

Life of A Case



The Life of a Case

Understanding CHINS Hearings and the Role the CASA Volunteer Plays

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A child abuse and neglect case begins with a report of abuse or neglect to the Department of Child Services (“DCS”). The report is investigated by DCS and if substantiated, may result in the filing of a Child In Need of Services, or “CHINS” proceeding. The first hearing in a CHINS case is the detention hearing.

Detention Hearing

- The general purpose of the detention hearing is to determine if there is probable cause to believe that a child is a child in need of services and if the DCS should be allowed to detain (or keep custody) of the child.
- A detention hearing must be held within forty-eight hours (excluding weekends and legal holidays) of the time the child was taken into custody. If the hearing is not held in this time period, the child must be released. I.C. 31-34-5-1
- As of July 1, 2009, the initial hearing (see below) on the CHINS petition must be held at the same time as the detention hearing. I.C. 31-34-10-2
- At the detention hearing, the court must make written findings that state: 1) whether removal of the child was necessary to protect the child; 2) a description of the family services available before removal of the child; 3) efforts made to provide family services before removal of the child; 4) why the efforts made to provide family services did not prevent removal of the child; and 5) whether the efforts made to prevent removal of the child were reasonable. I.C. 31-34-5-2
- The child must be given notice of the time, place and purpose of the detention hearing and must be given an opportunity to be heard and to make recommendations to the court. I.C. 31-34-5-1; I.C. 31-34-10-2. However, a child may be excluded from a CHINS or termination proceeding or from any part of a hearing for good cause shown. I.C. 31-32-6-8
- At the detention hearing, the court must release the child to the child’s parent, guardian or custodian unless the court finds probable cause to believe that the child is in need of services and that either: 1) detention is necessary to protect the child; or 2) the child is unlikely to appear before the court for further proceedings; or 3) the child has a reasonable basis for requesting that the child not be released; or 4) the parent, guardian or custodian cannot be located or is unable or unwilling to take custody of the child; or 5) consideration for the safety of the child precludes the use of family services to prevent removal of the child. I.C. 31-34-5-3
- The court can hold additional detention hearings if necessary. The child, DCS, the parent, guardian or custodian can request additional detention hearings. I.C. 31-34-5-4 and 31-34-5-5

- If the court releases the child to the child’s parent, guardian, or custodian at the detention hearing (i.e., an in-home CHINS), the court may impose conditions on the child or the child’s parent, guardian or custodian to ensure the safety of the child’s physical or mental health. I.C. 31-34-5-3.5
- A child alleged to be a CHINS cannot be held in a secure facility or a shelter care facility that houses persons charged with, imprisoned for, or incarcerated for crimes. Please note: The statute does not prevent CHINS children from being placed in a shelter care facility with JD (juvenile delinquent) children, as JD kids are not charged with a “crime.” I.C. 31-34-6-1, I.C. 31-32-2-6
- A court shall consider placing a child alleged to be a CHINS with an appropriate family member of the child before considering other placement of the child. I.C. 31-34-6-2
- A court may not place a child in a facility that is located outside the child’s county of residence unless placement of the child in a comparable facility with adequate services located in the child’s county of residence is unavailable. I.C. 31-34-6-3

CASA Volunteer at the Detention Hearing

- The CASA volunteer will probably not be present or appointed yet at the first detention and/or initial hearing. Under the statute, a CASA volunteer is appointed at the initial hearing in the case, which must be held at the same time as the detention hearing as of July 1, 2009. I.C. 31-34-10-2, I.C. 31-34-10-3
- However, in some counties, CASA program staff attend detention hearings so they are aware of the case from the beginning.
- The role of the CASA volunteer or staff person at the detention and/or initial hearing is very limited. It is most likely the CASA volunteer/staff person’s first exposure to the case, so the program would not prepare a report.
- The CASA volunteer or staff person present would take notes and listen to the hearing to learn about the case. This is also a key opportunity for the CASA volunteer/staff person to introduce themselves to the parties—the DCS caseworker, the parents, the child (if present), to explain the role of the CASA volunteer in the case, and to get contact information for the parents and relatives.

The Initial Hearing

- At the beginning of the initial hearing, the court is required to appoint a CASA volunteer for the child. I.C. 31-34-10-3. A CASA must now be appointed for every child in every CHINS and every involuntary termination of parental rights (“TPR”) proceeding if the parent objects to the termination of his/her rights. I.C. 31-34-10-3, I.C. 31-35-2-7
- Once appointed to the case, the CASA volunteer is a legal party to the CHINS case. I.C. 31-34-9-7. This means that the CASA has all the rights of a legal party to a case under the Indiana Rules of Trial Procedure, including the right to be notified of each hearing, to receive a timely copy of all motions filed (including a motion to dismiss the

case), the right to present evidence, the right to cross-examine witnesses, the right to discovery, and all other party rights.

