



WYOMING LEGISLATIVE SERVICE OFFICE

# Memorandum

**DATE** August 30, 2021

**TO** Joint Judiciary Committee

**FROM** Brian Fuller, Senior Staff Attorney

**SUBJECT** Children in Need of Supervision Act/Information

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This memorandum provides follow-up information regarding the Children in Need of Supervision (CHINS) Act; this memo focuses primarily on the actions the court can take in response to a child who is found to be in need of supervision. This memo also includes information on other states with laws that provide for children who are in need of supervision or services.

The Legislature enacted the CHINS Act in 1997.<sup>1</sup> Generally, the CHINS Act grants the juvenile court jurisdiction to order protective supervision, probation, or other services for children in need of supervision—defined as "any child . . . who is habitually truant or has run away from home or habitually disobeys reasonable and lawful demands of his parents, guardian, custodian or other proper authority or is ungovernable and beyond control."<sup>2</sup> The Wyoming Supreme Court has noted that the statutes governing juvenile-delinquency and CHINS proceedings are "virtually identical."<sup>3</sup>

A complaint that alleges that a child is in need of supervision must be referred to the district attorney, who must determine whether the child's best interests require judicial action.<sup>4</sup> If the district attorney concludes that judicial action is necessary, the district

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<sup>1</sup> 1997 Wyo. Session Laws Ch. 199.

<sup>2</sup> W.S. 14-6-402(a)(iv); Burns v. Sam, 2021 WY 10, ¶ 27 n.3, 479 P.3d 741, 749 n.3 (Wyo. 2021).

<sup>3</sup> LeBlanc v. State (In re ARLeB), 2017 WY 107, ¶ 28 n.2, 401 P.3d 932, 937 n.2 (Wyo. 2017). Given their similarity, much of the information in the Juvenile Justice Topic Summary provided in June may be relevant. That summary is available [here](#).

<sup>4</sup> W.S. 14-6-411(a).

attorney must file a CHINS petition with the juvenile court.<sup>5</sup> If a child is adjudged to be in need of supervision, the juvenile court must review the predisposition report, the multidisciplinary team's recommendations (if any), the case plan, and other reports or evaluations that the court orders.<sup>6</sup> The court must ensure that the Department of Family Services made "reasonable efforts" to prevent or eliminate the need for removal of the child from the child's home or to make it possible for the child to return to the child's home. The juvenile court must find by clear-and-convincing evidence that returning the child to the child's home wouldn't be in the child's best interests despite the efforts that were made.<sup>7</sup>

After finding a child to be in need of supervision, the court may do the following:

- Allow the child to remain in the custody of the child's parents, guardian, or custodian under protective supervision,<sup>8</sup> subject to any terms and conditions that the court may prescribe.<sup>9</sup>
- Transfer temporary legal custody to a relative or other suitable adult that the court finds qualified to receive and care for the child, with supervision, subject to any terms and conditions the court may prescribe.<sup>10</sup>
- Transfer temporary legal custody to a state or local public agency responsible for the care and placement of children in need of supervision, subject to the following:

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<sup>5</sup> Id.

<sup>6</sup> W.S. 14-6-429(a). Under the CHINS Act, the Department of Family Services must develop a case plan for a child when there is a recommendation to place the child outside the home. W.S. 14-6-427(k). Within 10 days of a CHINS petition being filed, the juvenile court must appoint a multidisciplinary team that includes the child's parents, a school-district representative, a representative of the Department of Family Services, the child's psychiatrist, psychologist, or a mental-health professional, the district attorney (or designee), the child's attorney or guardian ad litem, a volunteer lay advocate (if the court appoints one) and the foster parent. W.S. 14-6-427(c). This team is required to develop "reasonable and attainable recommendations" for the juvenile court, outlining the goals or objectives the child's parents should be required to meet for the child to be returned to the home or for the case to be closed. W.S. 14-6-427(f).

<sup>7</sup> W.S. 14-6-429(a)(iv).

<sup>8</sup> Protective supervision is "a legal status created by court order following an adjudication of neglect, whereby the child is permitted to remain in his home subject to supervision by the department of family services, a county or state probation officer or other qualified agency or individual the court may designate." W.S. 14-6-402(a)(xvii).

