

# Child in Need of Services (CHINS)

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<sup>i</sup> Originally written in 2014 by Renee Morioka.

# Definition

“Child in need of services” (CHINS) means a juvenile:

- Who is beyond the control of his or her parent such that the child’s behavior endangers the health, safety, or welfare of the child or other person;
- Who has been reported to law enforcement as absent without consent for at least twenty-four consecutive hours on two or more separate occasions from the home of either parent, a crisis residential center, an out-of-home placement, or a court-ordered placement; *and*
  - Has exhibited a serious substance abuse problem; *or*
  - Has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person;
- Who is in need of:
  - Necessary services, including food, shelter, health care, clothing, or education; *or*
  - services designed to maintain or reunite the family;
- Who lacks access to, or has declined to utilize, these services; *and*
- Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure;<sup>2</sup> *or*
- Who is a “sexually exploited child.”<sup>3</sup>

## Efforts to Prevent Out-of-Home Placement

Crisis residential center (CRC) staff shall make reasonable efforts to protect the child and achieve a reconciliation of the family. If a reconciliation and voluntary return of the child has not been achieved within 48 hours from the time of admission, and if the administrator of the center does not consider it likely that reconciliation will be achieved within the five-day period, then the administrator shall inform the parent and child of:

- The availability of counseling services;
- The right to file a child in need of services petition for an out-of-home placement, the right of a parent to file an at-risk youth petition, and the right of the parent and child to obtain assistance in filing the petition;
- The right to request the facility administrator or his or her designee to form a multidisciplinary team;
- The right to request a review of any out-of-home placement;

- The right to request a mental health or chemical dependency evaluation by a county-designated professional or a private treatment facility; and,
- The right to request treatment in a program to address the child’s at-risk behavior under RCW 13.32A.197.<sup>4</sup>

## **Petitions**

### **Where to File and Jurisdiction**

RCW 13.32A.150(2) provides that the petition must be filed in the county where the parent resides.<sup>5</sup> “Parent” means the parent or parents who have the legal right to custody of the child. The term “parent” includes custodians and guardians.<sup>6</sup>

Juvenile court jurisdiction is invoked over a CHINS upon the filing of such petition.<sup>7</sup>

### **Petitions Filed by the Department of Children, Youth, and Families**

#### *“May” File*

Department of Children Youth and Families (DCYF) must consider filing a CHINS petition if there is no parent available or willing to take custody of the child within 72 hours of the child’s placement at a CRC.<sup>8</sup>

#### *“Shall” File*

Unless a dependency petition is filed, DCYF must file a CHINS petition on behalf of the child for the court to approve an out-of-court placement on behalf of a child under any one (or more) of the following three circumstances:

1. The child has been admitted to a CRC or has been placed by DCYF in an out-of-home placement, *and*:
  - a. The parent has been notified that the child was so admitted or placed;
  - b. The child cannot return home, and legal authorization is needed for out-of-home placement beyond seventy-two hours;
  - c. No agreement between the parent and the child as to where the child shall live has been reached;
  - d. No CHINS petition has been filed by either the child or parent;
  - e. The parent has not filed an at-risk youth petition; *and*
  - f. The child has no suitable place to live other than the home of his or her parent.
2. The child has been admitted to a CRC *and*:
  - a. Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such placement;

- b. The staff, after searching with due diligence, have been unable to contact the parent of such child; *and*
  - c. The child has no suitable place to live other than the home of his or her parent.
3. An agreement between parent and child made per RCW 13.32A.090(3)(d)(ii) or pursuant to RCW 13.32A.120(1) is no longer acceptable to parent or child, *and*:
- a. The party to whom the arrangement is no longer acceptable has so notified the department;
  - b. Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such notification;
  - c. No new agreement between parent and child as to where the child shall live has been reached;
  - d. No [CHINS] petition has been filed by either the child or the parent;
  - e. The parent has not filed an at-risk youth petition; *and*
  - f. The child has no suitable place to live other than the home of his or her parent.<sup>9</sup>
  - g. Note that under each numbered subheading, each element must be met before DCYF is required to file.

