCS attorney has the legal duty of proving that the allegations in the CHINS petition are true and that the child is a CHINS. The DCS attorney must show proof by a preponderance of the evidence to the Court. **IC 31-34-12-3.** The preponderance of the evidence is the legal standard used for most civil cases, such as a lawsuit. The preponderance of the evidence legal standard is

easier to prove than the clear and convincing evidence standard (required to terminate parental rights) or the beyond a reasonable doubt standard (required for criminal convictions).

The DCS attorney will identify witnesses who can testify about the CHINS allegations from the witnesses' own personal knowledge. The DCS attorney will interview the witnesses and prepare them to testify. Having witnesses testify from their own personal knowledge at the factfinding hearing is very important because the Court cannot consider hearsay evidence at the factfinding hearing if a party objects.

Hearsay evidence is an out-of-court statement made by a person who is not present at Court that is being offered to the Court to prove that the contents of the statement are true. Reports are legally considered to be hearsay. Probative hearsay evidence in reports may be considered by the Court in a CHINS dispositional, periodic case review, or permanency hearing, because **IC 31-34-19-2** and **IC 31-34-22-3** allow the Judge to consider reports in these hearings. There is no Indiana statute that allows the Court to consider hearsay in a report at a factfinding hearing if one of the parties to the case objects. If the report writer testifies and the contents of the report are within the writer's personal knowledge or the report writer is a qualified expert, the Court may be able to consider the report in addition to the report writer's testimony at the factfinding hearing.

There are many legal exceptions to the hearsay rule. These legal exceptions allow specific types of out-of-court statements to be admitted into evidence and considered by the Court. One example of hearsay evidence which may be considered by the Court is a statement made by a parent regarding the parent's own conduct, actions, or wishes. The statements of a parent about the other parent's conduct, actions, or wishes usually will not be admissible as an exception to the hearsay rule. Other examples of admissible hearsay include specific business records and Court records. Children's statements to foster parents or to other adults are usually hearsay and usually may not be admitted into evidence and considered by the Court, unless the child testifies or the Child Hearsay Exception is used. *See this Handbook at VIII for the Child Hearsay Exception.*

Sometimes, foster parents are requested to testify at the factfinding hearing. Foster parents' testimony could be requested by DCS, the Guardian ad Litem or Court appointed Special Advocate, the parents, or the Judge. Foster parents may be asked to testify about their observations of the child's and/or parents' physical appearance and behavior. Foster parents may also be asked to testify about the care they are providing to a child who has special needs. Examples of special needs care could be feeding an infant prescription formula every two hours or giving frequent nebulizer treatments to a child who has asthma. If the DCS attorney has filed documents before the hearing about the Child Hearsay Exception, foster parents could be asked to testify about statements concerning child abuse or neglect which the child has made to the foster parents. DCS will inform foster parents before the CHINS factfinding if their testimony is needed and will prepare foster parents to testify. *See this Handbook at VIII on Foster Parent Testimony.*

The child may also be asked to testify in Court about child abuse and neglect. It is usually difficult for the child to testify, but the child's testimony may be necessary to prove that the child is a CHINS and to provide protection for the child. Foster parents can help by providing emotional support to the child and encouraging the child to tell the truth. Foster parents should also work with the DCS case manager, the child's therapist, and the Guardian ad Litem or Court Appointed Special Advocate to encourage the child to testify. DCS will prepare the child to testify.

Even if a factfinding hearing is scheduled, DCS, the parents, and the Guardian ad Litem or Court Appointed Special Advocate may make a written agreement and submit it to the Court for approval. If the Court approves the agreement, there is no need for the Court to hold a factfinding hearing. Some Indiana counties have CHINS facilitation and/or mediation services which help DCS, the parents, and the Guardian ad Litem or Court Appointed Special Advocate make written agreements about the CHINS petition so that there is no need to hold a factfinding hearing.

After the factfinding hearing has been completed, the Court will make the determination as to whether the allegations in the CHINS petition are true. If the Court determines the allegations are true and finds that the child is a CHINS, the Court will schedule a dispositional hearing to decide where the child should be placed and what services should be offered to the child and parents. **IC 31-34-11-2.** If the Court does not find the CHINS allegations true, the child is returned to the parents and the CHINS case is closed. **IC 31-34-11-3.** DCS will not be able to provide foster care or other services to the child if the Court finds that the child is not a CHINS. DCS could act to help the child in the future if a new child abuse or neglect report were made and substantiated and DCS chose to file a new CHINS petition.

VIII. Foster Parents' Testimony

A. Record Keeping

Foster parents should always keep good records about how they care for the child and meet the child's special needs. Records should include: (1) dates and locations of the child's medical and therapy appointments; (2) the child's medications, dosages, and in-home medical treatments; (3) the child's school conferences and Individual Education Plans; (4) the child's in-home therapy programs suggested by First Steps or other providers. Foster parents should also record: (1) the dates and times of parental visitation; (2) observations of the parents' physical appearance and demeanor; (3) statements parents make to foster parents about the parents' circumstances and problems; (4) observations of parent-child interaction; (5) observations of the child's behavior before and after visits; (6) the child's statements to foster parents about abuse, neglect, fears and

wishes. One of the reasons to keep good records is to enable foster parents to testify accurately and completely in Court.

B. Depositions

Witnesses, including foster parents, may be asked to give a deposition before the hearing. An attorney for a party to the CHINS or involuntary termination case may request the deposition. For a deposition, the witness appears at a pre-arranged time, usually at a Court reporter's office or an attorney's office. The witness takes an oath given by a Court reporter to tell the truth, just as if the witness were before the Judge in Court. Attorneys for the legal parties to the case (DCS, the parents, and Guardian ad Litem or Court Appointed Special Advocate) ask questions of the witness. The Court reporter records the attorneys' questions and the answers of the witness and later transcribes them into a typed document. When the typed document is ready, the witness is given the opportunity to read the document, and correct misstatements in his testimony in writing, using an error sheet provided by the Court reporter. The witness then signs the document and the error sheet, swearing that the answers provided are true and accurate. The deposition can be used instead of a witness's testimony at trial if the witness is found by the Court to be unavailable. The deposition can also be used by a party's attorney to challenge the witness's testimony at Court if the witness's testimony differs from what the witness said at the deposition.

Foster parents should notify the DCS family case manager before the foster parents are deposed. The DCS attorney and Guardian ad Litem or Court Appointed Special Advocate will usually be present at the deposition of a foster parent. Foster parents should give complete, accurate answers to the questions asked in a deposition. Foster parents, like all deposed witnesses, do not need to give up the right to read and sign the typed document before swearing to its accuracy. Foster parents should not agree to "waive signing" of the deposition, which is legal language for giving up the right to read, correct using the error sheet, and sign a deposition.

C. When Testimony May be Needed

Foster parents most likely will be asked to give formal testimony at a CHINS factfinding hearing or an involuntary termination hearing. Formal Court testimony is different from the foster parents' opportunity to be heard and to make recommendations. *See this Handbook at IX for information on the Opportunity to be Heard.* DCS, the Guardian ad Litem or Court Appointed Special Advocate, parents' attorneys, or the attorney for any other legal party to the case may ask the foster parents to testify. The request may be made by a telephone call, but usually a written subpoena will be mailed or hand delivered to the foster parents. The name and telephone number of the attorney who issued the subpoena will be listed on the subpoena. A subpoena is a Court order to appear at Court and testify. Foster parents should make every possible effort to appear at Court on the date and time

listed on the subpoena. Foster parents should show the subpoena to their employers and request to be excused from work. If foster parents are unable to be present at the date and time listed on a subpoena sent to them by DCS, they should contact the DCS family case manager as soon as possible to explain why they cannot be present. The DCS case manager could ask the DCS attorney for help in possibly arranging a different time for the foster parents to testify.

Foster parents should review their records before going to Court to testify and should bring their records to Court with them.

Frequently, Court hearings take longer than expected. Foster parents who go to Court to testify may be significantly delayed in returning home. Foster parents should arrange for other reliable adults to be present at the foster home when the children return from school, to prepare the children's dinner, and to supervise the children until the foster parents return home from Court.

D. The Process of Court Testimony

Usually the Judge swears in all the witnesses at the same time, before the trial begins. Witnesses swear or affirm to tell the truth. Sometimes an attorney for one of the parties asks for the Judge to order a "separation of witnesses." The purpose of separation of witnesses is to prevent witnesses from changing their testimony because they heard the testimony of other witnesses. If the Judge orders the witnesses to be separated, all witnesses, including foster parents, will be told to wait outside the courtroom. The witnesses will be instructed not to discuss their testimony with each other before or after they testify. Witnesses will be called one by one to testify.

After the witness is seated at the witness stand, the attorney who asked the witness to testify will question the witness first. This is called "direct examination." Witnesses should carefully listen to each question, answer only what was asked, and make every effort to answer truthfully and accurately. After direct examination is finished, the attorneys for the other parties may ask the witness "cross-examination" questions. Cross-examination is usually limited to the subject matter of direct examination. The purpose of cross-examination is to cast doubt on the witness's answers in direct examination by showing that the witness is a poor observer, is biased, or testified inaccurately. The Judge may also question the witness. After cross-examination is finished, the attorney who asked the direct examination questions may choose to ask the witness "re-direct examination" questions. Re-direct examination questions are used to clarify the witness's testimony or to allow the witness to give a more detailed answer than was permitted in cross-examination. The other attorneys may then ask the witness "re-cross-examination" questions. Sometimes re-direct examination and re-cross examination are not conducted due to time constraints or strategic decisions made by the attorneys. After all the questioning has been

completed, the witness may ask the Judge for permission to be excused to leave the courtroom and return to work or other activities. If the Judge excuses the witness, the witness is free to leave.