<sup>9</sup> W.S. 14-6-429(b)(i).

<sup>10</sup> W.S. 14-6-429(b)(ii).

- A child cannot be committed to the Wyoming Boys' School or the Wyoming Girls' School unless the child is 12 years of age and is also found delinquent.
- Temporary legal custody cannot be transferred to a state agency for out-of-community placement unless the child or the child's family has failed to perform under a court-supervised consent decree, or the Department of Family Services has certified that a community placement plan has proven unsuccessful.<sup>11</sup>

For children who are removed from the child's home, the court must conduct periodic formal reviews, and the agency or institution where the child is held must periodically recommend to the court whether the order or placement should be continued.<sup>12</sup> This requirement contemplates that children in need of supervision may be: (1) committed or transferred to an agency or institution (subject to statutory requirements); (2) placed in the custody of the Department of Family Services; (3) placed in a psychiatric residential treatment facility; or (4) placed in a qualified residential treatment program.<sup>13</sup>

As part of any order of disposition and terms and conditions for the order for a child in need of supervision, the court may:

- Require a child to perform a designated number of community-service hours, or participate in a work program, or perform labor or services under a responsible adult's supervision (subject to any laws regulating child labor), in order to meet the obligations imposed or for the purpose of discipline and rehabilitation.<sup>14</sup>
- Order the child to be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or to obtain other specialized treatment, care, counseling, or training, and place the child in a hospital or medical facility, youth camp, school, or other suitable facility for treatment.<sup>15</sup>
- Restrict or restrain the child's driving privileges for a period that the court deems appropriate. If necessary, the court can take possession of the child's driver's license.<sup>16</sup>

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<sup>11</sup> W.S. 14-6-429(b)(iii).

<sup>12</sup> W.S. 14-6-429(c).

<sup>13</sup> See *id.* A qualified residential treatment program is one that meets the requirements of federal law; this program must, among other things, have a trauma-informed model to meet the needs of children with serious emotional or behavioral disorders and has certain licensed staff to provide on-site care. See W.S. 14-6-402(a)(xxv); 42 U.S.C. § 672(k)(4).

<sup>14</sup> W.S. 14-6-429(d)(i).

<sup>15</sup> W.S. 14-6-429(d)(ii).

<sup>16</sup> W.S. 14-6-429(d)(iii).

- Impose any demands, requirements, limitations, restrictions, or restraints on the child, and do all things with regard to the child that his parents might reasonably and lawfully do under similar circumstances.<sup>17</sup>
- Order the child, or the child's parents, or both, to undergo evaluation and indicated treatment or another program designed to address problems that contributed to the adjudication.<sup>18</sup>
- After providing a notice to appear, order the child's custodial and noncustodial parent or guardian to participate in the child's treatment, plan of supervision, or probation, or otherwise order the performance of any acts that are reasonably necessary to aid the child in completing the court-ordered obligations.<sup>19</sup>
- Require the child's parents or guardian to attend a parenting class or other appropriate education or treatment, and to pay all or part of the cost of the class, education, or treatment based on the court's determination of their ability to pay.<sup>20</sup>
- Require the child's parents or guardian and the child to participate in a court-supervised treatment program that is qualified under the Court Supervised Treatment Programs Act (W.S. 7-13-1601 through 7-13-1616), as long as the program accepts the child's parent or guardian and the child for participation in the program.<sup>21</sup>

A child found to be in need of supervision may also be placed on probation, and the court may request that the Department of Family Services provides supervision of the child on probation.<sup>22</sup>

A court may (either on its own motion or after application of any party to the proceedings) also enter an order of protection in support of an order of disposition.<sup>23</sup> An order of protection can restrain or control the conduct of the child's parents, guardian, or custodian, or any party to the proceeding whom the court finds to be encouraging, causing, or contributing to the acts or conditions that brought the child within the CHINS Act.<sup>24</sup> The order of protection can require the person to do or refrain from doing any acts required or forbidden by law and that are necessary for the child's welfare, and may

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<sup>17</sup> W.S. 14-6-429(d)(iv).

<sup>18</sup> W.S. 14-6-429(d)(v). A parent who willfully violates or neglects or refuses to comply with any court order can be found in contempt. Id.