### **Petitions Filed by Youth or Parents (RCW 13.32A.150)**

A child or their parent may file a CHINS petition to approve an out-of-home placement for the child before completion of a family assessment. Upon request, DCYF must assist either a parent or child in the filing of the petition. If the petition is filed by the child or parent without the assistance of DCYF, the court shall immediately notify DCYF that a petition has been filed.<sup>10</sup> Additionally, where either a child, their parent, or the person or facility currently providing shelter to the child notifies the center that such individual or individuals cannot agree to the continuation of an out-of-home placement arrived at pursuant to RCW 13.32A.090(3)(d)(ii), the administrator of the center is required to immediately contact the remaining party or parties to the agreement and attempt to bring about the child's return home or to an alternative living arrangement agreeable to the child and the parent as soon as practicable.<sup>11</sup>

If a child and his or her parent cannot agree to an out-of-home placement under RCW 13.32A.090(3)(d)(ii), either the child or parent may file a CHINS petition to approve an out-of-home placement, or the parent may file an at-risk youth (ARY) petition.<sup>12</sup> If a child and his or her parent cannot agree to the continuation of an out-of-home placement under RCW 13.32A.090(3)(d)(ii), either the child or parent may file a CHINS petition to continue an out-of-home placement or the parent may file an ARY petition.<sup>13</sup>

## **Contents of the Petition and Family Assessments**

The petition shall allege that the child is a child in need of services and shall ask only that the placement of a child outside the home of his or her parent be approved.<sup>14</sup> The filing of a petition to approve the placement is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent and confers upon the court a special jurisdiction to approve or disapprove an out-of-home placement.<sup>15</sup> The court must not accept the filing of a CHINS petition by the child or the parents unless verification is provided that DCYF, or a community-based entity under contract with the department, has completed a family assessment. The family assessment shall involve the multidisciplinary team if one exists. The family assessment or plan of services developed by the multidisciplinary team shall be aimed at family reconciliation, reunification, and avoidance of the out-of-home placement of the child.<sup>16</sup>

## **Notice and Service**

The petitioner must ensure that a copy of the petition is served upon the parents of the youth.<sup>17</sup> Although the statute does not require it specifically, a copy of the petition should also be served upon the youth. Because lawyers and judicial officers understand proper service and notice requirements under the Juvenile Court Rules, Court Rules, Local Rules, and other RCWs relating to civil actions in general, but most parents and other laypersons involved in these actions do not, courts should develop a local practice regarding service and notice that specifically address *who* is responsible for proper service of ARY documents upon a youth. Good practice dictates that such procedures should be provided to the petitioning party in writing. Service of the petition on the parent(s) and child shall first be attempted via personal service. If personal service is unsuccessful, then it should be made via certified mail with return receipt.<sup>18</sup> Again, if the petition is filed by the child or parent, the court shall immediately notify DCYF.<sup>19</sup>

## **Indian Children<sup>20</sup>**

When a CHINS petition is filed by DCYF<sup>21</sup>, and the court or the petitioner knows or has reason to know that an Indian child is involved, the petitioner must promptly provide notice to the child's parent or Indian custodian and to the Indian child's tribe or tribes. Notice shall be by certified mail with return receipt requested and by use of a mandatory Indian child welfare act notice. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior by registered mail, return receipt requested, in accordance with the regulations of the Bureau of Indian Affairs. The secretary of the interior has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement proceeding shall be held until at least 10 days after receipt of notice by the parent or Indian custodian. The parent or Indian custodian or the tribe shall, upon request, be granted up to 20 additional days to prepare for the hearing.