E. The Child Hearsay Exception

A child's out-of-court statement about abuse or neglect to foster parents or other adults is hearsay and cannot be admitted into evidence unless the Child Hearsay Exception or some other legal exception applies. The Child Hearsay Exception (**IC 31-34-13-1 through 4**) allows an adult, including a foster parent, to testify about the child's out-of-court statement so that the child does not need to testify in Court. The Exception applies to an out-of-court statement made by a child under the age of fourteen (or a developmentally disabled child under the age of eighteen). The statement may concern abuse or neglect of the child who made the statement or abuse or neglect of the child's sibling. To allow the Child Hearsay Exception to be used, the Court must first hear evidence and find that the child's statement is reliable. The Court must also find that the child is unavailable as a witness due to: (a) incompetency, (b) medical reasons, or (c) there is a substantial likelihood that the child would be mentally or emotionally harmed by testifying. The Exception may also be used if the child's out-of-court statement was subject to cross-examination when the statement was made.

If the Court makes the necessary findings so the Child Hearsay Exception can be used, the child's statement may be admitted through the testimony of a witness, such as a foster parent or DCS family case manager, who heard the child make the statement. The Child Hearsay Exception may be used only at the CHINS factfinding hearing and at a contested hearing on a petition for involuntary termination of the parent-child relationship. **IC31-35-4-1 through 4**.

Foster parents to whom the child has made a statement about abuse or neglect should inform the DCS family case manager as soon as possible regarding the child's statement. The case manager can enlist the help of the DCS attorney, who needs to decide whether to use the Child Hearsay Exception. The DCS attorney must file a notice of intent to use the Child Hearsay Exception with the Court at least seven days before the CHINS factfinding or involuntary termination hearing. The notice must include the specific statement that was made, and must be sent to all the parties to the case.

The DCS attorney will prepare the foster parent to testify about the child's statement if the Child Hearsay Exception is being used. Foster parents will be asked to testify about the circumstances when the statement was made as well as what the child said. Information about the circumstances includes: (1) the date and time of the statement; (2) the child's physical location when the statement was made; (3) what activities the child and foster parents were doing when the statement was made.

Sometimes the Prosecutor's Office will file a criminal charge against the perpetrator of child abuse or neglect based on the same incident that caused the child to be placed in foster care. The foster child may be a witness in the criminal case. Criminal law also provides for an adult, including a foster parent or DCS family case manager, to testify about the child's statement in some situations. The criminal law which allows this procedure is the Protected Person statute, **IC 35-37-4-6**. The requirements of the Protected Person statute are different from those in the Child Hearsay Exception for CHINS and involuntary termination cases. The Prosecutor will prepare adult witnesses to testify about the child's out-of-court statements in a criminal case.

IX. Foster Parents' Opportunities to be Heard in Court

Foster parents should attend their foster child's Court hearings whenever possible. Foster parents have the legal opportunity to be heard by the Judge at all CHINS hearings, and to make recommendations at all CHINS hearings except for the factfinding hearing. *See the sections of this Handbook on each type of hearing for the specific statutes which provide these opportunities for foster parents.* Foster parents should keep good records on the child's behavior, appearance, developmental milestones, medical and therapy appointments, and parental and relative visits and contacts. This information should be stored in a safe place where children cannot find it. Foster parents should regularly give this information to the DCS family case manager, and the child's Guardian ad Litem/Court Appointed Special Advocate.

Information may also be given verbally to the Judge by foster parents at the CHINS hearings. Foster parents should be polite to all parties at Court hearings, and should respond with accurate, specific information about the child when requested to do so by the Judge. Foster parents may also respectfully raise their hands or stand and ask to give information to the Judge.

Periodic case review hearings, permanency hearings, and termination hearings (discussed in sections XII, XIII, and XV of this Handbook) provide additional opportunities for foster parents to participate. For these hearings, foster parents' opportunity to be heard and make recommendations includes the right to submit a written statement to the court. **IC 31-34-21-4** (CHINS) and **IC 31-35-2-6.5** (termination). If served upon all parties to the CHINS or termination case and others who have a right to notice of the hearing, the written statement may be made part of the court record. If foster parents wish to submit a written statement, the statement should be typed, no more than four pages in length, contain observations and facts, relate to the issues before the court (depending on the type of hearing), and not be overly emotional. Foster parents should bring enough copies of the written statement to Court so that all parties and others with the right to notice may have a copy. This includes the Judge, the DCS attorney and family case manager, the child's Guardian ad Litem

or Court Appointed Special Advocate, parents and their attorneys, prospective adoptive parents, and other persons as the Judge directs.

In periodic case review hearings and permanency hearings, foster parents also have the right to present oral testimony to the Court and to cross-examine any of the witnesses at the hearing. Foster parents who ask to testify should always be truthful and give complete statements. *See this Handbook at VIII for additional information on testimony.* If foster parents testify, the other parties to the case may question foster parents about their testimony. This questioning is called cross-examination. The purposes of cross-examination are: (1) to give the witness the opportunity to explain testimony which was unclear or incomplete; (2) to show the Judge that the witness is a poor observer or gave inaccurate testimony; (3) to show the Judge that the witness has made contradictory statements or has been untruthful. Foster parents should be careful in using the opportunity for cross-examination of witnesses. It is best to cross-examine a witness only when (1) the testimony relates to an important issue concerning the child's safety and well-being; (2) the testimony has been very inaccurate; and (3) foster parents have personal knowledge of accurate information on the issue.

X. CHINS Dispositional and Dispositional Modification Hearings

A. Dispositional Hearing

The Court must hold the dispositional hearing within thirty days of finding that the child is a Child in Need of Services. The Court finds that the child is a CHINS because the parents have admitted the allegations in the CHINS petition or the Court has found the allegations true after the factfinding hearing has been completed. The purpose of the dispositional hearing is for the Court to determine the child's placement, the services which will be provided to the child and parents (including visitation), and the parents' ability to pay child support and to reimburse DCS for the cost of services.

IC 31-34-19-1.3 requires DCS to provide notice of the date, time, place, and purpose of the dispositional hearing to the child, parents, other parties, the Guardian ad Litem or Court Appointed Special Advocate, foster parents, and other caretakers with whom the child is temporarily placed. Written notice must be mailed five days before the date of the scheduled hearing. **IC 31-32-1-4.** Written notice of the hearing is not required if verbal notice has been given to the person by the Court at an earlier hearing. **IC 31-32-1-4.** Persons, including foster parents, who receive notice of the hearing have the opportunity to be heard by the Court at the hearing and to make recommendations to the Court. **IC 31-34-19-1.3.**

Before the dispositional hearing, the DCS family case manager will prepare a predispositional report for the Court. The report will include the child's needs for care, treatment, rehabilitation, and placement and the DCS recommendations for the child. **IC 31-34-18-1.** Other legal parties to the case, including the child, the parents, and the Guardian ad Litem or Court Appointed Special Advocate may also prepare predispositional reports for the Court. **IC 31-34-18-1.** A person who prepares a predispositional report may confer with the child's school, community mental health center, and others as the Court directs. **IC 31-34-18-1.1.**

If out-of-home placement is appropriate for the child, the DCS family case manager shall consider whether the child should be placed with a suitable and willing blood or adoptive relative before considering other out-of-home placements. **IC 31-34-18-2.** The case manager who prepares the predispositional report shall conduct a criminal history check of all persons over age fourteen who live in the household of an unlicensed relative home before placing the child in the unlicensed relative home. **IC 31-34-20-1.5.** The criminal history check includes collecting each report of substantiated child abuse or neglect for the past five years. **IC 31-9-2-22.5.** The child usually cannot be placed in a home inhabited by persons who have been convicted of or had juvenile delinquency findings for criminal offenses that would prevent foster care licensure. The criminal offenses that prevent foster care licensure are listed at **IC 31-27-4-13.** *See the Appendix to this Handbook for the list of criminal offenses that prevent foster care licensure.* If a person who lives in the home has committed substantiated abuse or neglect, the child usually cannot be placed in the home, but there are some exceptions to this rule. The Court can allow the child to be placed in the home of a person who has committed one of the criminal offenses listed at **IC 31-27-4-13** or substantiated abuse or neglect if the Court finds that the person's past behavior is not relevant to the person's present ability to care for the child and the placement is in the child's best interest. **IC 31-34-20-1.5.** In making this decision, the Court must consider the length of time since the commission of the offense or substantiated abuse or neglect, the severity of the offense, abuse, or neglect, and evidence of the person's rehabilitation. **IC 31-34-20.1.5.**

A person who prepares a predispositional report is required to recommend to the Court the least restrictive, most family-like, and most appropriate placement for the child. If possible, the placement should be close to the parents' home, and not disrupt family life. All recommendations must be consistent with the best interests, safety, and special needs of the child. Recommendations must impose the least restraint on the freedom of the child and parents and provide an opportunity for parental participation. **IC 31-34-18-4.** Predispositional reports shall be made available before the hearing to the child, parents, and the Guardian ad Litem or Court Appointed Special Advocate. **IC 31-34-18-6.** If the Court determines on the record that the report contains information that should not be released to the child or parents, a factual summary may be provided to the child and parents. **IC 31-34-18-6.** The attorney for the parents, the attorney for the child, and the Guardian ad Litem or Court Appointed Special Advocate will always be given a copy of the predispositional report. **IC 31-34-18-6.** Predispositional reports are confidential, so if the child or foster parents

receive the report, it should be kept in a secure place with the child's other confidential documents such as the child's birth certificate, Social Security card, and medical reports. The predispositional report may be admitted into evidence at the dispositional hearing. **IC 31-34-19-2.** The Court can consider hearsay information in the report as long as the hearsay information is probative, which means that the information affords proof of relevant facts. **IC 31-34-19-2.** The Court shall give the child, parents, and foster parents or other caretakers a fair opportunity to controvert (dispute) any report admitted into evidence.

