

ABCs of the CHINS Process: A Parent's Guide



National Alliance on Mental Illness

NAMI | New Hampshire

Originally developed by the Children's Coalition of Southern New Hampshire; Revised and updated July 2009 by the NH Division for Juvenile Justice Services (DJJS) and NAMI New Hampshire (National Alliance on Mental Illness).

WHAT IS A “CHINS”?

What a CHINS Is:

CHINS (“child in need of services”) is a legal process governed by state statute (RSA 169-D) that helps to address specific behavioral problems of children under the age of 18, specifically, a child who is expressly found to be:

- **Habitually**, willfully, and without good and sufficient cause, truant from school; **OR**
- **Habitually** running away from home; **OR**
- **Repeatedly** disregarding the reasonable and lawful commands of his/her parents, guardian or custodian **and** placing himself/ herself or others in unsafe circumstances; **AND**
- Is expressly found to be in need of care, guidance, counseling, discipline, supervision, treatment, or rehabilitation as a consequence of one or more of the preceding behaviors.

Additionally, a CHINS petition may be filed when a child has committed willful **repeated or habitual conduct** constituting offenses that would be violations (but **not** felonies or misdemeanors) under the Criminal Code of this state if committed by a person 17 years of age or over, **OR** willful **repeated or habitual conduct** constituting offenses that would be violations or misdemeanors (but not felonies) under the Motor Vehicle Code of this state if committed by a person 16 years old or older. (**Note:** Only a law enforcement officer or prosecutor should file a CHINS petition under these sections.)

What a CHINS Is Not:

A CHINS petition is NOT appropriate in any of the following situations:

- **Emancipated Minors:** If a minor received an emancipation decree in another state, NH will give legal recognition to that court order (RSA 21-B:2). Emancipated minors are therefore not subject to CHINS proceedings brought by their parent/ guardian/custodian for disobedience or running away from home.
- **Delinquent Acts:** “Delinquent” means a person who has committed an offense before reaching the age of 17 that would be a felony or misdemeanor under the Criminal Code of this state if committed by an adult (RSA 169-B:2, IV). Delinquent acts **cannot** be included in a CHINS petition [RSA 169-D:5, IV; *In re James N.*, 157 N.H. 690 (2008)].
- **Excluded Offenses:** Violations of any of the following laws are **excluded** by state statutes (RSA 169-B:32 & 169-D:22) from juvenile CHINS or delinquency proceedings: Motor vehicle laws by persons 16 years of age or over; aeronautics; boat navigation; fish and game; alcoholic beverages; fireworks; tobacco. These excluded offenses are subject to adult court prosecution, not juvenile court.

When is a CHINS appropriate?

A CHINS petition may only be filed by a parent/guardian/custodian when the following conditions have been met (RSA 169-D:5, III)

- The child and family have sought to resolve the expressed problem through available community alternatives,
- The problem still remains, **AND**
- Court intervention is needed to resolve the problem.

You must utilize and exhaust other existing remedies and resources before seeking court intervention. The back of this pamphlet lists some information and referral resources. You may also explore the following website: http://www.dhhs.nh.gov/DHHS/DHHS_SITE/default.htm.

CHINS WITHOUT COURT INVOLVEMENT:

If all other remedies and resources have not been exhausted, a local Juvenile Probation & Parole Officer (JPPO) who is familiar with local resources may suggest alternatives. This does not involve the court. Call the DCYF Central Intake Line (800-894-5533) to request this alternative.

For other options, contact your local police department and ask to speak to your police department's Juvenile Officer.

FILING A CHINS PETITION:

According to state law (RSA 169-D:5, I), a petition alleging a child to be a "child in need of services" (CHINS/status offender) may be filed by:

- The child's parent, legal guardian or custodian; or
- A school official; or
- A law enforcement officer.

The petition must be in writing on a form called a "Juvenile Petition". This form can be obtained at your local police department or courthouse.

The following information must be included on the form:

- Name, date of birth, and address of the child;
- Name, address and telephone numbers of the parents, legal guardian or custodian, and the petitioner;
- Specific details, including the date, time and location of the offenses, and the statute (RSA) violated;
- Information that shows that the child and family have sought to resolve the problem through available community resources, that the problem still remains, and that court intervention is needed.

The juvenile petition must be signed, under oath, in the presence of a Notary Public, Justice of the Peace, court clerk or deputy court clerk. The person administering the oath must actually witness you writing your signature onto the form.

The juvenile petition must then be submitted to your juvenile or family court where a docket number, and a date and time for a court hearing will be assigned. The juvenile petition is then given to the local police or sheriff's department "for service."