The notice must contain a statement notifying the parent or custodian and the tribe of the pending proceeding and notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.<sup>22</sup>

## **Court's Responsibility Upon Filing**

RCW 13.32A.160(1) provides that upon the filing of a CHINS petition, the court shall do the following:

1. Schedule a fact-finding hearing;
2. Notify the parent(s), DCYF, and the child of the fact-finding hearing date;
3. Notify the parent(s) of the right to be represented by counsel, and if found indigent, of the right to have counsel appointed for them by the court;
4. Appoint legal counsel for the child;
5. Inform the child and the parent(s) of the legal consequences of the court approving or disapproving a CHINS petition;
6. Notify the parent(s) of their rights under RCW 13.32A, 11.130, 13.34, and 71.34, which includes the right to file an ARY petition and the right to submit application for admission of their child to a treatment facility for alcohol, chemical dependency, or mental health treatment, and the right to file a guardianship petition; and
7. Notify all parties, including DCYF, of their right to present evidence at the fact-finding hearing.

### **Timing**

Pursuant to RCW 13.32A.160, the fact-finding hearing must be scheduled for within *five calendar days* of filing if the child is residing in a place other than the parents' home or out-of-home placement. Courts may schedule the hearing for within *ten* calendar days for all other situations. If the last day is a weekend or holiday, the hearing must be scheduled for the *preceding* judicial day.

Courts should pay careful attention to these timelines as calendaring of hearings becomes especially difficult if juvenile court docket time allotted to Becca Bill proceedings is not routinely part of the Juvenile Court's schedule.

## **Placement of Youth Pending Court Hearing**

When a CHINS petition is filed, the child may be placed (if not already placed) by DCYF in a CRC, Hope center, licensed foster family home, licensed group home facility or any other suitable residence to be determined by DCYF. The court may place a child in a crisis residential center for a temporary out-of-home placement as long as the requirements of RCW 13.32A.125 are met.<sup>23</sup>

If the child has been placed in a foster family home or group care facility under RCW Chapter 74.15, the child shall remain there, or in any other suitable residence as

determined by DCYF, pending resolution of the petition by the court.<sup>24</sup> DCYF may authorize emergency medical or dental care for the child if the child is admitted to a CRC or placed in out-of-home placement.<sup>25</sup>

Temporary out-of-home placement at a semi-secure CRC can be used if all of the following elements are met: (1) no other suitable out-of-home placement is available; (2) space is available at a semi-secure CRC; and (3) no child will be denied access for a five-day placement due to this placement.

Placements in a semi-secure CRC under a CHINS petition are deemed temporary out-of-home placements and do not take priority over non-CHINS youth referred to the semi-secure CRC.<sup>26</sup>

Any placement may be reviewed by the court within three judicial days upon the request of the child or the child's parent.<sup>27</sup>

## **Child in Need of Services Fact-Finding**

The court and DCYF should remind parents and/or the child's current placement of the need to have the child present for all CHINS-related hearings. While the statute does not specifically require the child's presence, because the child is an integral piece to these proceedings, their presence should be required. In fact, many courts delay CHINS proceedings from occurring unless and until the child is able to be present (e.g., once the child is picked up and returned from a runaway episode). The child's presence is also advised so that the court has the opportunity to warn the child about contempt sanctions, explain the court's expectations, and allow the child to participate meaningfully throughout the court proceedings with the assistance of their attorney.<sup>28</sup> At the beginning of the hearing, the court should first advise the parent(s) of their rights as set forth in RCW 13.32A.160(1).<sup>29</sup>

If the court approves a CHINS petition, a written statement of the court's reasons (i.e. an Order on CHINS Petition) must be filed. RCW 13.32A.170(2) provides that at the fact-finding hearing, the court can approve an order stating that the child shall be placed in a residence other than the home of his/her parent(s) only if it has been established by a preponderance of the evidence (which includes DCYF's recommendation for approval or dismissal of the petition<sup>30</sup>) that all of the following have been met:

- The child is in need of services as defined in RCW 13.32A.030(5);
- If the petitioner is the child, he or she has made reasonable efforts to resolve the conflict;
- Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the parent(s) home and to make it possible for the child to return home; and
- A suitable out-of-home placement is available.