IC 31-34-19-2.

At the dispositional hearing, the Court will ensure that copies of the predispositional reports have been provided to the parties and will admit the reports into evidence. The Court will also give the child (if present), parents, Guardian ad Litem or Court Appointed Special Advocate, foster parents, and other caretakers the opportunity to be heard and make recommendations. **IC 31-34-19-1.3.** Foster parents may present their personal observations on the child's behavior, adjustment, health and school issues and should also provide emotional support to the child if the child attends the hearing. The DCS family case manager may request foster parents to transport the child to the hearing. The Court is required to enter a dispositional decree (court order) that is the least restrictive (most family like) and most appropriate setting available consistent with the child's best interests and special needs. **IC 31-34-19-6.** The Court shall also include a reasonable opportunity for parental participation in the dispositional decree. **IC 31-34-19-6.** The Court must consider whether the child should be placed with a suitable and willing blood or adoptive relative before considering other out-of-home placements for the child such as foster care. **IC 31-34-19-7.**

Some options which the Court can order at the dispositional hearing are:

- Supervision of the child by DCS;
- Outpatient treatment for the child;
- Removal of the child from the parents' home and authorize DCS to place the child in out-of-home placement, which includes foster care, relative placement, a group home, or a residential treatment center (DCS will not pay for out-of-state placements unless the placements are approved by DCS);
- Award wardship to DCS;
- Partially or completely emancipate the child;
- Order the child's parents to complete services recommended by DCS and approved by the Court;

- Order parents or other parties to the case not to contact the child.

IC 31-34-20-1. The Court may also order parents to pay child support and to reimburse DCS for the cost of services provided to the child or parents. **IC 31-40-1-3.** The Court shall send a copy of the dispositional decree to each person who receives placement of the child, which could include foster parents. **IC 31-34-19-8.**

Because DCS is the funding source for child welfare, Indiana statutes have been enacted to increase the role of DCS in the Court's decisions about placement and services. If the Court does not accept the DCS recommendations in the predispositional report and the Court wants to consider different recommendations made by parents, foster parents, other caretakers, the Guardian ad Litem or Court Appointed Special Advocate, or the Court's own recommendations, the Court may continue the dispositional hearing for not more than seven business days. DCS shall consider the recommendations requested by the Court and submit a supplemental report stating the final DCS recommendations. The Court is required to accept each final recommendation of the DCS supplemental report unless the Court finds that a recommendation is unreasonable or contrary to the welfare and best interests of the child. **IC 31-34-19-6.1.** There is an expedited appeal process for DCS to appeal Court orders which are contrary to DCS recommendations. *See this Handbook at XVI for information on CHINS appeals.*

B. Dispositional Modification Hearing

As the foster child's case progresses, it may be necessary to change the dispositional orders so significantly that a formal dispositional modification hearing should be held. The Court can decide on its own to schedule a dispositional modification hearing. **IC 31-34-23-1.** The child, parents, DCS, Guardian ad Litem or Court Appointed Special Advocate, or a person who is providing court ordered services to the child or parents can file a motion requesting that the Court modify the dispositional decree. **IC 31-34-23-1.** The Court can make an emergency change in the child's placement before a dispositional modification hearing is scheduled. **IC 31-34-23-3.** There is no specific time period for scheduling a dispositional modification hearing. DCS shall give notice of the date, time, place, and purpose of the dispositional modification hearing to the child, parents, other parties, Guardian ad Litem or Court Appointed Special Advocate, foster parents, and other caretakers with whom the child is placed. **IC 31-34-23-4.** DCS shall prepare a dispositional modification report for the hearing. **IC 31-23-4.** The statutes which apply to predispositional reports, including access to the reports, the Court's ability to consider probative hearsay in the reports, and the opportunity for the child, parents, foster parents, and other caretakers to controvert (dispute) the reports also apply to dispositional modification reports. **IC 31-34-23-4.** At the dispositional modification hearing, the Court shall give the child (if present), parents, Guardian ad Litem or Court Appointed Special Advocate, foster parents, and other caretakers the opportunity to

be heard by the Court and to make recommendations. **IC31-34-23-4**. The foster parents' role at the hearing includes giving information about their personal observations on the child's behavior, adjustment, health, and school issues. Foster parents should also transport the child to the hearing if requested to do so by the DCS family case manager and provide emotional support to the child before and after the hearing.

XI. Reasonable Efforts

Foster parents are sometimes concerned about DCS efforts to reunify the foster child with birth parents. DCS is required by both federal law and Indiana law to make reasonable efforts to preserve and reunify families.

Since 1980, federal law (Adoption Assistance and Child Welfare Act) has required state child welfare departments do the following as a precondition to receiving federal reimbursement for children in placement:

- Exert reasonable efforts to avoid removing children from their homes and to reunite children who were removed from their homes
- Maintain current case plans for all children
- Review cases on a set timetable
- Obtain permanency for children

In 1997 the federal Adoption and Safe Families Act clarified that the paramount goal of the child welfare system is safety and permanence for the child. The Adoption and Safe Families Act continued the requirement that states must exert reasonable efforts to provide parents with services to avoid removal of children or facilitate reunification of child and parent, but created exceptions when reasonable efforts toward preservation and reunification are not required.

The three components of the reasonable efforts concept under Indiana law are:

- The child's health and safety are of paramount concern in determining the extent to which reasonable efforts to reunify or preserve a family are appropriate. **IC 31-34-21-5.5**.
- DCS shall make reasonable efforts to preserve and reunify families by preventing or eliminating the need to remove the child or to make it possible for the child to return safely to the child's home as soon as possible. **IC 31-34-21-5.5**.
- The Court can make a specific finding and order that reasonable efforts toward preservation and reunification are not required in five limited situations. **IC 31-34-21-5.6**

The five limited situations in which the Court can find that reasonable efforts toward family preservation or reunification are not required are:

- The child is a CHINS and the parent's rights to another child have previously been involuntarily terminated by a Court.
- The child is a CHINS and is also an abandoned infant under the age of twelve months. An abandoned infant is defined at **IC 31-9-2-0.5** as a child less than twelve months old whose parent has knowingly or intentionally left the child in an environment that endangers the child's life or health or in a hospital or medical facility, and has no reasonable plan to assume the care, custody, and control of the child.
- The parent of a CHINS has been convicted of causing suicide, involuntary manslaughter, rape, criminal deviate conduct, child molesting, child exploitation, sexual misconduct with a minor, or incest (or a comparable offense in another state, territory, or country), and the victim was: less than sixteen years of age and either the convicted parent's biological, adopted, or stepchild, or a parent of the child.
- The parent of a CHINS has been convicted of murder or voluntary manslaughter (or a comparable offense in another state, territory, or country) or has been convicted of committing one of the following in relation to murder or voluntary manslaughter: aiding, inducing, or causing another person to commit the crime (**IC 35-41-2-4**); attempting to commit the crime (**IC 35-41-5-1**); or conspiring with another person to commit the crime (**IC 35-41-5-2**), and the victim was: the biological, adopted, or stepchild (no age requirement for the child victim) of the convicted person, or the parent of the child.
- The parent of a CHINS has been convicted of Class A, B, or C felony battery, aggravated battery, Class B felony neglect of a dependent, or Class C felony criminal recklessness (or a comparable offense in another state, territory, or country), and the victim was the biological, adopted, or stepchild (no age requirement for the child victim) of the convicted person.

If the Court finds that reasonable efforts to reunify or preserve the child's family are not required, DCS shall complete a permanency plan and the Court shall hold a permanency hearing within 30 days. **IC 31-34-21-5.7. IC 31-34-21-7.** *See this Handbook at XIII. for information on the Permanency Hearing.*

If the Court has approved a permanency plan that is inconsistent with continuing reasonable efforts to preserve or reunify the child's family, **IC 31-34-21-5.8** provides new duties for DCS. DCS is then required to place the child, with the Court's approval, in an out-of-home placement in accordance with the permanency plan. DCS is also required to complete whatever steps are necessary to finalize the permanent placement of the child in a timely manner.

XII. CHINS Periodic Case Review Hearing

The Court is required to hold a formal periodic case review hearing for every Child in Need of Services at least every six months after the child's removal from the parents or at least every six months after the dispositional decree, whichever date comes first. **IC 31-34-21-2**. The Court may hold the child's case review hearing more often than every six months. The periodic case review hearing is sometimes called the placement and jurisdiction review hearing. The purpose of the periodic case review hearing is to oversee case progress and determine whether there is a need to adjust or update the case plan.

IC 31-34-21-4 requires DCS to provide notice of the case review seven days before the hearing to: the child's parents, the parents' attorney(s), a prospective adoptive parent (if all consents to adoption have been filed with DCS, the Adoption Court has determined that consents are not needed, or a petition for termination of the parental rights has been filed), the Guardian ad Litem or Court Appointed Special Advocate, other parties, the child's foster parent, any other person who DCS knows is currently caring for the child and who is not required to be licensed, and any other suitable relative or person who DCS knows has had a significant or caretaking relationship to the child.

DCS must prepare and file a progress report on every child's case every three months after the child's dispositional decree is entered. **IC 31-34-21-1**. DCS is also required to prepare a progress report for the case review hearing. The report shall include information on the progress made in rehabilitating the child, preventing out-of-home placement, or reuniting the family. **IC 31-34-22-1**. Before preparing the report DCS shall consult with the foster parents about the child's progress made while in the foster parents' care. **IC 31-34-22-1**. Other legal parties to the CHINS case, including the parents and the child's Guardian ad Litem or Court Appointed Special Advocate may also prepare reports for the case review hearing. The Court can consider hearsay information in the periodic case review reports as long as the hearsay information is probative, which means that the information affords proof of relevant facts. **IC 31-34-22-3**.