<sup>19</sup> W.S. 14-6-429(d)(vi).

<sup>20</sup> W.S. 14-6-429(d)(vii).

<sup>21</sup> W.S. 14-6-429(d)(viii).

<sup>22</sup> W.S. 14-6-429(k).

<sup>23</sup> W.S. 14-6-430(a).

<sup>24</sup> Id.

include the following requirements for the person whom an order of protection is issued:<sup>25</sup>

- Perform any legal obligation of support.<sup>26</sup>
- Not make contact with the child or his place of abode.<sup>27</sup>
- Refrain from conduct that in any way interferes with or disrupts the control and supervision of the child by the child's legal custodian.<sup>28</sup>
- Permit a parent reasonable visitation privileges under specified terms and conditions.<sup>29</sup>
- Give proper attention to care of the home and to refrain from conduct that is detrimental to the child and the home environment.<sup>30</sup>
- Enforce the child's compliance with the terms and conditions that were imposed in the order of disposition.<sup>31</sup>

It is unclear exactly how long an order of disposition remains in effect. Under W.S. 14-6-429(h), any "disposition order for a child in need of supervision continues in force for not more than one (1) year, as ordered by the court."<sup>32</sup> Under W.S. 14-6-431(a), an "order of disposition shall remain in force for an indefinite period until terminated by the court whenever it appears the purpose of the order has been achieved" and it's in the child's best interests that he be discharged from the court's jurisdiction.<sup>33</sup> Unless an order is sooner terminated, all orders issued under the CHINS Act "shall terminate with respect to a child

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<sup>25</sup> W.S. 14-6-430(b).

<sup>26</sup> W.S. 14-6-430(b)(i).

<sup>27</sup> W.S. 14-6-430(b)(ii).

<sup>28</sup> W.S. 14-6-430(b)(iii).

<sup>29</sup> W.S. 14-6-430(b)(iv).

<sup>30</sup> W.S. 14-6-430(b)(v).

<sup>31</sup> W.S. 14-6-430(b)(vi).

<sup>32</sup> W.S. 14-6-429(h) ("Any disposition order for a child in need of supervision continues in force for not more than one (1) year, as ordered by the court. A hearing shall be held before the expiration of the disposition order to determine the appropriateness of continuing the order including but not limited to whether the child should be returned to the parent's custody, remain under custody as ordered or have the custody order amended. The court shall enter an appropriate disposition order after each hearing under this subsection.").

<sup>33</sup> W.S. 14-6-431(a) ("An order of disposition shall remain in force for an indefinite period until terminated by the court whenever it appears the purpose of the order has been achieved and it is in the child's best interest that he be discharged from further court jurisdiction.").

adjudicated in need of supervision" upon turning 18.<sup>34</sup> If the child is still in the custody of the Department of Family Services when the child turns 18, "services may be provided on a case by case basis."<sup>35</sup>

## Other States

The following is a brief overview of what some states have enacted in terms of addressing the needs of children who are found to be in need of supervision or services.

Indiana has enacted a comprehensive law that provides for children who are in need of services, who are defined as a child under age 18 who: (1) is the victim of human or sexual trafficking; or (2) needs care, treatment, or rehabilitation that the child is not receiving and is unlikely to be provided or accepted without the court's "coercive intervention."<sup>36</sup> If a child is determined to be a child in need of services, the juvenile court may order one or more of the following:

- Order supervision of the child by Indiana's Department of Child Services.
- Order the child to receive outpatient treatment: (1) at a social-service agency or a psychological, psychiatric, medical, or educational facility; or (2) from an individual practitioner.
- Remove the child from the child's home and authorize the Department to place the child in another home, shelter-care facility, child-caring institution, group home, or secure private facility. (Placement includes authorization to "control and discipline the child.")
- Award wardship of the child to the Department for care, supervision, and placement.
- Partially or completely emancipate the child under Indiana law.
- Order the child's parent, guardian, or custodian to complete services recommended by the Department and approved by the court.
- Order a person who is a party to refrain from direct or indirect contact with the child.
- Order a perpetrator of child abuse or neglect to refrain from returning to the child's residence.<sup>37</sup>

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<sup>34</sup> W.S. 14-6-431(b).