- The general purpose of the initial hearing is to serve the parents with a copy of the CHINS petition and to notify them of the allegations against them, to determine if the parents admit or deny the allegations in the CHINS petition and to determine if an attorney should be appointed for the parent(s).
- As of July 1, 2009, the initial hearing on the CHINS petition must be held at the same time as the detention hearing. I.C. 31-34-10-2
- The court can schedule an additional initial hearing if necessary, but it must be held no more than thirty (30) calendar days after the date of the first initial hearing unless the court grants an extension of time for extraordinary circumstances that are stated in a written court order. I.C. 31-34-10-2
- The child must be given notice of the time, place and purpose of the initial hearing and must be given a 31-34-10-2.
- However, a child may be excluded from a CHINS or termination proceeding or from any part of a hearing for good cause shown. I.C. 31-32-6-8
- At the initial hearing, the court must inform the child, if the child is at an age of understanding, of the nature of the allegations in the CHINS petition and the dispositional alternatives available to the court if the child is found to be a CHINS.
- The statute provides that the following persons are parties to the CHINS case: the child, the child's parent, guardian or custodian, the DCS and the GAL or CASA. These parties have all rights of parties under the Indiana Rules of Trial Procedure. I.C. 31-34-9-7
- If the parent(s) admit the allegations of the CHINS petition, the court must enter the judgment and schedule a dispositional hearing. I.C. 31-34-10-8. If the parent(s) deny the allegations of the CHINS petition, the court must set the case for a fact-finding hearing. I.C. 31-34-10-9. If a parent fails to respond to the allegations, it is treated as a denial of the allegations. I.C. 31-34-10-6
- If the CHINS petition is filed under I.C. 31-34-1-6 (a "CHINS 6"), the child must admit or deny the allegations in the CHINS petition.

The Role of the CASA Volunteer at the Initial Hearing

- The law requires a CASA volunteer to be appointed at the beginning of the initial hearing for every child in every CHINS case. I.C. 31-34-10-3
- Since this is the first hearing at which the CASA is appointed, there may not be a CASA volunteer or staff person present yet. [No report is required at the initial hearing or at a continued initial hearing.](#) If there is a continued initial hearing and time allows, the CASA may be able to visit the child and offer information to the court as to how the child is doing, if requested by the court.
- If present, the initial hearing is a good opportunity for the CASA volunteer or staff to meet the parties—the DCS caseworker, the parents, the child (if present), to explain

the role of the CASA in the case, and to get contact information for the parents and relatives.

- Often, one of the parents in a CHINS case is absent or unknown, which can delay the case and permanency for the child. If there is an absent or missing parent, the CASA can also play a key role by asking relatives and other persons if they have information about the identity or location of the absent/missing parent.
- The CASA can also identify possible relative placements when they are interviewing parties in the case and can share this information with DCS.
- The CASA can also play a key role in the beginning of the case and throughout the case in helping the child to understand what is going on. The child may be present at the hearings and the CASA can help the child understand what occurs at each hearing. If the child is not present at hearings throughout the case, the CASA should help the child to understand how the case is progressing by explaining the process in a way appropriate for the child's age and level of understanding. The CASA can seek input from the child's therapist/counselor as to the most appropriate way to explain the court process and/or case progress to the child at their particular age and stage of development.

The Fact-finding Hearing

- The general purpose of the fact-finding hearing is to litigate in the courtroom the allegations in the CHINS petition. This is an evidentiary hearing at which the rules of evidence and trial rules apply, except when the juvenile code provides otherwise. Each party can present evidence at the hearing and cross-examine witnesses. The court must then decide whether the allegations of the CHINS petition have been proven by a preponderance of the evidence.
- The court must complete the fact-finding hearing not more than sixty (60) days after the CHINS petition is filed. The court can extend the time to complete the fact-finding hearing for an additional sixty (60) days if all parties in the action consent. I.C. 31-34-11-1
- If the court holds the fact-finding hearing and finds that a child is a child in need of services, the court must enter judgment, order a predisposition report and schedule a disposition hearing. I.C. 31-34-11-2
- If the court finds that the child is not a child in need of services, the court shall discharge the child. I.C. 31-34-11-3