The DCS periodic case review report shall be made available to: the child, the child's parents, the foster parents, the Guardian ad Litem or Court Appointed Special Advocate, and any other person who is entitled to receive notice of the case review hearing. **IC 31-34-22-2**. The Court may determine on the record that the DCS report contains information that should not be released to any person who is entitled to receive the report. **IC 31-34-22-2**. If the Court makes this determination, the person will not be given the report. The report will always be provided to the attorneys for the parents and the Guardian ad Litem or Court Appointed Special Advocate. The Court may provide a factual summary of the report to the child, the child's parents, and the foster parent if the Court decides not to release the entire report. **IC 31-34-22-2**. Foster parents and others who are entitled

to receive the DCS periodic case review report shall be given a fair opportunity to dispute any part of the report admitted into evidence. **IC 31-34-22-3.**

IC 31-34-21-4.5 allows foster parents, long term foster parents (defined at **IC-31-34-21-4.6** as foster parents who have cared for a child for at least the twelve most recent months or fifteen of the most recent twenty-two months), or former foster parents to petition the Court to intervene as legal parties in the periodic case review hearing. A foster parent who has been the subject of a substantiated child abuse or neglect report or who has been convicted of a felony which requires denial of a foster care license may not petition to intervene. Felonies which require denial of a foster care license are listed at **IC 31-27-4-13** and in the Appendix of this Handbook. The Court may grant the petition to intervene if the Court determines that the foster parents' intervention is in the child's best interests. If the Court permits foster parents to intervene, foster parents become legal parties for the periodic case review hearing. Foster parents who become legal parties can be represented by an attorney at the case review hearing. The attorney can file legal documents on behalf of the foster parents, and can receive and respond to legal documents filed by other parties. Foster parents will need to pay for the services of an attorney to represent them at a periodic case review hearing. Some foster parents may be eligible for pro bono or modest means attorney services provided by nonprofit organizations or private attorneys.

Foster parents may be involved in the periodic case review hearing even if they do not intervene. **IC 31-34-21-4** gives foster parents and others who receive notice of the case review hearing the following:

- the opportunity to be heard and to make recommendations to the Court
- the opportunity to submit a written statement to the Court, that, if served on all parties to the CHINS case and others who receive notice of the case review, may be made a part of the Court record
- the right to present oral testimony to the Court
- the right to cross examine any of the witnesses at the hearing

See this Handbook at IX for more information on Foster Parents' Opportunities to be Heard in Court. The opportunity to present a written statement, and the rights to present oral testimony and cross-examine witnesses are also afforded to those who receive notice of permanency hearings.

At the case review hearing, the Court shall determine whether the child's case plan, services, and placement meet the special needs and best interests of the child, whether DCS has made reasonable efforts to reunify the family, and a projected date for the child's return home, placement for adoption, or the appointment of a legal guardian for the child. **IC 31-34-21-5.** The Court must also look at thirteen other issues. The issues about which foster parents will most likely have information are:

- the extent of parental visitation, including the reasons for infrequent visitation
- the child's recovery from any injuries suffered before removal
- whether any additional services are required for the child and the nature of those services
- the extent to which the child has been rehabilitated

Other issues which the Court shall consider are:

- whether DCS and the child's parents have complied with the child's case plan
- the DCS services offered to the child and parents, dates the services were offered, and the outcome from the services
- DCS efforts to offer and provide services
- the extent to which the parents have enhanced their ability to fulfill parental obligations
- the extent to which parents have cooperated with DCS
- whether the parents need additional services and the nature of those services
- whether the child is placed in the least restrictive, most family-like setting and whether the placement is close to the parents' home
- the extent to which the causes for the child's placement have been alleviated
- whether the current placement or DCS supervision should be continued
- the extent to which parents have participated in or been given the opportunity to participate in case planning, court hearings, and visitation
- whether DCS has made reasonable efforts to reunify or preserve the child's family (unless the Judge has previously determined that reasonable efforts are not required)
- whether a permanency plan for the child should be prepared or implemented
- the child's legal settlement for school attendance

The Court can order the following after the periodic case review hearing is concluded:

- continue the child in the same placement
- order the additional services for the child and parents
- change the child's placement, including returning the child to the parent's home
- change parent's visitation with the child
- schedule a permanency hearing
- close the child's case

If the Court's orders require a modification of the child's dispositional decree, the Court must follow Indiana statutes which prioritize DCS recommendations. **IC 31-34-23-4. IC 31-34-19-6.1.** If the Court does not accept the recommendations in the DCS periodic case review report and wants DCS to consider the recommendations of the Court, a party to the case, or the foster parents, the Court shall continue the case review hearing for not more than seven business days. DCS shall consider the recommendations requested by the Court and submit a supplemental report stating the final DCS recommendations. The Court is required to accept each final recommendation of the DCS supplemental report unless the Court finds that a recommendation is unreasonable or contrary to the welfare and best interests of the child. There is an expedited appeal process for DCS to appeal Court orders which are contrary to DCS recommendations. *See this Handbook at XVI for information on CHINS appeals.*

XIII. CHINS Permanency Hearing

The purpose of the permanency hearing is for the Court to make a definitive long-term decision about a permanent placement for the child. The permanency hearing may be combined with the periodic case review hearing, which is discussed in this Handbook at XII. **IC 31-34-21-7** states that the permanency hearing should be held:

- within thirty days of a Court ruling that reasonable efforts to reunify or preserve the child's family are not required. *See this Handbook at XI for information on the five limited situations when the Court can rule that reasonable efforts are not required.*
- every twelve months after the child has been removed from parents or every twelve months from the date of the dispositional decree, whichever occurs first
- more often if ordered by the Court

IC 31-34-21-4 requires DCS to provide notice of the permanency hearing seven days before the hearing to: the child's parents, the parents' attorney(s), a prospective adoptive parent (if all consents to adoption have been filed with DCS, the Adoption Court has determined that consents are not needed, or a petition for termination of the parental rights has been filed), the Guardian ad Litem or Court Appointed Special Advocate, other parties, the child's foster parent, any other person who DCS knows is currently caring for the child and who is not required to be licensed, and any other suitable relative or person who DCS knows has had a significant or caretaking relationship to the child. If the foster child is at least sixteen years old and the proposed permanency plan is independent living, DCS shall give notice of the permanency hearing to the foster child. **IC 31-34-21-7.** DCS may give notice of the permanency hearing by personal delivery or mail. **IC 31-32-1-4.**

All those who receive notice of the permanency hearing, including foster parents and the foster child age sixteen or older who is transitioning to independent living, shall be given the opportunity to be heard at Court and to make recommendations. **IC 31-34-21-4**. For permanency hearings, those who receive notice also have the following:

- the opportunity to submit a written statement to the Court, that, if served on all parties to the CHINS case and others who receive notice of the permanency hearing, may be made a part of the Court record
- the right to present oral testimony to the Court
- the right to cross-examine any of the witnesses at the hearing

IC 31-34-21-4.5 allows foster parents, long term foster parents (defined at **IC-31-34-21-4.6** as foster parents who have cared for a child for at least the twelve most recent months or fifteen of the most recent twenty-two months), or former foster parents to petition the Court to intervene as legal parties in the permanency hearing. A foster parent who has been the subject of a substantiated child abuse or neglect report or who has been convicted of a felony which requires denial of a foster care license may not petition to intervene. **IC 31-27-4-13**. *See the Appendix of this Handbook for felonies which require denial of a foster care license*. The Court may grant the petition to intervene if the Court determines that the foster parents' intervention is in the child's best interests. If the Court permits foster parents to intervene, foster parents become legal parties for the permanency hearing. Foster parents who become legal parties can be represented by an attorney at the permanency hearing. The attorney can file legal documents on behalf of the foster parents, and can receive and respond to legal documents filed by other parties. Foster parents will need to pay for the services of an attorney to represent them at a permanency hearing. Some foster parents may be eligible for pro bono or modest means attorney services provided by nonprofit organizations or private attorneys.

The DCS family case manager is required to prepare a report for the permanency hearing. **IC 31-34-21-8**. The report shall include information on case progress and the DCS recommendation for the child's permanency plan. Other legal parties to the CHINS case, including the parents and the Guardian ad Litem or Court Appointed Special Advocate, may also prepare reports with recommendations for the permanency hearing. Before preparing the DCS report, the family case manager shall consult with the foster parents on the child's progress while in the care of the foster parents. **IC 31-34-22-1**. Foster parents could ask the case manager about the DCS permanency plan recommendations, so foster parents can support the plan and encourage the child's adjustment. During this consultation, foster parents may want to inform the case manager about whether the foster parents would like to adopt the child if adoption becomes the permanency plan.

In making the decision to offer their adoption of the child as a possible permanency plan, foster parents should consider the financial impact of adopting the child. Foster parents should be honest with the DCs family case manager about whether they can commit to adopting a child when there is no postadoption financial assistance available. The foster care per diem will terminate after an adoption, and postadoption financial assistance may be unavailable to help meet the child's special needs. Only some children are eligible to receive postadoption financial assistance through the Federal Adoption Assistance Program. The state adoption subsidy program is not currently fully funded, and many children have been placed on a waiting list to receive subsidies. For information on the DCS Adoption Program, check the DCS website, www.in.gov/dcs and click on DCS Polices, then Child Welfare Policies. The Indiana Adoption Program, effective January 1, 2009, is explained in an administrative letter on the website.

Foster parents may also decide to hire and consult with their own independent attorney to help foster parents gather information to make an informed decision about adopting the child. An attorney who is representing only the foster parents can help foster parents understand the lengthy termination and adoption process. The attorney can help foster parents negotiate a postadoption contact privileges agreement. The attorney can also help foster parents with the process of requesting any available postadoption financial assistance.