- The court cannot grant a petition filed by the child or DCYF if it is established that the petition is only based upon the child's dislike of reasonable rules or reasonable discipline established by the parent(s). At the end of the fact-finding hearing, the court must make one of the following decisions regarding the CHINS petition:
- Approve the CHINS petition and, if appropriate, enter a temporary out-of-home placement for a period *not to exceed 14 days* pending approval of a disposition decision to be made under RCW 13.32A.179(2);
- Approve an ARY petition filed by the parents and dismiss the CHINS petition;
- Dismiss the CHINS petition as not satisfying the statutory definition of a child-in-need-of-services or because the youth is already the subject of a dependency proceeding;<sup>31</sup> or
- Order DCYF to review the case to determine whether the case is appropriate for dependency petition under RCW 13.34. (The court may do this at any time throughout the duration of the CHINS action).<sup>32</sup>

## Disposition

A disposition hearing must be held no later than 14 days after the approval and entry of the Order on CHINS Petition and the temporary out-of-home placement.<sup>33</sup> Disposition may occur on the same day as the fact-finding hearing to reduce the number of court appearances or if there are other timing concerns.

RCW 13.32A.179(4) provides that the court may order DCYF to submit a dispositional plan. In this plan, DCYF can only address the needs of the child. It should not address the needs of the parent(s) unless the CHINS order was entered upon the request of the child or DCYF under RCW 13.32A.179(d)(2) or was unless specifically agreed to by the parent(s). Otherwise, parental participation is merely voluntary.

The court must notify the parent(s), the child, and DCYF of the time and place of the dispositional hearing.<sup>34</sup> At the conclusion of the dispositional hearing, the court can do any one of the following:

- Reunite the family and dismiss the CHINS petition;
- Approve an ARY petition filed by the parent(s) and dismiss the CHINS;
- Approve an out-of-home placement requested in the CHINS petition filed by the parents;
- Order an out-of-home placement at the request of the child or DCYF which shall not exceed 90-days; or
- Order DCYF to review the matter for purposes of filing a Dependency Petition.<sup>35</sup>

## Warning of Contempt

RCW 13.32A.250 provides that the court must verbally notify the parent(s) and child of the possibility of the finding of contempt for failure to comply with the terms of the court order and the possible consequences thereof, including confinement when applicable. It is good practice that the court advise the parties of contempt at every CHINS hearing and language should be included in every CHINS order produced from a substantive hearing acknowledging that the parties have been so advised.

## Setting Review Date

After making a dispositional order, the court shall schedule a review hearing to be held within the following 90 days. It is the court's duty to advise the parties of the review hearing date, appoint legal counsel for the child and/or a guardian ad litem or court-appointed special advocate to represent the child at the review hearing, advise the parent(s) of their right to representation, and notify the parties of their rights to present evidence at the review hearing.<sup>36</sup> Whether or not the court approves an out-of-home placement, the court can order any conditions of supervision as set forth in RCW 13.32A.196(3).<sup>37</sup> These conditions of supervision include regular school attendance with no unexcused absences, counseling, participation in substance abuse/mental health out-patient program, reporting on a regular basis to DCYF or any other designated person or agency, or any other condition of supervision the court deems appropriate (e.g., employment, anger management, and refraining from using/possessing drugs/alcohol). No disposition order shall ever include involuntary commitment to a substance abuse or mental health treatment facility.<sup>38</sup>

## DCYF or Child-Requested Out-of-Home Placement

The court can only order an out-of-home placement at the request of DCYF or the child if it finds by clear, cogent, and convincing evidence that either of the following three conditions have been met:<sup>39</sup>

- (1) The order is in the best interests of the family and
  - a. The parents have *not* requested an out-of-home placement;
  - b. The parents have *not* exercised any other right in RCW 13.32A.160(1)(e);
  - c. The child has made reasonable efforts to resolve the problems that led to the filing of the CHINS petition;
  - d. The problems cannot be resolved by delivery of services to the family during continued placement in the parental home;
  - e. Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to return home; *and*
  - f. A suitable out-of-home placement is available; *or*

- (2) The order is in the best interest of the child and the parents are unavailable; or
- (3) The parent's actions cause imminent threat to the child's health or safety.