<sup>35</sup> W.S. 14-6-431(b).

<sup>36</sup> Ind. Code Ann. § 31-34-1-3.5(a).

<sup>37</sup> Ind. Code Ann. § 31-34-20-1(a). Additional requirements must be met before a juvenile court can place a child in a home or facility outside of Indiana. Ind. Code Ann. § 31-34-20-1(b).

The juvenile court's dispositional order must be one that: (1) is in the least restrictive and most appropriate setting available; (2) least interferes with family autonomy; (3) is least disruptive of family life; (4) imposes the least restraint on the child's freedom and the child's parent, guardian, or custodian; (5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian; and (6) provides a reasonable opportunity for the child's parent who is incarcerated and who has maintained a meaningful role in the child's life to maintain a relationship with the child.<sup>38</sup>

Virginia law has separate provisions for children in need of supervision and children in need of services. A "child in need of services" is a child: (1) whose behavior, conduct, or condition presents or results in a serious threat to the well-being and physical safety of the child; or (2) a child under age 14 whose behavior, conduct, or condition presents or results in a serious threat to the well-being and physical safety of another person.<sup>39</sup> To find that a child is one in need of services: (1) the conduct complained of must present "a clear and substantial danger to the child's life or health or to the life or health of another person"; (2) the child or the child's family is in need of treatment, rehabilitation, or services not presently being received; and (3) the court's intervention is essential to provide the treatment, rehabilitation, or services needed by the child or the child's family.<sup>40</sup>

Conversely, a "child in need of supervision" is one who, while subject to compulsory school attendance under Virginia law, is habitually and without justification absent from school, and: (1) the child has been offered an adequate opportunity to receive the benefit of any and all educational services required to be provided; (2) the school has made a reasonable effort to effect the child's regular attendance without success; and (3) the school has provided documentation that it has complied with state law regarding notice that a student hasn't reported to school.<sup>41</sup>

Alternatively, a "child in need of supervision" can be one who, without the consent of the child's parent, remains away from or deserts or abandons his family more than once or who escapes or remains away without proper authority from a residential care facility, and: (1) the child's conduct presents a clear and substantial danger to the child's life or

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<sup>38</sup> Ind. Code Ann. § 31-34-19-6.

<sup>39</sup> Va. Code Ann. § 16.1-228. No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religion can for that reason alone be considered to be a child in need of services. Id.

<sup>40</sup> Id.

<sup>41</sup> Id.

health; (2) the child or his family is in need of treatment, rehabilitation, or services not presently being received; and (3) the court's intervention is essential to provide the treatment, rehabilitation, or services needed by the child or the child's family.<sup>42</sup>

After finding that a child is in need of services, the court (juvenile or circuit in Virginia) may do any of the following:

- Enter an order using its authority to cooperate with and make use of the services of all public or private societies or organizations that seek to protect or aid children or families.
- Permit the child to remain with the child's parent, subject to any terms or conditions the court imposes on the child or the parent.
- Order the parent to participate in programs, cooperate in treatment, or be subject to conditions and limitations that the court may order and that are designed for the rehabilitation of the child and parent.
- Excuse the child, if 14 or older, from further compliance with compulsory school-attendance requirements if the court finds that the child isn't able to benefit appreciably from further schooling. The court may authorize the child to be employed in any occupation that isn't legally declared hazardous for children under 18.
- Permit the local board of social services or a public agency to place the child in suitable family homes, child-caring institutions, residential facilities, or independent living arrangements with legal custody remaining with the parent.
- Transfer legal custody to: (1) a relative or other person who, after study, is found to be qualified to receive and care for the child; (2) a child-welfare agency, private organization, or facility that is licensed or legally authorized to receive and provide care for the child; (3) a local board of social services.
- Require the child to participate in a public-service project under any conditions the court prescribes.<sup>43</sup>

If a child is found to be in need of supervision, the court may order any of the following:

- Enter any order of disposition authorized for a child found to be in need of services.
- Place the child on probation with any terms and conditions the court may prescribe, including suspending the child's driver's license or require the child to be issued a restricted license.

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<sup>42</sup> Id.