The DCS permanency hearing report shall be made available to: the child, the child's parents, the foster parents, the Guardian ad Litem or Court Appointed Special Advocate, and any other person who is entitled to receive notice of the permanency hearing. **IC 31-34-22-2.** Permanency hearing reports are confidential, so if the child receives a copy of the report, foster parents should be certain that the report is kept in a secure place along with the child's other confidential documents. The Court may determine on the record that the DCS report contains information that should not be released to a person who is usually entitled to receive the report. **IC 31-34-22-2.** If the Court makes this determination, that person will not be given the report. The report will always be provided to the attorneys for the parents and the Guardian ad Litem or Court Appointed Special Advocate. The Court may provide a factual summary of the report to the child, the child's parents, and the foster parent if the Court decides not to release the entire report to them. **IC 31-34-22-2.**

At the permanency hearing, the Court will insure that copies of the permanency hearing reports have been provided to those who received notice of the hearing. The Court will admit the reports into evidence. The Court can consider hearsay information in the permanency reports as long as the hearsay information is probative, which means that the information offers proof of relevant facts. **IC 31-34-22-3.** The Court will give the child (if present), parents, Guardian ad Litem or Court Appointed Special Advocate, foster parents, and others who received notice of the hearing the opportunity to be heard, make recommendations, submit a written statement, testify, and cross-examine witnesses. **IC 31-34-21-4.**

The Court must also consult with the child in an age appropriate manner regarding the proposed permanency plan. **IC 31-34-21-7**. The Court may do this by speaking with the child in person, or through an interview with or written report submitted by: (1) the Guardian ad Litem or Court Appointed Special Advocate; (2) a DCS family case manager; or (3) the person with whom the child is living and who has primary responsibility for the child's care and supervision.

The most important determination which the Court will make is to consider and approve the child's permanency plan. **IC 31-34-21-7.5** lists the following options for permanency plans:

- Return to or continuation of care by a parent, including placement with the noncustodial parent
- Initiation of a termination of the parent-child relationship case
- Placement for adoption
- Placement with a responsible relative who is willing to act as the child's permanent custodian
- Appointment of a legal guardian
- Placement of the child in another planned, permanent living arrangement

The Court must also consider and approve a time schedule for implementing the permanency plan and order interim arrangements for the child's care while the permanency plan is being completed.

The home selected as the child's permanency plan usually cannot be inhabited by persons who have been convicted of or had juvenile delinquency findings for criminal offenses that would prevent foster care licensure. **IC 31-27-4-13**. *See the Appendix of this Handbook for the felonies which require denial of a foster care license.* If a person who lives in the home has committed substantiated abuse or neglect, the child usually cannot be placed in the home. The Court can allow the child be placed in the home of a person who has committed a criminal offense or substantiated abuse or neglect if the Court finds that the person's past behavior is not relevant to the person's present ability to care for the child and that approval of the permanency plan is in the child's best interests. **IC 31-34-21-7.5**. In making this determination, the Court shall consider the length of time since the person committed the offense or act of substantiated abuse or neglect. The Court shall also consider the severity of the offense or substantiated abuse or neglect, and evidence of the person's rehabilitation. **IC 31-34-21-7.5**.

At the permanency hearing, the Court must also examine the procedures used by DCS to be sure that parents' rights are being protected. If parents' rights have not been protected throughout the CHINS process, the Court may not have a good legal reason to follow through with involuntary termination of the parent-child relationship rights when termination is the permanency plan.

After the Court approves the child's permanency plan, additional work must be completed to implement the plan. The Court can consider a guardianship petition and determine whether a guardian should be appointed for the child. **IC 31-34-21-7.7**. Often a guardianship or relative custodianship permanency plan can be completed within a relatively short time. Involuntary termination of the parent-child relationship and adoption may take much longer to complete. Sometimes adoption cases may be pending for more than one year. Termination of parental rights and adoption of the child provide increased safety and permanency for the child. Adoptions are final, unlike guardianships or custodianships. Birth parents always have the right to ask the Court to consider terminating a guardianship or relative custodianship and returning the child to the birth parents' custody.

Foster parents should provide emotional support and encouragement to help the child formulate his wishes about a permanency plan. Foster parents should also encourage the child to express his permanency wishes to the DCS family case manager, Guardian ad Litem or Court Appointed Special Advocate, or the Court. Foster parents can also help the child to be patient while the permanency plan is being implemented.

XIV. Voluntary Termination of the Parent-Child Relationship, Consents to Adoption, and Postadoption Contact Privileges

A. Voluntary Termination

Voluntary termination of the parent-child relationship is a Court proceeding that permanently ends the legal, social, and financial relationship and responsibility between the parent and child. Voluntary termination legally allows a child to be adopted without the parent's consent. Voluntary termination is a first step toward the adoption process. A separate adoption procedure is needed to complete the child's adoption.

The voluntary termination process begins with the parent's written consent to voluntary termination. A parents' written consent can be accepted by the DCS attorney, a DCS family case manager, or a social worker from a licensed child placing agency. The written consent should be notarized or signed in the presence of a person who is authorized by law to witness legal

documents. **IC 31-35-1-6.** The person who accepts the parent's consent must be careful not to say or do anything to coerce the parent to consent. If the parent is represented by an attorney, the parent's attorney should be present when the parent signs the consent to voluntary termination.

IC 31-35-1-12 states that parents must be advised of the following rights before signing the consent to voluntary termination:

- Their consent is permanent and cannot be revoked or set aside unless it was obtained by fraud or duress, or unless the parent is incompetent;
- When the Court terminates the parent-child relationship:
 - A. all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, parenting time, or support pertaining to that relationship, are permanently terminated; and,
 - B. their consent to the child's adoption is not required;
- The parents have a right to the:
 - A. care;
 - B. custody; and
 - C. control;

of their child as long as they fulfill their parental obligations;

- The parents have a right to a judicial determination of any alleged failure to fulfill their parental obligations in a proceeding to adjudicate their child a delinquent child or a child in need of services;
- The parents have a right to assistance in fulfilling their parental obligations after a Court has determined that they are not doing so;
- Proceedings to terminate the parent-child relationship against the will of the parents can be initiated only after:
 - A. the child has been adjudicated a delinquent child or a child in need of services and the child has been removed from their custody following the adjudication; or
 - B. a parent has been convicted and imprisoned for an offense listed in **IC 31-35-3-4** (or has been convicted and imprisoned for an offense listed in **IC 31-6-5-4.2(a)** before its repeal), the child has been removed from that parent's custody under a dispositional decree, and the child has been removed from the parent's custody for six months under a Court order;
- The parents are entitled to representation by counsel, provided by the state if necessary, throughout any proceedings to terminate the parent-child relationship against the will of the parents; and

- The parents will receive notice of the hearing, unless parents waived (gave up) their right to notice in writing signed in the presence of a Notary Public. At the hearing, the Court will decide if the parents' consent was voluntary, and the parents may appear at the hearing and allege their consent was not voluntary.

Competent parents who are under the age of eighteen may consent to voluntary termination without the approval of the Court or the parents' guardians. **IC 31-35-1-9.**

After the parent signs the consent to voluntary termination, the second step is the filing of a petition to terminate the parent-child relationship. Only DCS or a licensed child placing agency can file a petition for the voluntary termination of the parent-child relationship. **IC 31-35-1-4.** A parent cannot file his or her own petition for voluntary termination of the parent-child relationship. A voluntary termination petition may be filed in the juvenile or probate Court. **IC 31-35-1-3.** A voluntary termination petition may be filed for a child who is not a Child in Need of Services.

The person who files the petition for voluntary termination must prove:

- The parent knowingly and voluntarily consents to termination of the parent-child relationship
- Termination is in the child's best interests;
- The petitioner has developed a satisfactory plan of care and treatment for the child. **IC 31-35-1-4.**

After the voluntary termination petition has been filed, the Court will schedule a hearing date. The parents shall be notified of the hearing date by mail at least ten days before the hearing or by in person delivery at least three days before the hearing. **IC 31-35-1-5. IC 31-32-9-1.** The parent can waive (give up) the right to receive notice of the hearing on the voluntary termination petition by signing a notarized document which states that the waiver cannot be revoked and that the parent will not receive notice of the adoption or termination. **IC 31-35-1-5.**

At the court hearing on the voluntary termination petition, the Judge must advise the parent about the parent's constitutional and other legal rights and the consequences of voluntary termination. **IC 31-35-1-8.** The Judge will hear evidence and determine whether the parent's consent to voluntary termination is knowing and voluntary. The Indiana Supreme Court held that a parent's written consent to voluntary termination is invalid unless the parent either:

- appears at the court hearing and acknowledges the parent's consent to termination; or

- consented to termination in writing before a person authorized by law to witness legal documents; and
- was advised of the legal rights listed at **IC 31-35-1-12**; and
- was advised that if the parent chooses to attend the court hearing, the only issue before the Court is whether the parent's consent was voluntary

If the parent does not attend the court hearing, the Judge must inquire about the reasons why the parent did not attend. **IC 31-35-1-7**. The Judge may require a probation officer to investigate to determine whether there is any evidence of fraud or duress and to establish that the parent was competent to consent to termination. **IC 31-35-1-7**.

At the voluntary termination hearing, the Judge must also determine that:

- termination of the parent-child relationship is in the child's best interest; and
- the petitioner (DCS or other licensed child placing agency) has developed a satisfactory plan of care and treatment for the child.

If the Judge determines that all the allegations in the termination petition are true, the Judge shall order the parent's rights legally terminated. **IC 31-35-1-10**. After the Judge orders parental rights terminated, the parent does not have the right to request custody of the child, nor is the parent required to pay ongoing child support. The parent is still required to pay any child support arrearage (past due child support). The parent's consent to the child's adoption is not needed.