Any placement can be reviewed by the court within three days of the child's or parent's request.<sup>40</sup>

## **Review Hearings (RCW 13.32A.190)**

In addition to reports for dispositional hearings, RCW 13.32A.179(4) provides that the court may order DCYF to submit a dispositional plan. Again, the plan shall only address the needs of the child and shall *not* address the needs of the parent(s) *unless* the CHINS order was entered upon the request of the child or DCYF (RCW 13.32A.179(d)(2) where the child or DCYF petitioned for the CHINS), or unless specifically agreed to by the parent(s). Otherwise, parental participation is merely voluntary. At the review hearing, the court is to determine whether to approve or disapprove the continuation of the dispositional plan. The court will determine whether reasonable efforts have been made to reunify the family and to make it possible for the child to return home.

The court shall discontinue the out-of-home placement and order the child to return home if the court has reasonable grounds to believe that the parents have made reasonable efforts to resolve the conflict and the court has reason to believe that the child's refusal to return home is capricious. If out-of-home placement is continued, the court may modify the original dispositional plan.

Out-of-home placement *cannot* be continued beyond 180 days of the first review hearing. Once the "nine months" (total) has passed, the CHINS petition must be dismissed. For example, if the first review occurs after 90 days of placement and the next review is scheduled for six months later, at that "second" review, the court must dismiss the CHINS.

## **Out-of-Home Placement<sup>41</sup> in CHINS Proceedings**

Again, in CHINS proceedings, the court may only place a child outside of the family home if it is established by a preponderance of the evidence that (1) the child is in need of services as defined in RCW 13.32A.030(5); (2) if the petitioner is the child, he or she has made reasonable efforts to resolve the conflict; (3) reasonable efforts have been made to prevent or eliminate the need for removal of the child from the parent(s) home and to make it possible for the child to return home; *and* (3) a suitable out-of-home placement is available.<sup>42</sup>

The court must hear DCYF recommendations regarding whether a suitable out-of-home placement is "available" if the court intends to place the child in the care and custody of DCYF.<sup>43</sup> If DCYF determines that it has no suitable out-of-home placement for the child, the court must look for alternative placements or the child should be placed or remain in the parent's home.<sup>44</sup>

# Contempt, Detention, and Pick-Up of Runaway Youth<sup>45</sup>

In all CHINS proceedings, the court shall verbally notify the parents and the child of the possibility of a finding of contempt for failure to comply with the terms of a court order entered pursuant to this chapter and the possible consequences thereof, including confinement when applicable. The court must treat the parents and the child equally for the purposes of applying contempt of court processes and penalties unless specifically noted.<sup>46</sup>

If the child involved in an at risk youth proceeding fails to comply with the court order, the court may impose: (i) Community restitution; (ii) Confinement to residential and nonresidential programs with intensive wraparound services; (iii) A requirement that the child meet with a mentor for a specified number of times; or (iv) Other services and interventions that the court deems appropriate,<sup>47</sup> but may not impose confinement in a juvenile detention facility as a remedial sanction. A child in a child in need of services proceeding may not be placed in confinement.

## Runaways and Harboring

*Runaways.* Whenever the court finds that there is probable cause to believe, based upon consideration of a contempt motion and a supporting declaration/affidavit, that a child involved in an at-risk youth proceeding has violated a placement order, the court must summon the child through a method other than warrant. The summons must be communicated by mail, telephone, text, or in another method likely to ensure the child receives the communication. However, the court may issue a warrant if the court finds probable cause to believe that the child would not appear in response to the command or finds probable cause to believe that the arrest is necessary to prevent serious bodily harm to the juvenile or another.