The parents/guardian/custodian will be served with a copy of the juvenile petition. Please note that the child is not served with a copy of the juvenile petition as it is the responsibility of the persons served (usually the parents) to bring the child to court for the hearings. An initial court appearance must be held not less than 24 hours nor more than 7 days from the filing of a legally sufficient petition.

CHINS Offenses:

The kinds of offenses that usually qualify for a CHINS petition filed by a parent/guardian/custodian are:

Truancy: A truant is a child who is subject to the compulsory school attendance law (RSA 193:1) and who has habitually, willfully, and without good and sufficient cause been absent from school. According to NH law (RSA 189:35-a): “Truancy” means an unexcused absence from school or class and “unexcused absence” is an absence without parental or administrative permission. *Twenty half days of unexcused absence during a school year shall constitute “habitual truancy”. A school district shall define the term “half day of absence”.* In consideration of these requirements, in most cases, it is usually more appropriate for a school official to file the CHINS petition for truancy.

Runaway: A runaway is a child who has been **habitually** absent from home, and whose whereabouts at the time of the absences from home were unknown to the child’s parents/guardian/custodian, and whose absences occurred without the consent of the child’s parents/guardian/custodian. Whenever a child’s whereabouts become unknown to the child’s parent/guardian/custodian, the child’s disappearance should be immediately reported to your local law enforcement agency; this should be done even if you are not planning to file a CHINS petition. Failure to report the child missing to the police could result in neglect charges being filed against you. Court intervention would normally commence after the child is located and returned home. Because the police usually investigate and locate missing persons, it is usually more appropriate for a police officer to file the CHINS petition for runaway.

Uncontrollable: This is a child who repeatedly disregards the reasonable and lawful commands of his/her parents, guardian or custodian and thereby places himself/herself or others in unsafe circumstances. Crimes, including violations of drug, alcohol and tobacco laws, must NOT be included in a CHINS petition, as these are governed by adult criminal or juvenile delinquency procedures. **A pattern of disobedient, harmful behavior must be described, in detail, by the parent/guardian/custodian.** Do not include isolated instances as CHINS offenses are the result of repeated or habitual misbehavior by the child.

Behaviors that are not CHINS Offenses:

CHINS offenses do not include general adolescent behaviors such as failure to clean a room, showing disrespect or not doing homework. However, if these behaviors are becoming a serious problem in your home, contact one of the listed referral resources for assistance. Further, CHINS offenses do not include physically hurting others, destroying property, stealing or taking a parent’s car without permission. These are adult crimes or juvenile delinquency offenses that must be referred to the local police department for investigation and prosecution.

THE COURT PROCESS

The first court hearing is called an *Initial Appearance*. The judge will explain the formal charges and constitutional rights to the child. **The child has a right to an attorney.** Whenever the parent/guardian/custodian files the CHINS petition, unless the child is already represented by his/her own attorney, **the court is required to appoint an attorney for the child** [RSA 169-D:12, II (a)]. The case will be continued until the child’s attorney is present.

The next court hearing is called an *Adjudicatory Hearing* (similar in purpose to a “Trial” in other types of court cases), which is held not later than 21 days after the initial appearance. Unless the child pleads “true” to the charges, the petitioner must produce witnesses at the adjudicatory hearing to testify, and present evidence, in order to prove to the court that the charges stated in the petition are true *beyond a reasonable doubt* (RSA 169-D:15). The child’s attorney may choose to cross-examine these witnesses and provide other witnesses and evidence to the court. After considering all of the testimony and evidence, the judge will find the petition to be “true” (proven) or “not true” (not proven). If the judge determines the allegations are “not true”, the court proceedings usually end that day.

If the court determines that the charges have been proven and finds that the child is a “child in need of services”, the court will then assign a Juvenile Probation and Parole Officer (JPPO). The judge may then order the JPPO to conduct a background investigation of the child and family, and may also order physical and mental health evaluations of the child and family members, to be performed within the next 30 days. The court may also “join” the child’s school district to participate in the court proceedings. The JPPO will interview the child, family members, school officials and appropriate community agencies in order to prepare a report with recommendations for consideration by the court at the next hearing.

The next court hearing is called a *Dispositional Hearing*, at which the court considers the report and recommendations of the JPPO and other parties, and considers the results of any evaluation reports that may have been conducted at the court’s request. After considering all of the available facts, the judge then issues a dispositional order that is “least restrictive and most appropriate” for the child, the family and the public interest.

Sometimes the *Initial Appearance*, *Adjudicatory Hearing* and/ or *Dispositional Hearing* are combined from three separate hearings into one or two hearings to be heard on the same date. This may be possible depending upon whether the child wishes to contest the charges and whether the petitioner and other necessary parties are present and ready to proceed.