B. Consents to Adoption

Sometimes parents prefer to consent to the child's adoption instead of voluntarily terminating the parent-child relationship. A consent to adoption may be signed by the parent either in the presence of the Court, a Notary Public or another person authorized by law to witness legal documents, an agent of DCS, or an agent of a licensed child placing agency. **IC 31-19-9-2**. The child's mother may not sign her consent to adoption before the child is born. **IC 31-19-9-2**. The child's father may sign a written consent to the child's adoption before the child is born if:

- the consent is witnessed by a Notary Public; and
- the consent contains a written acknowledgment that the consent is irrevocable; and
- the consent contains a written acknowledgment that the child's father will not receive notice of the adoption proceedings. **IC 31-19-9-2**.

The consent to adoption signed by the parent may contain the names of the adoptive parents. In this situation, only the named adoptive parents can adopt the child. The parent may choose to sign a consent to adoption that does not name specific adoptive parents. **IC 31-19-9-3**. In this situation, any adoptive parents whose adoption is approved by the Court may adopt the child.

A parent who is under the age of eighteen may consent to an adoption. The concurrence of the parent's parents or guardian is not needed, unless the Court determines that it is in the best interest of the child to be adopted to require the concurrence of the consenting parent's parents or guardian. **IC 31-19-9-1**.

C. Postadoption Contact Privileges

At the time of the child's adoption, the Court which grants the adoption may approve a postadoption contact privileges agreement made between the adoptive parents and the birth parents. **IC 31-19-16-2**. Only birth parents who have consented to adoption or voluntarily terminated their parental rights are eligible for postadoption contact privileges. **IC 31-19-16-1**. Parents whose parental rights were involuntarily terminated are not eligible for postadoption contact privileges. **IC 31-19-16-2 and 3** provide that the Court may order the postadoption contact if it approves the contact agreement between the adoptive parents and the birth parent and finds that:

- The child is at least two years of age and there is a significant emotional attachment between the child and the birth parent.
- The desired contact between the birth parent and the child is in the best interest of the child.
- Each adoptive parent consents to the contact between the birth parent and the child.
- The adoptive parents and birth parent filed a postadoption contact agreement with the Court which contains the following: (1) an acknowledgment by the birth parents that the adoption is irrevocable, even if the adoptive parent does not abide by the postadoption contact agreement and (2) an acknowledgment by the adoptive parents that the contact agreement grants the birth parent the right to enforce the postadoption privileges set out in the agreement.
- The agency sponsoring the adoption and the child's Guardian ad Litem or Court Appointed Special Advocate recommend the postadoption contact agreement, or DCS was informed of the agreement and commented on the agreement in its report.
- The child consents to the agreement if the child is at least twelve years of age.

The Indiana Court of Appeals has clarified that the postadoption contact laws are the only means to obtain court-ordered visitation between the birth parent and the adopted child.

Foster parents may hire and consult with the own independent attorney who can help them negotiate the terms of the postadoption contact agreement.

XV. Involuntary Termination of the Parent-Child Relationship

Although the majority of children who have been adjudicated CHINS will be successfully reunified with a parent, some children will achieve permanent families through termination of the parent-child relationship and adoption. When foster parents begin caring for children, it is not possible to be certain whether reunification or termination of the parent-child relationship and adoption will be the best outcome. Fortunately, foster parents can take steps to assure that the best reunification case is also the best termination case, if necessary. Foster parents' involvement in case planning and Child and Family Team meetings, accurate, thorough documentation of parents' statements and behavior, and detailed information on the child's best interests and needs can form the basis for either a successful reunification or provide needed evidence for involuntary termination of the parent-child relationship.

Only DCS or the child's Guardian ad Litem or Court Appointed Special Advocate may file an involuntary termination petition. **IC 31-35-2-4** provides that the following must be proven in order to involuntarily terminate the parent-child relationship:

- 1) The child has been adjudicated a Child in Need of Services or a delinquent child;
- 2) That one of the following is true:
 - a) The child has been removed from the parent for at least six (6) months under a dispositional decree;
 - b) A Court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the Court's finding, the date of the finding, and the manner in which the finding was made; or
 - c) The child has been removed from the parent and has been under supervision of DCS or the probation department for at least fifteen months of the most recent twenty-two months, beginning with the date the child is removed from the home as a result of the child being alleged to be a CHINS or delinquent.
- 3) That one of the following is true:
 - a) There is a reasonable probability that conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - b) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child; or

- c) The child has, on two separate occasions, been adjudicated a child in need of services;
- 4) That termination is in the best interests of the child; and
- 5) That there is a satisfactory plan for the care and treatment of the child.

A termination petition must be filed if the child has been removed from the parent under DCS or probation department supervision for fifteen of the most recent twenty-two months, beginning with the date the child is removed from the home. **IC 31-35-2-4.5.**

A second termination statute, **IC 31-35-3-4**, can be used if parents have been criminally convicted of specific crimes, the parent's child or stepchild was the crime victim, and the victim was less than sixteen years old when the crime was committed. The crimes included in **IC 31-35-3-4** are murder, causing suicide, voluntary manslaughter, involuntary manslaughter, rape, criminal deviate conduct, child molesting, child exploitation, sexual misconduct with a minor, and incest. **IC 31-35-3-8** provides that a showing that the parent has been convicted of one of the offenses listed at **IC 31-35-3-4** is prima facie evidence of the following elements of the termination statute: (1) there is a reasonable probability that the conditions that resulted in the removal of the child from the parent under a Court order will not be remedied; or (2) there is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the child. Using the criminal conviction and other requirements as prima facie evidence means that it is easier to prove that parental rights should be terminated in the above situations. The requirements of the victim being the parent's child or stepchild and the victim being under sixteen when the crime occurred must also be met to use this termination statute.

Even though **IC 31-35-2-4.5** requires that a termination petition be filed for every child who has been removed for fifteen of the most recent twenty-two months, the parents' attorney, DCS attorney, or Guardian ad Litem/Court Appointed Special Advocate may file a motion to dismiss the termination petition. Some reasons why dismissal may be requested are: (1) terminating the parent-child relationship is not in the child's best interests; (2) the time period to complete family services has not expired; (3) DCS has not provided substantial and material services to permit safe reunification. **IC31-35-2-4.5.** If the Court dismisses the termination petition, the child could still remain in foster care. A second termination petition could be filed at a later date if DCS or the child's Guardian ad Litem or Court Appointed Special Advocate determines that there is enough evidence to prove the case.

Indiana law requires that an involuntary termination petition be proved by clear and convincing evidence. **IC 31-34-12-2.** Clear and convincing evidence is the standard of proof required for very important civil cases, including guardianship, adoption, and termination cases. The clear and convincing standard is less difficult to meet than the beyond a reasonable doubt standard required to

convict a person of a crime. DCS or the child's Guardian ad Litem/Court Appointed Special Advocate has the legal responsibility for proving each of the requirements listed in the termination statutes. The Indiana Supreme Court and the Indiana Court of Appeals have viewed involuntary termination of parental rights as a last resort, when all other reasonable efforts have failed. The Supreme and Appellate Courts have also recognized that parental rights are not absolute and must be subordinated to the child's interests. The Courts have also stated that parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. These statements by the Supreme and Appellate Courts provide guidance for Indiana juvenile Court Judges in deciding termination cases.

Because the consequences of terminating parenting rights are very serious, DCS must make efforts to locate birth parents to serve them with the termination petition. DCS family case managers will frequently question relatives and make inquiries of the Department of Correction and County Jail in attempting to locate parents. Foster parents who receive information on the possible whereabouts of an absent parent should immediately share this information with the DCS family case manager and the child's Guardian ad Litem or Court Appointed Special Advocate. This information could be received from relatives, other parents, or the child.

In addition to serving a copy of the termination petition on the parents, the person who filed the termination petition (DCS or the Guardian ad Litem/Court Appointed Special Advocate) must also provide notice of the hearing date on the termination petition to the child's parents, the parents' attorney(s), a prospective adoptive parent (if all consents to adoption have been filed with DCS, the Adoption Court has determined that consents are not needed, or a petition for termination of the parental rights has been filed), the Guardian ad Litem/Court Appointed Special Advocate, other parties, the child's foster parents, any other person who DCS knows is currently caring for the child and who is not required to be licensed, and any other suitable relative or person who DCS knows has had significant or caretaking relationship to the child. **IC 31-35-2-6.5**. The notice must be sent at least ten days before the hearing.

The Court shall continue the termination hearing if DCS has not provided the Court with signed verification from the foster parents that the foster parents have been notified of the termination hearing at least five business days before the hearing. The continuance is not required if a foster parent attends the hearing. **IC 31-35-2-6.5(f)**.

Unlike CHINS cases, where the Court is not required to appoint an attorney to represent the parents, Indiana law gives parents the right to a free court appointed attorney in termination cases. **IC 31-32-4-3**. The Court usually appoints attorneys for the parents at an initial hearing on the termination petition. One court appointed attorney may represent two parents if there is no legal conflict of interest. Frequently the Court appoints a separate attorney for each parent, including an alleged father. Alleged fathers can easily become legal fathers by signing a paternity affidavit with the

child's mother or establishing paternity by agreement in Court. No blood or DNA testing is required to establish paternity if the alleged father and mother agree that the alleged father is the biological father. Courts believe it is important to appoint attorneys for alleged fathers in termination cases to ensure that alleged fathers' rights are protected. Appointing an attorney for an alleged father also helps the child because the child may not be legally available for adoption if only the mother's rights are terminated. If both parents' rights are terminated by the Court, this makes it easier and less costly for prospective adoptive parents to adopt the child.

If a parent objects to termination of parental rights, the Court must appoint a Guardian ad Litem or Court Appointed Special Advocate to represent the child in the termination case. **IC 31-35-2-7**. The Court may reappoint the Guardian ad Litem or Court Appointed Special Advocate who has served on the CHINS case.