If a warrant is issued, it may not be served on a child in school during school hours in the presence of other students.

If the child fails to appear via the summons or other method, the court may issue an order directing law enforcement to pick up and take the child to detention.<sup>48</sup> . A child in a child in need of services proceeding may not be placed in confinement.

Harboring Runaways. RCW 13.32A.082 provides that:

1. Any person who, without legal authorization, provides shelter to a minor and who knows at the time of providing the shelter that the minor is away from the parent's home without the permission of the parent, or other lawfully prescribed residence, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or DCYF. The report may be made by telephone or any other reasonable means.

2. Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.
  - “Shelter” means the person’s home or any structure over which the person has any control.
  - “Promptly report” means to report within eight hours after the person has knowledge that the minor is away from a lawfully prescribed residence or home without parental permission.
3. When [DCYF] receives a report under subsection 1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family.

*Penalty for Harboring.* RCW 13.32A080 provides that:

A person commits the crime of unlawful harboring of a minor if the person provides shelter to a minor without the consent of a parent of the minor and after the person knows that the minor is away from the home of the parent, without the parent’s permission, and if the person intentionally:

- Fails to release the minor to a law enforcement officer after being requested to do so by the officer; or
- Fails to disclose the location of the minor to a law enforcement officer after being requested to do so by the officer, if the person knows the location of the minor and had either taken the minor to that location or had assisted the minor in reaching that location; or obstructs a law enforcement officer from taking the minor into custody; or
- Assists the minor in avoiding or attempting to avoid the custody of the law enforcement officer.
- It is a defense to a prosecution under this section that the defendant had custody of the minor pursuant to a court order.
- Unlawful harboring of a minor is punishable as a gross misdemeanor.
- Any person who provides shelter to a child, absent from home, may notify DCYF’s local community service office of the child’s presence.
- An adult responsible for involving a child in the commission of an offense may be prosecuted under existing criminal statutes including, but not limited to:
  - Distribution of a controlled substance to a minor, as defined in RCW 69.50.406;
  - Promoting prostitution as defined in chapter 9A.88 RCW; and
  - Complicity of the adult in the crime of a minor, under RCW 9A.08.020.
- Immunity. RCW 13.32A.070 provides that:

- A law enforcement officer acting in good faith pursuant to this chapter is immune from civil or criminal liability for such action.
- A person with whom a child is placed pursuant to this chapter and who acts reasonably and in good faith is immune from civil or criminal liability for the act of receiving the child. The immunity does not release the person from liability under any other law.

## Time Limitations of CHINS Proceedings and Dismissals

As stated above, out-of-home placement *cannot* be continued beyond 180 days of the first review hearing. The following are the grounds upon which the court *must* dismiss a CHINS petition:

- The problems that led to the filing of the CHINS have been addressed such that court involvement is no longer needed;
- The out-of-home placement will be beyond the statutorily allowed 180-days from the commencement of the first review hearing if the CHINS is further continued;
- The parent was the petitioner and requested out-of-home placement, but now requests that the child be returned home;
- The child is now the subject of a dependency proceeding under RCW 13.34; or
- The parent was the petitioner and had requested court intervention, but the parent now wishes to withdraw the petition—to dismiss the action and court involvement.

The following are the grounds upon which the court *may* dismiss a CHINS petition:

1. It is not feasible for DCYF to provide services under one or more of the following circumstances under RCW 13.32A.190(4):
  - a. The child has been absent from the court approved placement for 30 consecutive days or more;
  - b. The parent(s) or the child, or all of them, refuse to cooperate with available, appropriate intervention aimed at reunifying the family; *or*
  - c. DCYF has exhausted all available and appropriate services that would result in reunification;
2. The child is now the subject of an ARY petition (these cases are simply “consolidated” ARY cases); or
3. The parent(s) were the petitioners and the court finds good cause to believe that the continuation of out-of-home placement would serve no useful purpose.\