<sup>43</sup> Va. Code Ann. § 16.1-278.4.

- Order the child, the child's parent, or both, to participate in programs, cooperate in treatment, or be subject to any conditions and limitations that the court may order and are designed for the child's rehabilitation.
- For any parent who has violated the compulsory school-attendance law, order the parent to participate in programs, cooperate in treatment, or be subject to any conditions and limitations that the court may order and that are designed for the child's or parent's rehabilitation. (A parent who fails to cooperate with this order may be subject to a \$100 fine for each day the parent fails to comply with the court order.)<sup>44</sup>

Florida law addresses both children in need of services and families in need of services. A "child in need of services" is one who: (1) has persistently run away from the child's parents despite reasonable efforts to remedy the conditions contributing to the behavior; (2) is habitually truant from school while subject to compulsory school-attendance laws, despite reasonable efforts to remedy the situation; or (3) has persistently disobeyed the reasonable and lawful demands of the child's parent or custodian, and who is beyond the parent's control despite their reasonable efforts and the efforts of appropriate agencies to remedy the conditions contributing to the behavior.<sup>45</sup> A child in need of services cannot be subject to a pending investigation of abuse, neglect, or abandonment; cannot be from a family in need of services; and cannot be someone charged with violating a law before reaching 18.<sup>46</sup>

A "family in need of services" means a family that has a child who: (1) is running away; (2) persistently disobeys reasonable and lawful demands of the parent and is beyond the parent's control; or (3) is habitually truant from school or engaging in other serious behaviors that place the child at risk of future abuse, neglect, abandonment, or at risk of entering the juvenile-justice system.<sup>47</sup> To qualify, the child must be referred to a law-enforcement agency, the Department of Juvenile Justice, or an agency contracted to provide services to children in need of services.<sup>48</sup> A family isn't eligible to receive services if, at the time of the referral, there is an open investigation into an allegation of abuse, neglect, or abandonment, or the child is under supervision by the Department of Juvenile Justice or the Department of Children and Families because of an adjudication of dependency or delinquency.<sup>49</sup>

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<sup>44</sup> Va. Code Ann. § 16.1-278.5.

<sup>45</sup> Fla. Stat. § 984.03(9).

<sup>46</sup> Id.

<sup>47</sup> Fla. Stat. § 984.03(25).

<sup>48</sup> Id.

<sup>49</sup> Id.

If a court finds that a child is in need of services, the court has the power to "direct the least intrusive and least restrictive disposition" by ordering: (1) the parent, guardian, or custodian and the child to participate in treatment, services, and any other alternative identified as necessary; (2) order the parent, guardian, or custodian to pay a fine or fee if the Department of Juvenile Justice recommends it.<sup>50</sup> The court may also do any of the following:

- Place the child under the supervision of the department's contracted provider of programs and services for children or families in need of services.
- Place the child in the temporary legal custody of an adult willing to care for the child.
- Commit the child to a licensed child-caring agency willing to receive the child and to provide services without compensation from the department.
- Order the child (and, if the court finds appropriate, the parent or guardian) to render community service.<sup>51</sup>

The court may also order the child, family, parent, guardian, or custodian of a child in need of services to participate in family counseling or other professional counseling deemed necessary for the child's rehabilitation.<sup>52</sup> Any order that requires the participation of the child, parent, custodian, or guardian is mandatory.<sup>53</sup>

For families in need of services, the Department of Juvenile Justice is authorized to provide for nonjudicial procedures for those cases. The department must offer and refer services to families in need of services, and the department is required to coordinate efforts with those providing services to children in need of services.<sup>54</sup>

This is a broad overview of Wyoming's CHINS Act and a sampling of how other states have addressed children in need of supervision or services. Please let me know if you have any questions or need further information.

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<sup>50</sup> Fla. Stat. § 984.22(1).

<sup>51</sup> Fla. Stat. § 984.22(2).

<sup>52</sup> Fla. Stat. § 984.22(5).

<sup>53</sup> Fla. Stat. § 984.22(6).

<sup>54</sup> See Children/Families in Need of Services, Rule 63C-1.001-.003, available at <http://www.djj.state.fl.us/docs/rules/63c-1.pdf?sfvrsn=2>.