Contested termination trials require much legal work and many witnesses. The DCS attorney and the Guardian ad Litem or Court Appointed Special Advocate must interview potential witnesses (which could include foster parents), determine which witnesses should testify, and prepare exhibits to offer into evidence. After the parents' attorneys have been appointed, they will meet with the parents to discuss the parents' wishes and prepare witnesses to testify and exhibits to offer at the trial. The parents' attorneys will usually review the DCS and Guardian ad Litem or Court Appointed Special Advocate files, which could include information given by foster parents.

Termination trials are often lengthy and may take place on several different days. One reason for the lengthy trial is for the Judge to be sure that the parents' rights are protected. If parents' due process rights are not protected, the Indiana Supreme or Appellate Courts could reverse the juvenile Judge's order which terminated parental rights. A problem with protecting parental rights arises when the parent is incarcerated. Although incarcerated parents do not always have the right to be physically present at the termination hearing, incarcerated parents must be given the opportunity to participate meaningfully in the hearing. Incarcerated parents often participate in the trial by using a telephone link between the courtroom and the jail or prison so the incarcerated parent can hear the trial, consult with the parent's attorney, and testify.

Another reason for the lengthy trials in termination cases is that hearsay evidence may not be admitted and considered by the Court in a termination trial if a party to the case objects to the admission of the hearsay evidence. Hearsay evidence is an out-of-court statement made by a person who is not present at Court that is being offered to the Court to prove that the contents of the statement are true. Probative hearsay evidence in written reports may be considered by the Court in a CHINS dispositional or periodic case review hearing, because **IC 31-34-19-2** and **IC 31-34-22-3** allow the Judge to consider reports in these hearings. There is no Indiana statute that allows the Court to consider hearsay in a report at a termination trial if one of the parties to the case objects. In termination cases, written reports are considered to be hearsay unless the report writer also

testifies and the contents of the report are within the report writer's personal knowledge. There are many legal exceptions to the hearsay rule. These legal exceptions allow specific types of out-of-court statements to be admitted into evidence and considered by the Court. One example of hearsay evidence which may be admitted and considered by the Court is a statement made by a parent regarding the parent's own conduct, actions, or wishes. The statements of a parent about the other parent's conduct or actions usually will not be admissible as an exception to the hearsay rule. Other examples of admissible hearsay include specific business records and court records. Children's statements to foster parents or to other adults are usually hearsay and usually may not be admitted into evidence and considered by the Court, unless the child testifies or the Child Hearsay Exception is used. *See this Handbook at VIII for an explanation of the Child Hearsay Exception.*

The child's Guardian ad Litem or Court Appointed Special Advocate may testify about the child's general wishes and desires at the termination trial. Foster parents may also be called as witnesses at the termination trial by DCS, the Guardian ad Litem or Court Appointed Special Advocate, parents' attorneys, or any other legal party to the case. Foster parents will usually be testifying about their own personal observations, the care which the foster parents are providing to the child, and the parents' statements to the foster parents. At the termination trial or at a hearing on a motion to dismiss the termination petition, foster parents have the opportunity to be heard and to make recommendations to the Court. **IC 31-35-2-6.5.** Foster parents may also submit a written statement that may be made a part of the Court's record if a copy of the statement is given to all those who have the right to notice of the hearing. **IC 31-35-2-6.5.** Foster parents do not become legal parties to the termination case even though they have the right to the opportunity to be heard, make recommendations and submit a written statement to the Court. The only way foster parents can become legal parties to a termination case is if the Court grants a motion to intervene, which must usually be filed by an attorney who represents the foster parents.

The Court must begin the termination trial within 90 days of the filing of the termination petition and complete the trial within 180 days after the petition is filed. The Judge frequently takes the decision about the terminating parental rights under advisement so the Judge has time to review all the exhibits and testimony and documents submitted by the lawyers for the parties to the case. The Indiana Trial Rules give the Judge 90 days to make a decision after the termination hearing is completed, but there are some exceptions to the Rules which extend the time period for the Judge's decision to be given.

If the Judge finds that the allegations in the termination petition are not true, the Judge shall dismiss the termination petition. **IC 31-35-2-8; IC 31-35-3-9.** When the Judge dismisses the termination petition, the child is not immediately returned to the parents' custody. The child's CHINS case usually remains open, and the Court continues to conduct periodic case reviews. The Court may schedule a permanency hearing to reconsider the child's permanency plan.

If the Judge finds that the allegations in the termination petition are true, the Judge shall order the parent-child relationship terminated. **IC 31-35-2-8; IC 31-35-3-9**. When the parents' rights are terminated, the parents' consents to the child's adoption are not required. **IC 31-35-6-4**. If the parent has been ordered to pay child support, the ongoing child support requirement ends when the parent's rights are terminated, but the parent is still obligated to pay any child support arrearage. **IC 31-35-6-4**. The parents' rights to visitation and other contact with the child end when parental rights are terminated. Sometimes the Court orders or DCS arranges a gradual decrease in visits or a farewell visit for the parents and child. The Court of Appeals has ruled that, when a parent's rights have been terminated, the parent's relatives lose their legal ability to request visitation with the child, and DCS is not required to consider the parent's relatives for placement with the child.

After parental rights have been terminated, the juvenile Court may refer the child's case to the Court which has jurisdiction over adoptions. **IC 31-35-6-1**. The Court may refer the child's case for adoption even if the parent is appealing the termination of parental rights order. **IC 31-35-6-3**. *See this Handbook at XV for information on Appeals*. The juvenile Court will continue to hold periodic case review hearings at least every six months on the child's CHINS case until the adoption petition is filed. **IC 31-35-6-1**. The case review hearings will focus on the child's needs and placement, but the parents whose rights have been terminated will not be parties to the case or receive DCS services. The child's Guardian ad Litem or Court Appointed Special Advocate will continue to serve and to represent the child's best interests as long as the child's CHINS case is open. **IC 31-32-3-8**. The Guardian ad Litem or Court Appointed Special Advocate will also review the child's adoption plan with DCS and report to the juvenile Court regarding the plan's appropriateness in relationship to the best interests of the child. **IC 31-35-6-2**.

A termination of parental rights case may be very stressful for the foster child. Even if the child has been severely abused or neglected by the parents, the child may become emotionally upset when the Court considers terminating his parents' rights. Foster parents should give information to and consult with the DCS family case manager, the Guardian ad Litem or Court Appointed Special Advocate, and the child's therapist as to how foster parents can best help their foster child's adjustment during the termination process.

XVI. Appeals of CHINS and Termination Orders

Legal parties to the CHINS case or the involuntary termination of the parent-child relationship case who are dissatisfied with the trial Judge's decision can appeal the case to the Indiana Court of Appeals. Foster parents are not legal parties to the case unless the Judge has granted their motion to intervene. *See this Handbook at XII CHINS Periodic Case Review for information about foster parents' moving to intervene in a case*. An appeal is a review of legal documents by the Judges of

the Indiana Court of Appeals. It is not a retrial of the case, but the end result of an appeal could be a retrial of the case.

An appeal is initiated by the attorney for the party who was dissatisfied with the trial Judge's decision. The appeal includes copies of Court documents and frequently the transcript of the CHINS or termination hearing. The transcript includes all the testimony given by witnesses as well as legal arguments made by the attorneys and rulings by the Judge. The attorney for the party who wishes to appeal the Judge's decision also prepares and submits a legal argument to the Court of Appeals. Attorneys for the other parties may file their legal arguments in response to the appeal.

Indiana has fifteen Court of Appeals Judges who are appointed by the Governor of Indiana. The Judges have high academic credentials and many of them have previously served as trial Judges in Indiana counties. Three Court of Appeals Judges decide each appeal by reviewing the documents, transcripts, and legal arguments submitted. The Judges and their staff also may conduct legal research and require the parties' attorneys to make oral arguments before the Court of Appeals to help the decision-making. The three Court of Appeals Judges then write a legal opinion about the case. Legal opinions for each case are posted on the Indiana Supreme Court website, www.in.gov/judiciary, on Monday through Friday of each week. The legal opinions may be accessed by clicking on "Today's Court of Appeals Opinions" under Online Services on the right-hand side of the Supreme Court home page. Children's initials, not their full names, are used in the CHINS, termination, adoption, and paternity opinions to protect children's privacy. Some cases are "Published" and may be used by attorneys to persuade Judges who are making decisions on similar cases. Most of the Court of Appeals opinions are "Not for Publication" (NFP), which means that the opinions decide only the issues for that particular case but cannot be used by attorneys or Judges to guide decision-making on other cases.

The Court of Appeals Judges' opinion may affirm (agree with) the trial Judge's decision on the case. The Court of Appeals Judges' opinion may reverse (disagree with) the trial Judge's decision on the case. Decisions which are reversed are often remanded (sent back) to the trial Judge with instructions to hold a new hearing about the case. The trial Judge's previous decision on the CHINS or termination case may be vacated (taken away), and the trial Judge will need to decide the CHINS or termination case again after a retrial of the case. Most often, the Court of Appeals agrees with the trial Judge's decision, and the Appeals process ends with the trial Judge's decision standing as the final decision on the case.

If a party is dissatisfied with the Court of Appeals opinion, the party's attorney can file legal documents asking the Indiana Supreme Court to accept transfer of the case. The five Indiana Supreme Court Justices, who have outstanding academic credentials and many of whom have served as trial Judges in Indiana counties, are appointed by the Governor. The Indiana Supreme Court may decide not to accept transfer of the case. If the Indiana Supreme Court does not accept

transfer, the opinion of the Court of Appeals decides the case outcome. If the Indiana Supreme Court accepts transfer of the case, which does not usually happen, the Supreme Court Justices review the documents submitted to the Court of Appeals, the Court of Appeals decision, and the transfer documents submitted to the Supreme Court. The Justices and their staff conduct legal research. The Justices may require the parties' attorneys to make oral arguments before the Supreme Court.