## **No Entitlement to Services**

RCW 13.32A.300 states that “[n]othing in this chapter shall be construed to create an entitlement to services nor to create judicial authority to order the provision at public expense of services to any person or family where [DCYF] has determined that such services are unavailable or unsuitable or that the child or family are not eligible for such services.”<sup>49</sup>

## ENDNOTES

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<sup>1</sup> Jim is an assistant attorney general. He primarily advises the Department of Children, Youth, and Families on issues related to adolescent youth in the Department's care. His experience includes representing the state in dependency and termination cases at the trial and appellate level. Jim grew up in Shelton, Washington. He received a Bachelor of Arts degree with a focus in biology from the Evergreen State College in 2006 and a Juris Doctorate degree from Lewis and Clark Law School in 2009. Prior to joining the Attorney General's office in 2016, Jim spent six years in private practice, practicing family law and representing children in dependency cases in Thurston County.

<sup>2</sup> RCW 13.32A.030(5) (emphasis added).

<sup>3</sup> "Sexually exploited child" means any person under the age of 18 who is a victim of the crime of commercial sex abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102. RCW 13.32A.030(17).

<sup>4</sup> RCW 13.32A.130(5).

<sup>5</sup> See also JuCR 5.2(b).

<sup>6</sup> RCW 13.32A.030(14).

<sup>7</sup> JuCR 5.1.

<sup>8</sup> RCW 13.32A.130(3).

<sup>9</sup> RCW 13.32A.140 (emphasis added).

<sup>10</sup> RCW 13.32A.152(2).

<sup>11</sup> See RCW 13.32A.120(1).

<sup>12</sup> RCW 13.32A.120(2).

<sup>13</sup> RCW 13.32A.120(3).

<sup>14</sup> RCW 13.32A.150(2).

<sup>15</sup> RCW 13.32A.150(2).

<sup>16</sup> RCW 13.32A.150(1).

<sup>17</sup> See RCW 13.32A.152.

<sup>18</sup> RCW 13.32A.152(1). This "extra" notice requirement is not specifically required for ARY cases. Please refer to the ARY section, Chapter 25, for more information and discussion on this point.

<sup>19</sup> RCW 13.32A.152(2).

<sup>20</sup> ESSB 5656 created the "Washington state Indian child welfare act". See generally E.S.S.B. 5656, 62nd Legis., Reg. Sess. (Wash. 2011); Laws of 2011, ch. 309. This act outlines definitions, procedures, and responsibilities required when courts address cases involving Indian children. See Chapter 29 for more information concerning the Washington state Indian child welfare act (WICWA).

<sup>21</sup> The notice requirements regarding Indian child CHINS cases were refined by E.S.S.B. 5656, secs. 7 and 21. The bill requires heightened notice requirements where DCYF is seeking out-of-home placement via CHINS, but the notice requirements are unclear in a number of other areas. For example, the bill does not clearly state whether the same, or similar, notice requirements are required if the petitioner is the youth or a parent(s); whether these heightened notice requirements are necessary only if the parent and/or youth disagree with the out-of-home placement (see E.S.S.B. sec. 7); whether these heightened notice requirements only apply if there is foster care placement (see E.S.S.B. sec. 7.); or whether these notice requirements apply where the youth is placed with a relative(s) or "fictive kin" (which is a common practice within the Native communities). For these reasons, the notice requirements set forth in this subsection will only serve to address notice requirements when DCYF is the petitioner in a CHINS proceeding regarding an Indian child, the parents do not agree with placement, and placement is in foster care. As a "best practice" tip, courts should encourage the same notice practices regardless of the petitioner's identity in a CHINS proceeding, whether the out-of-home placement is "voluntary" versus "involuntary" in nature, and if placement is in foster care versus somewhere other than the parent's home.

<sup>22</sup> RCW 13.32A.152(3).

<sup>23</sup> RCW 13.32A.160(2); see also RCW 13.32A.140.