The Role of the CASA Volunteer at the Fact-finding Hearing

- Since the fact-finding hearing is an evidentiary hearing, the CASA volunteer generally would not submit a report concerning the allegations of the CHINS petition at this hearing. However, in some counties, the court requests a report from the CASA at the fact-finding that addresses how the child is doing in their placement, how they are doing in school, what the child might need, and other information concerning the safety and well-being of the child. Hearsay in a CASA report is generally not admissible at a fact-finding hearing unless certain hearsay exceptions apply.
- Since the CASA volunteer generally does not have first-hand knowledge of the facts that support the allegations in the CHINS petition, the CASA volunteer will probably not be a witness who testifies at the fact-finding hearing.
- The child may be present at the fact-finding hearing and could even possibly have to testify. The CASA volunteer can also help prepare the child to go to court and support the child at the hearing, especially if the child has to testify. However, it is generally the role of the DCS family case manager or attorney to prepare the child to testify.
- The timelines under the statutes are very strict so that children can achieve permanency in a timely manner. The CASA volunteer generally should not request a continuance of a case, which will delay permanency for the child, absent extenuating circumstances that are discussed with the CASA program director. If repeated requests to continue hearings are requested by the DCS or by the parents' attorneys, the CASA volunteer may want to object to the continuances as these delays are generally not in the best interest of the children.

Dispositional Hearing

- Prior to the dispositional hearing, the CASA volunteer has standing to file a petition for parental participation asking the court to require the parent to participate in a program of care, treatment or rehabilitation for the child. I.C. 31-34-16-1. A petition for parental participation asks the court to require the parent(s) to: 1) obtain assistance in fulfilling their obligations as a parent; 2) provide specified care, treatment or supervision for the child; 3) work with a person providing care, treatment or rehabilitation for a child; or 4) refrain from direct or indirect contact with the child. I.C. 31-34-16-3
- The CASA volunteer may also file a predisposition report for consideration by the court that states the needs of the child for care, treatment, rehabilitation or placement and makes recommendations for the care, treatment, rehabilitation or placement of the child. I.C. 31-34-18-1. As long as it is consistent with the safety and best interests of the child and the community, the predisposition report must recommend care, treatment, rehabilitation and placement that: 1) is the least restrictive, most family like and most appropriate setting available and close to the parents' home, consistent with the best interest and special needs of the child; 2) least interferes with family autonomy; 3) is least disruptive of family life; 4) imposes the least restraint on the freedom of the child and the child's parent, guardian or custodian; and 5) provides a reasonable opportunity for participation by the child's parent, guardian or custodian. I.C. 31-34-18-4
- Predisposition reports by DCS or the CASA volunteer must be made available to parties "within a reasonable time before the dispositional hearing." I.C. 31-34-18-6
- The court must complete the dispositional hearing not more than thirty (30) days after the date the court finds that the child is a child in need of services to consider the following: 1) alternatives for the care, treatment, rehabilitation or placement of the child; the necessity, nature, and extent of the participation by a parent, guardian or custodian in the program of care, treatment and rehabilitation for the child; and 3) the financial responsibility of the parent or guardian of the estate for services provided for the parent or guardian or the child. I.C. 31-34-19-1
- Any predisposition report may be admitted into evidence to the extent that the report contains evidence of probative value, even if the report contains hearsay or would otherwise be excluded. I.C. 31-34-19-2. If a report contains information that should not be released to the child or the child's parent, guardian or custodian, a factual summary of the report may be admitted.

- DCS must provide notice of the date, time, place and purpose of the dispositional hearing to each party (including the CASA volunteer and the child), and to the foster parents and relative caretakers. The court must also give all people notified the opportunity to be heard and to make recommendations to the court. I.C. 31-34-19-1.3
- As long as it is consistent with the safety and best interests of the child and the community, the court must enter a dispositional decree that: 1) is the least restrictive, most family like and most appropriate setting available and close to the parents' home, consistent with the best interest and special needs of the child; 2) least interferes with family autonomy; 3) is least disruptive of family life; 4) imposes the least restraint on the freedom of the child and the child's parent, guardian or custodian; and 5) provides a reasonable opportunity for participation by the child's parent, guardian or custodian. I.C. 31-34-19-6
- If the court enters a dispositional decree regarding a child that includes an out-of-home placement, the court must consider whether the child should be placed with a 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. I.C. 31-34-19-7
- The court may order one or more of the following dispositional decrees: 1) order supervision of the child by the probation department or the DCS; 2) order the child to receive outpatient treatment at a social service agency or a psychological, psychiatric, medical or educational facility, or from a private practitioner; 3) remove the child from the child's home and place the child in another home or shelter care facility; 4) award wardship of the child to DCS for supervision, care and placement; 5) partially or completely emancipate the child; 6) order the child or the child's parent, guardian or custodian to complete services recommended by DCS and approved by the court; 7) order a person who is party to refrain from direct or indirect contact with the child; 8) order a perpetrator of child abuse or neglect to refrain from returning to the child's residence. I.C. 31-34-20-1
- The court cannot place a child in a home or facility that is located outside Indiana unless the placement is approved by the DCS director or his/her designee.
- The court can modify any dispositional decree upon its own motion or upon the motion of the child, the child's parents, the GAL/CASA, the DCS, the attorney for DCS or the motion of any person providing services to the child or to the child's parents under the dispositional decree. I.C. 31-34-23-1