The Indiana Supreme Court may adopt the Court of Appeals opinion on the case. The Indiana Supreme Court may disagree with the Court of Appeals, vacate (take away) the Court of Appeals opinion, and issue a new opinion. The Supreme Court may affirm (agree with) the trial Judge's decision or may disagree with (reverse) the trial Judge's decision. If the Supreme Court reverses the trial Judge's decision, the Supreme Court may remand (send back) the case to the trial Judge with instructions to conduct a new trial on the case.

There is also a special appeal process for CHINS cases when the trial Judge disagrees with the DCS recommendations and does not order what DCS recommended. This is an expedited appeal process. Only DCS can initiate these types of appeals because a major issue on these appeals is whether DCS must pay for placements or services. The expedited appeals are decided by the Indiana Court of Appeals. The Indiana Supreme Court may also accept transfer of these appeals.

Foster parents should provide emotional support, stability, and encouragement to the child if an appeal is initiated on the CHINS or Termination case. Foster parents should also seek guidance from the child's DCS family case manager, therapist, and Guardian ad Litem or Court Appointed Special Advocate in addressing the child's concerns. Frequently, the child is not aware that an Appeal is pending, and does not need to become aware that the case has not yet been resolved.

GLOSSARY

Adjudication – Court determination of child’s status due to parents’ admission or after hearing evidence.

Assessment – an initial and ongoing Department of Child Services investigation or evaluation that includes a review and determination of the safety issues that affect a child; an identification of the causes of the safety issues; a determination whether child abuse, neglect or maltreatment occurred; and a determination of the needs of the child’s family in order for the child to remain in or be returned to the home safely or be placed in an alternative living arrangement. **IC 31-9-2-9.6.**

Case Plan – written plan which includes recommended services for child and parents, permanent plan for child, and plan for ensuring child’s educational stability. **IC 31-34-15-1** through **4.**

Child and Family Team Meeting – a DCS case planning meeting which focuses on the family’s needs and identified strengths to determine what intervention might be most successful.

Child in Need of Services (CHINS) – a child is a CHINS if the child is a victim of child abuse, child sexual abuse, or child neglect. A child can also be a CHINS if the child is a danger to himself/herself or others and needs care or treatment that the Court must order to be provided to the child. A “child” is defined as a person under the age of 18. Only DCS may file a petition alleging that a child is a CHINS.

The criteria for CHINS are more specifically written in the law as:

1. The child’s physical or mental condition is seriously impaired or seriously endangered due to the neglect, refusal or inability of the child’s parent (or guardian or custodian) to give the child the necessary food, clothing, shelter, medical care, education, or supervision (**IC 31-34-1-1**); or
2. The child’s physical or mental health has been seriously endangered due to an injury by the act or omission of the parent (or guardian or custodian) of the child (**IC 31-34-1-2**); or
3. The child is a victim of a sex offense or the child lives in the same household as the adult who committed the sex offense for which the adult was convicted or a CHINS adjudication was made (**IC 31-34-1-3**); or
4. The parent allows the child to participate in an obscene performance (**IC 31-34-1-4**); or
5. The parent allows the child to commit a sex offense (**IC 31-34-1-5**); or
6. The child substantially endangers the child’s own health or the health of another (**IC 31-34-1-6**); or
7. The child’s parent fails to participate in a school disciplinary proceeding if the child has been repeatedly disruptive in school (**IC 31-34-1-7**); or
8. The child is a missing child (**IC 31-34-1-8**); or
9. The child is born with fetal alcohol syndrome or with any amount of a controlled substance or legend drug in the child’s body; or has an injury, abnormal physical or psychological

development, or a substantial risk of a life-threatening condition, due to the child's mother's use of alcohol or controlled or legend drugs during the mother's pregnancy (**IC 31-34-1-10; 11**). (Note: The child is not a CHINS if the child's mother possessed a valid prescription for the drug and the mother made a good faith effort to use the drug as prescribed).

In all CHINS determinations, the judge also must decide that it is necessary for the Court to intervene to provide the care, treatment, or rehabilitation that the child needs.

Court Appointed Special Advocate – a community volunteer who has received training and has been appointed by a court to represent and protect the best interests of a child. A Court Appointed Special Advocate speaks for the child in court. A Court Appointed Special Advocate may research, examine, advocate, facilitate, and monitor a child's situation. **IC 31-9-2-28**.

Custodian – includes a person with whom a child resides; a member of the household of the child's noncustodial parent; or a child caregiver (in home paid daycare provider). **IC 31-9-2-31**.

Department of Child Services (DCS) – the state agency responsible for conducting assessments of child abuse or neglect, filing and proceeding with CHINS petitions, providing child welfare services, and licensing foster homes, group homes, child caring institutions, and child placing agencies. The county offices which carry out DCS duties are local offices of DCS.

Foster parent – a person who provides care and supervision for a child in his or her home and is licensed by DCS. **IC 31-9-2-47**.

Guardian ad Litem – an attorney, volunteer, or employee of a county program who is appointed by the court to represent and protect the best interests of a child. The Guardian ad Litem may provide the child with services requested by the court, including researching, examining, advocating, facilitating, and monitoring the child's situation. **IC 31-9-2-50**.

Indiana Code – Indiana law pertaining to children served by the child welfare system can be found at **IC 31-33** (Juvenile Law: Reporting and Investigation of Child Abuse and Neglect), **IC 31-34** (Juvenile Law: Children in Need of Services), and **IC 31-35** (Juvenile Law: Termination of Parent-Child Relationship). The Indiana Code can be located on the website at www.in.gov/legislative/ic/code. This website is updated annually to incorporate newly enacted legislation.

Kinship caregiver – a person who is at least eighteen years old who is related to a child by blood, adoption, or marriage or is the child's godparent or stepparent and is the primary caregiver for and provider of financial support of a child. **IC 31-9-2-72.5**.

Mediation – formal process where trained mediator, complying with specific Alternative Dispute Resolution Rules, assists parties to reach written legal arguments on cases.

Negotiation – informal process where parties try to reach legal agreements on cases.

Parent – a biological or adoptive parent. The term includes both parents, regardless of their marital status, and also includes alleged fathers whose paternity has not yet been established. **IC 31-9-2-88.**

Putative father – a man who is alleged to be or claims to be a child’s father, who was not married to the mother of the child, or who has not established paternity in a court proceeding or by an affidavit. **IC 31-9-2-100.**

Reasonable efforts – efforts required by federal law and state law to prevent removal of a child from the child’s home, to preserve the family, or to reunify the family. A Court must make the determination as to what is “reasonable.” In making this determination, the Court is required to hold the child’s health and safety as the paramount concern. **IC 31-34-21-5.5.**

Relative – a maternal or paternal grandparent, an adult aunt or uncle, an adult sibling, or any other adult relative suggested by either parent of a child. **IC 31-34-3-4.5.**

Special needs foster family home – licensed foster home that cares for a child who has a mental, physical or emotional disability and will require additional supervision or assistance. **IC 31-9-2-117.5.**

Statute – A law enacted by the Indiana General Assembly or United States Congress.

Termination of the Parent-Child Relationship – Court proceedings which end birth parents’ rights and responsibilities for their child, enabling the child’s adoption. **IC 31-35-1** (voluntary); **IC 31-35-2** and **IC 31-35-3** (involuntary).

Therapeutic foster family home – licensed foster home that cares for a child who is seriously emotionally disturbed or developmentally disabled and who receives in home treatment supervised and supported by qualified program staff. **IC 31-9-2-129.5.**

Wardship – transfer from parent of the responsibility for temporary care and custody of a child which may include authority for person granted wardship to make decisions concerning the child’s physical custody, care and supervision, medical care and treatment, and visitation with parents, relatives or others. **IC 31-9-2-134.5.**

XVIII. Appendix: List of Criminal Convictions Which Prevent Foster Home Licensure

IC 31-27-4-13(a) states that, as of July 1, 2011, a foster home license must be denied to an applicant who has been convicted of the following felonies:

- (1) Murder (**IC 35-42-1-1**)
- (2) Causing suicide (**IC 35-42-1-2**)
- (3) Assisting suicide (**IC 35-42-1-2.5**)
- (4) Voluntary manslaughter (**IC 35-42-1-3**)
- (5) Reckless homicide (**IC 35-42-1-5**)
- (6) Battery (**IC 35-42-2-1**) within the past five (5) years
- (7) Domestic battery (**IC 35-42-2-1.3**)
- (8) Aggravated battery (**IC 35-42-2-1.5**)
- (9) Kidnapping (**IC 35-42-3-2**)
- (10) Criminal confinement (**IC 35-42-3-3**) within the past five (5) years
- (11) A felony sex offense under **IC 35-42-4**
- (12) Carjacking (**IC 35-42-5-2**) within the past five (5) years
- (13) Arson (**IC 35-43-1-1**) within the past five (5) years
- (14) Incest (**IC 35-46-1-3**)
- (15) Neglect of a dependent (**IC 35-46-1-4(a)(1)** and **IC 35-46-1-4(a)(2)**)
- (16) Child selling (**IC 35-46-1-4(d)**).
- (17) A felony involving a weapon under **IC 35-47** or **IC 35-47.5** within the past five (5) years
- (18) A felony relating to controlled substances under **IC 35-48-4** within the past five (5) years
- (19) An offense relating to material or performance that is harmful to minors or obscene under **IC 35-49-3**
- (20) A felony that is substantially equivalent to a felony listed in subdivisions (1) through (19) for which the conviction was entered in another state

A foster home license may be denied to an applicant who has been convicted of a felony which is not listed at **IC 31-27-4-13(a)**. A foster home license may also be denied to an applicant who has had a juvenile delinquency adjudication for an act listed at **IC 31-27-4-13(a)**.