<sup>24</sup> RCW 13.32A.160(3).

<sup>25</sup> RCW 13.32A.140.

<sup>26</sup> RCW 13.32A.125.

<sup>27</sup> RCW 13.32A.160.

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<sup>28</sup> In some counties, the court requires the child's presence at the courthouse at least 30 minutes prior to the docket actually beginning (i.e., the court order or notice of hearing requires the child be present at 8:30 a.m. for a 9:00 hearing). This allows ample time for "lateness" that invariably occurs with youth of these ages and to allow the youth to meet with counsel prior to their hearing

<sup>29</sup> Please refer to § 26.5 of this chapter for a list of these rights.

<sup>30</sup> If no family assessment was filed along with the petition, the court should inquire as to DCYF's recommendation. Because RCW 13.32A.170(2) requires the court's consideration of the "Departmental recommendation for approval or dismissal of the petition," query should be made by the court of DCYF's recommendations prior to ruling on a CHINS petition at fact-finding.

<sup>31</sup> If a dependency is filed at any time during while the CHINS is pending, jurisdiction transfers to the dependency court and the CHINS proceeding shall be dismissed. See RCW 13.32A.170; see also RCW 13.34.020 and RCW 13.32A.150.

<sup>32</sup> See RCW 13.32A.170.

<sup>33</sup> RCW 13.32A.179(1).

<sup>34</sup> RCW 13.32A.179.

<sup>35</sup> RCW 13.32A.179(2).

<sup>36</sup> RCW 13.32A.190(1).

<sup>37</sup> RCW 13.32A.179(2).

<sup>38</sup> RCW 13.32A.196(4).

<sup>39</sup> RCW 13.32A.179(3).

<sup>40</sup> RCW 13.32A.160(3).

<sup>41</sup> Remember—the court can only order an out-of-home placement at the request of DCYF or the child if it finds by clear, cogent, and convincing evidence that either (1), (2), or (3) applies: 1) The order is in the best interests of the family and The parents have not requested an out-of-home placement; The parents have not exercised any other right in RCW 13.32A.160(1)(e); The child has made reasonable efforts to resolve the problems that led to the filing of the CHINS petition; The problems cannot be resolved by delivery of services to the family during continued placement in the parental home; Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to return home; and A suitable out-of-home placement is available; or 2) The order is in the best interest of the child and the parents are unavailable; or 3) The parent's actions cause imminent threat to the child's health or safety.

<sup>42</sup> RCW 13.32A.170(2).

<sup>43</sup> RCW 13.32A.170(2).

<sup>44</sup> See RCW 12.32A.300. It has been this author's experience that CHINS and ARY courts question whether DCYF has true "gate keeping" authority regarding whether a suitable out-of-home placement is "available." Much of these discussions have occurred in cases where youth with violent or sexually aggressive histories are being released from Juvenile rehabilitation administration (JRA) facilities and their parents are not willing to re-assume custody of them. RCW 13.32A.300 clearly provides DCYF with the sole authority to determine the availability of out-of-home placements in situations like this. It is this author's opinion that in these circumstances the court must work with the family to locate other placements outside of DCYF-monitored/sponsored facilities.

<sup>45</sup> Please take note, case law on the issue of civil contempt has remained a fluid discussion by Washington appellate courts, and the court should undertake a review of applicable current court decisions prior to issuing orders of contempt and sanctions

<sup>46</sup> RCW 13.32A.250(1).

<sup>47</sup> RCW 13.32A.250(2)-(3).

<sup>48</sup> RCW 13.32A.250(5).

<sup>49</sup> Also see the discussion at footnote 16. Situations may arise where a parent and/or child requests a specific service that DCYF either believes is not appropriate for the child or family and/or DCYF has determined that such a "service" is "unavailable." In these situations, DCYF has maintained that the court cannot require DCYF to fund the service in this situation and can only be "ordered" by the court upon the youth if the parent will be financially responsible for payment.