

When Kids Are In Court

CHILD IN NEED OF SERVICES (CHINS)

Title 31 of the Indiana Code addresses issues of family law and juvenile law. It is within Title 31 that the State of Indiana is granted authority to intervene in the life of a child to protect that child. When the State of Indiana, through the Indiana Department of Child Services (DCS), initiates a case alleging that a child is a child in need of services, a court is often confronted with two admirable but at times conflicting goals:

To protect children and insure children are afforded a chance for a viable life;

and

Maintain and strengthen the family unit in our society.

Access to records in a CHINS case is more restricted than in a juvenile delinquency case as the societal interests differ between the two cases. There are public safety issues in a juvenile delinquency case that serve as a counter balance to the child's and the families interests while in a CHINS case the focus is on the best interests of the child and the preservation of the family.

The CHINS process:

1. The initial report. The state call-in center receives all reports of abuse and neglect and conducts the initial screening of the report.
2. If appropriate, the case is forwarded to the local DCS office for further investigation.
3. The local DCS office may further screen the case or conduct an investigation. A safety plan may be implemented pending an investigation.

4. If an investigation concludes that intervention by DCS is appropriate the agency may enter into an Informal Adjustment (IA), an agreement between DCS and the parents and approved by a court.
5. DCS may file a CHINS petition.
6. If an emergency exists, the child may be detained or taken into custody by DCS without a prior court order and a detention hearing will be conducted.
7. An initial hearing is conducted to explain to the parents the allegations, their rights and the dispositional alternative.
8. A trial before the court, or a fact finding hearing, is conducted to determine if the child is a child in need of services. The parents may also admit that the child is a child in need of services.
9. The burden of proof for DCS is a preponderance of the evidence, meaning the allegation that the child is a child in need of services is more likely true than not.
10. A dispositional hearing is conducted to determine the placement of the child, identify services and the plan for the child and the family.
11. Following the dispositional hearing, review hearing and/or permanency hearings are held to review the progress of the case.
12. Throughout the case a plan for permanency represents the goal by which a case may be closed. A plan for permanency may include reunification of the family, guardianship, change in custody to a non-offending parent, independent living, termination of parental rights and adoption.

The parties/players in a CHINS case include:

1. The judge.
2. The DCS attorney.
3. The parents' attorney.
4. Mother and father.
5. Alleged fathers.
6. The Court Appointed Special Advocate (CASA) or guardian ad litem (GAL).
7. DCS investigators.
8. DCS family case managers.
9. Family members (grandma, grandpa, aunts, uncles, etc.).
10. Step-parents.

11. Family friends.
12. Foster parents.
13. Foster care agencies.
14. Law enforcement.
15. School officials including special education.
16. Service providers (an inexhaustible list).
17. Residential facilities.

TERMINATION OF PARENTAL RIGHTS (TPR)

The TPR process:

1. Upon provisions of the Indiana Code the Department of Child Services may file a petition to terminate parental rights. Depending upon the circumstances the filing of the petition may be discretionary or mandatory.
2. This is a separate proceeding from a CHINS case even though the parties may be identical.
3. The burden of proof to terminate parental rights is clear and convincing evidence.
4. The elements in a TPR case involve the removal of the child from the parents' home for an extended time, the prospects that the conditions that led to the removal of the child will not be corrected and the best interests of the child. Also an element is that there is a reasonable plan for the child.
5. As in a CHINS case, there is an initial hearing and a fact-finding hearing.
6. There is a right to appeal an order that terminates the parent child relationship.

Access to CHINS records/hearings:

CHINS and TPR cases will involve a mix of records that are a part of the court proceedings and records and information generated by DCS as a part of the abuse or neglect investigation and ongoing supervision of the child while the case is open.

Records: Access to CHINS and TPR records are governed by the same statutory provisions of the Indiana Code and the Indiana Administrative Rules.

I.C. 31-39-1-2. All juvenile court records subject to this chapter are confidential and are available only in accordance with I.C. 31-39-2.

I.C. 31-33-18-1. Information and reports of DCS are confidential.

Indiana Administrative Rule 9(G). The following information in case records is excluded from public access and is confidential:

(b)(iii). All records relating to child abuse as declared confidential by I.C. 31-33-18.

(b)(vi). Records of juvenile proceedings, as declared confidential by I.C.31-39-1-2, except those specifically open under statute.

CHINS and TPR cases/records are not included in those types of juvenile cases where the records are accessible to the public (as contrasted to juvenile delinquency records where the child is charged with an act that would be murder or a felony if committed by an adult). Juvenile records and files are often classified “public” and “private”.

Hearings: I.C. 31-32-6-2 provides that the juvenile court shall determine whether the public should be excluded from a proceeding other than a juvenile delinquency proceeding involving murder or felony allegations which are presumptively open to the public pursuant to I.C. 31-32-6-3.

There exist statutory provisions where a party can request a closed proceeding even if the court orders the proceeding open.

Indiana Administrative Rule (G)(1.1) provides that if a court proceeding is closed to the public, when the court receives confidential information, then that information remains excluded from public access.

Indiana Administrative Rule (G)(1.2) provides that when a court proceeding is open to the public, that if information is entered into the record of the court proceeding that is confidential, then that information will remain excluded from the public only if a party or person affected by the release of that information requests that the information remain excluded from public access.