The Role of the CASA Volunteer at the Dispositional Hearing

- The CASA volunteer should prepare a report for the dispositional hearing. As outlined above, the CASA may want to also file a petition for parental participation or a predisposition report. In this report, the CASA would make recommendations for the care, treatment, rehabilitation and placement of the child and/or the parents that are consistent with the requirements of the statute, as outlined above.
- The CASA volunteer should consult with DCS prior to the dispositional hearing (at a family team meeting, case conference or informally) and discuss what DCS will be recommending. DCS and the volunteer may be able to agree as to what should be recommended to the court.
- At this point, the CASA volunteer should have had several contacts with the child so they are able to make solid, fact-based recommendations to the court as to the child's needs, services, placement, visitation, and what services may be appropriate for the parents. If appropriate (based on the child's age and development), the volunteer should consult with the child prior to the dispositional hearing and obtain the child's input about his/her care, treatment, placement, needs and desires.
- A CASA volunteer can request modification of a dispositional decree if appropriate.

Progress Reports and Review Hearings

- At any time after the date of the original dispositional decree, the court may order DCS to file a progress report. The court must order DCS to file a report every three months after the dispositional decree is entered on the progress made in implementing the decree. After reviewing the progress report, the court can modify the dispositional report. I.C. 31-34-21-1
- Every CHINS case must be reviewed at least once every six (6) months, or more often, if ordered by the court. The first periodic case review must occur: 1) at least six months after the date of the child's removal from the parent; or 2) at least six (6) months after the date of the dispositional decree, whichever comes first. Each periodic case review must be conducted by the court in a formal court hearing. I.C. 31-34-21-2. Prior to a periodic case review, DCS must prepare a report on the progress made in implementing the dispositional decree. I.C. 31-34-21-3
- DCS must provide seven days' notice of the review and the permanency hearing to the parties, foster parents, relative caretakers, prospective adoptive parents (under certain circumstances), persons who are currently providing care for the child, other person whom DCS knows has had a significant or caretaking relationship to the child. The court shall also give these persons the opportunity to be heard and to make recommendations to the court. I.C. 31-34-21-4
- At the periodic case review, the court must determine: 1) whether the child's case plan, services and placement meet the special needs and best interests of the child; 2) whether DCS has made reasonable efforts to provide family services; and 3) the projected date for the child's return home, the child's adoption placement, the child's emancipation, or the appointment of a legal guardian for the child. The court must make this determination after considering fifteen (15) different factors, outlined in I.C. 31-34-21-5. A copy of this statute is attached for your reference.
- Any report prepared for a review hearing may be admitted into evidence to the extent that the report contains evidence of probative value, even if the report contains hearsay or would otherwise be excluded. I.C. 31-34-22-3. If a report contains information that should not be released to the child or the child's parent, guardian or custodian, a factual summary of the report may be admitted.

The Role of the CASA Volunteer at the Review Hearing

- As a party to the case, the CASA volunteer must receive a copy of all progress reports and review hearing reports. The volunteer can file a response to the progress report or their own progress report if the volunteer has additional or conflicting information to provide to the court.
- The CASA volunteer should always file a report at the review hearing. The CASA report should address some or all of the issues outlined in I.C. 31-34-21-5 (a copy of which is attached) that the court must consider at the review hearing.
- The CASA report should also provide the court with current information about the child's safety, well-being and permanence, including such matters as how the child is doing in their placement, whether the child is able to return home, how the child's services are progressing and whether additional services may be needed, how the child is doing in school, the child's needs and wishes, and other information requested by your particular judge.
- The CASA report should also include the number and types of contacts (i.e.: telephone, in person, e-mail, etc.) that the volunteer has had with the child, to show that the volunteer has had sufficient in-person contact with the child to be able to make fact-based recommendations to the court as to the child's best interests.
- The CASA volunteer should monitor whether the court orders are being complied with and whether the case is progressing in a timely manner, consistent with the timelines in the statutes. The volunteer should bring it to the court's attention if there are unnecessary delays by any party as this will ultimately delay permanency for the child. As a general rule, the volunteer should not request continuances or take other action that would result in additional delays in the case. Child advocates should never lose their sense of urgency about a child's attainment of a safe and permanent home and should help the court and other parties to stay focused on this as well.
- The CASA volunteer should keep the child informed about the progress of the case after each hearing, including review hearings, if the child is unable to attend the hearing. If the child does attend, the volunteer should help the child to understand what happened in court. The volunteer may want to seek input from the child's therapist/counselor as to the most appropriate way to explain the court process and/or case progress to the child at their particular age and stage of development.
- The CASA report should summarize for the court what has transpired since the last hearing. Judges have found that the CASA report is often very useful because it assimilates information from many different sources, such as from the foster parents, service providers, the child, DCS, and possibly the parents or others.

