

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 6: Court	Effective Date: July 1, 2021
	Section 03: Fact-Finding Hearing	Version: 6

POLICY OVERVIEW

The Fact-Finding Hearing is the setting in which the Department of Child Services (DCS) must prove that the condition of the child is as set forth in the Indiana Code (IC) under IC 31-34-1-1 through IC 31-34-1-11. A Fact-Finding Hearing will take place when either parent or another named party to a Child in Need of Services (CHINS) proceeding contest the facts alleged in the DCS CHINS Petition. DCS must show the situation meets one (1) or more of the CHINS definitions and that coercive intervention of the court is necessary to protect the child (see Tool 6.B: Statutory Definition of CHINS).

PROCEDURE

DCS will proceed to a Child in Need of Services (CHINS) Fact-Finding Hearing when either parent or another named party contests the facts alleged in the DCS CHINS Petition.

DCS will provide notice of any Fact-Finding Hearing to all parties to the case and the resource parent or other caretaker with whom the child has been placed for temporary care (see policy 6.04 Providing Notice).

DCS will request separate hearings for the parents, guardians, or custodians when appropriate due to safety concerns and will protect the confidentiality of information shared during court proceedings.

The juvenile court will complete a Fact-Finding Hearing not more than 60 calendar days after a petition alleging that a CHINS is filed. The juvenile court may extend the time to complete a Fact-Finding Hearing for an additional 60 calendar days if all parties in the action consent to the additional time.

If the Fact-Finding Hearing is not held immediately after the Detention and Initial Hearing, DCS will provide notice of any Fact-Finding Hearing to each party and resource parent or other caretaker with whom the child has been placed for temporary care unless the court provided written notice at a previous hearing. The court will provide each person who is required to be notified an opportunity to be heard at the Fact-Finding Hearing.

The Family Case Manager (FCM) will:

1. Ask if the parent, guardian, or custodian or the child needs a reasonable accommodation due to a disability;
2. Obtain the date, time, and location of the Fact-Finding Hearing from the DCS Staff Attorney;

3. Meet with the DCS Staff Attorney to prepare to for the Fact-Finding Hearing. (e.g., prepare to testify and assist the attorney in gathering information, exhibits, and a list of witnesses);
4. Request separate hearings be held for the alleged domestic violence victim and alleged domestic violence offender, when appropriate (see policy 2.30 Domestic Violence);
5. Attend the scheduled hearing;

Note: If Reasonable Efforts to Prevent Removal (RE) or Responsibility for Placement and Care (PC) findings are issued for the first time at this hearing, ensure the information is entered in the case management system (see policy 15.01 Eligibility Overview for Field and Legal Staff).

6. Enter court hearing data and any future hearings scheduled in the case management system; and

Note: If the court determines the child is a CHINS, the case will proceed to the appropriate hearing. If the court determines the child is not a CHINS, the case will be dismissed.

7. Consult with the DCS Staff Attorney and FCM Supervisor to determine if action is needed regarding any substantiation based on the same facts and circumstances as the Fact-Finding Hearing if the court determines the child is not a CHINS.

The FCM Supervisor will:

1. Assist the FCM, whenever necessary, to ensure all Fact-Finding Hearing requirements have been met (see policy 6.04 Providing Notice);
2. Assist the DCS Staff Attorney with hearing preparation, including ensuring the FCM is prepared to provide testimony during the Fact-Finding Hearing;
3. Consult with the DCS Staff Attorney and FCM to determine if action is needed regarding any substantiation based on the same facts and circumstances as the Fact-Finding Hearing if the court determines the child is not a CHINS; and
4. Ensure all decisions and steps taken are documented in the case management system.

The DCS Staff Attorney will:

1. Meet with the FCM to ensure all parties have a comprehensive understanding of the case and any relevant information about the case that has occurred since the filing of the Petition;

Note: The attorney is responsible for contacting the FCM to establish communication and coordinate planning for the trial.

2. Ensure notice is provided to all appropriate parties, as outlined in policy 6.04 Providing Notice;
3. Meet with the FCM and FCM Supervisor to review any substantiation based on the same facts as the Fact-Finding Hearing to determine if a reversal is warranted if the court determines the child is not a CHINS. If the only basis for the court's determination that the child is not a CHINS is a failure to prove coercive intervention of the court is necessary and the court clearly makes that finding in its order or on the record, then the substantiation may not need to be reversed; and

Note: Any reversal must occur within 10 business days of the fact-finding decision being issued IC 31-33-26-15.

4. Appropriately prepare for the Fact-Finding Hearing, including preparing witnesses to testify, if needed.

LEGAL REFERENCES

- [IC 31-10-2-3: Rights of persons with a disability](#)
- [IC 31-17-2-8.1: "Disability"; custody](#)
- [IC 31-33-26-15: Expungement and amendment of record procedures](#)
- [IC 31-34-1: Circumstances Under Which a Child is a Child in Need of Services](#)
- [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](#)
- [IC 31-34-1-11: Risks or injuries arising from use of alcohol, controlled substance, or legend drug by child's mother during pregnancy](#)
- [IC 31-34-10-6: Admission or denial of allegations by parent, guardian or custodian](#)
- [IC 31-34-10-9: Dispositional hearing, factfinding hearing: consent](#)
- [IC 31-34-11-1: Hearing requirements; extension of time; notice; opportunity to be heard](#)
- [42 USC 12102: Definition of disability](#)

RELEVANT INFORMATION

Definitions

Ex Parte Communication

Ex parte communication is any written or verbal communication about the case between a judge and any persons interested in the outcome of a case, including placement and/or relatives, which occurs outside of the presence of the other parties or attorneys on a case.

Sidebar

A sidebar is a conversation held outside the hearing of the other persons present in the court. It usually includes the attorneys for the parties, Guardian ad Litem (GAL)/Court Appointed Special Advocate (CASA), judge, and court reporter.

Form and Tools

- [Tool 6.B: Statutory Definition of CHINS](#)
- [Affidavit of Diligent Inquiry \(ADI\) \(SF 54778\)](#)- Available in the case management system

Related Policies

- [2.30 Domestic Violence](#)
- [6.04 Providing Notice](#)
- [15.01 Eligibility Overview for Field and Legal Staff](#)