The Permanency Hearing

- The Court must hold a permanency hearing every twelve (12) months after: 1) the date of the original dispositional decree; or 2) a child in need of services was removed from the child's parent, guardian or custodian; whichever comes first, or, more often if ordered by the court. I.C. 31-34-21-7.
- At the permanency hearing, the court must make the determination and findings outlined above that are required for the review hearing I.C. 31-34-21-5. There is a rebuttable presumption that jurisdiction over the child in a CHINS case ends twelve (12) months after the date of the original dispositional decree or twelve (12) months after the child was removed from their parent, whichever occurs first. I.C. 31-34-21-7. DCS can rebut this presumption by proving that the objectives of the dispositional decree have not been accomplished, that a continuation of the decree is necessary, that it is in the child's best interests for the court to maintain its jurisdiction over the child. If DCS does not rebut the presumption, the court must direct the DCS to establish a permanency plan within thirty (30) days or discharge the child and the child's parent, guardian or custodian. I.C. 31-34-21-7.
- The court is required to consider the recommendations of the CASA volunteer before approving the permanency plan. I.C. 31-34-21-7
- The Court must also consult with the child about the permanency plan, either in person or through an interview with or a written statement or report submitted by the CASA volunteer, the DCS family case manager, or the person with whom the child is living and who has primary responsibility for the care and supervision of the child, in an age appropriate manner. If the child is at least sixteen (16) years of age and the proposed permanency plan provides for the transition of the child from foster care to independent living, the court must require DCS to send notice of the permanency hearing to the child and provide the child an opportunity to be heard and to make recommendations to the court. I.C. 31-34-21-7. DCS is required to send notice of the permanency hearing to foster parents and others as well (see section above on notice for review hearings).

The possible permanency plan options that the court may approve if consistent with the best interests of the child are:

- 1) Return to or continuation of existing custodial care within the home of the child's parent, or placement of the child with the child's non-custodial parent;
- 2) Initiation of a termination of the parent-child relationship proceeding;
- 3) Placement of the child for adoption;
- 4) Placement of the child with a responsible person including an adult sibling, a grandparent, an aunt or uncle, or another relative who is able and willing to act as the child's permanent custodian;
- 5) Appointment of a legal guardian for the child; or,
- 6) Placement of the child in another planned, permanent living arrangement. I.C. 31-34-21-7.5
- 7) The permanency plan must include a time schedule for implementing the permanency

plan and provisions for temporary or interim arrangements for the care and custody of the child, pending completion of the implementation of the permanency plan.

The Role of the CASA volunteer at the Permanency Hearing

- The CASA volunteer should always file a report at the permanency hearing that includes their recommendations as to what permanency plan is in the best interests of the child. The court is required to consult with the child in person or through an interview or a written statement or report submitted by the CASA volunteer (or DCS or the person the child is living with), so the CASA volunteer should provide a written report.
- In a recent federal review of Indiana's child welfare system, the reviewers found that most of the parties in the CHINS case did not understand what a permanency hearing was and what it was supposed to accomplish. The permanency hearing is not just another review hearing. The CASA volunteer should be prepared at the permanency hearing to specifically address the permanency plan options. The volunteer must also consult with the child about the permanency plan in an age appropriate manner and help the child to understand what permanency means to him or her.
- The CASA volunteer should encourage the timely development of a permanency plan and the timely holding of the permanency hearing for the sake of the child.
- The CASA volunteer should consult with DCS prior to the permanency hearing (in a family team meeting, case conference or informal meeting) to determine what DCS will recommend. If there are significant difference between the permanency plans (such as reunification vs. termination of parental rights), DCS and CASA and others should plan to meet to discuss the case and where their differences are before the permanency hearing.