After the court’s order of disposition, the court is required to conduct periodic *Review Hearings* at any time while the case remains open to review the progress made and to consider any changed circumstances since the previous hearing. The judge will consider information presented by the family, the child and involved agencies. The judge may continue earlier orders or modify those orders during this hearing.

If the child has entered an out-of-home placement during the court proceedings, the court is required to conduct a *Permanency Hearing* at least annually to “consider whether the parent or parents and child have met the responsibilities pursuant to the dispositional orders issued by the court.”

Copies of all court records regarding a child may be obtained by the parent or legal guardian from the Clerk of Court.

WHAT MIGHT THE COURT ORDER?

The Court may order specific conditions under which children must conduct themselves, as well as services in which the child and family

must participate. In many instances, the Court will require the school district to participate in the planning for a child.

It is important to note that “parents must be made aware of their contribution to the problem and must account for their role in the solution of the problem, and must accept the responsibility to participate in any program of care ordered by the court in order to assure that the outcome may have a good probability of success while, at the same time, supporting families in their mission to teach values to youth and to exercise reasonable control of their children” (RSA 169-D:1, II).

Every situation is different and orders are issued based upon each unique circumstance. Some examples include court diversion, family mediation, mental health evaluation, counseling, conditional release (juvenile probation), payment of fines to the court and restitution to victims, unpaid community service, home detention, and placement in a foster home or group home setting.

The court is prohibited by federal and state laws from ordering the confinement of CHINS or status offenders in adult prisons or jails, or in architecturally secure juvenile detention facilities.

WHO PAYS FOR COURT-ORDERED SERVICES AND PLACEMENTS?

Under state law (RSA 169-D:29), **parents or guardians are liable to reimburse the state for the costs of placements, programs and services rendered in juvenile court proceedings.** This includes but is not limited to the costs of placement out of the home, court-ordered evaluations and treatment, random drug screening and attorney's fees.

At the *Initial Appearance* the parents/guardian/custodian are given a financial affidavit to complete and arrangements are made for a payment plan and/or fee reduction. Specific questions regarding reimbursement may be addressed to the JPPO or to the Court. Part of this process includes a requirement for the parents/guardian/custodian to provide copies of the child's birth certificate, health insurance information and, as applicable, immigration status.

Some local agencies are available to provide services to you and your family at little or no cost; some accept Medicaid and health insurance coverage. Agencies often have unique funding and may be contacted directly for answers to specific funding questions. **If your child is eligible for special education services**, the child's school district must provide special education and educationally-related services for your child—free of charge to you.

Additionally, parents/guardians are responsible to ensure that court fines and victim restitution are paid.

DEFINITIONS

Adjudicatory Hearing (adjudication): The hearing after the “Initial Appearance”. This is when both the petitioner and the child present their witnesses and evidence; similar in purpose to a trial. “The petitioner has the burden to prove the allegations in support of the petition beyond a reasonable doubt [RSA 169-D:15].”

CHINS (“child in need of services”): A child under the age of 18 who exhibits one of the behavioral difficulties specified in RSA 169-D:2, IV,

and who is in need of care, guidance, counseling, discipline, supervision, treatment or rehabilitation as a result of these behaviors.

Delinquent: A person who has committed an offense before reaching the age of 17 that would be a felony or misdemeanor under the Criminal Code of this state if committed by an adult. (Note: Not to be confused with “CHINS”.)

Dispositional Hearing (disposition): The hearing at which the judge issues the final order; roughly similar in purpose to a sentencing hearing for an adult. In juvenile cases the court considers the reports and recommendations of the parties and then issues an order that the court considers to be the “least restrictive and most appropriate”.

Diversion: A program or service designed to assist the child, family and victim without requiring court intervention.

Division for Children, Youth and Families (DCYF): The state child protective services agency that responds to the needs of families and children when children are abused, neglected or abandoned. Part of the NH Department of Health and Human Services (DHHS).

Division for Juvenile Justice Services (DJJS): The state juvenile justice agency that provides investigative services to the court, and residential care and probation and parole supervision of children and youth who disobey state laws. Part of the NH Department of Health and Human Services (DHHS).

Initial Appearance: The first court hearing following the filing of a CHINS petition with the court, at which the child is advised of the formal charges and his/her constitutional rights; the court will usually appoint a defense attorney for the child at this hearing.

Juvenile Court: In NH, juvenile delinquency, CHINS and child abuse/neglect cases are handled by either the Family Division or the District Court. Check with the police department in your county to determine which court has jurisdiction over juvenile cases.

Juvenile Officer: A police officer who primarily investigates crimes committed by or against children and youth. A “juvenile officer” frequently prosecutes these cases in court.

Juvenile Probation and Parole Officer (JPPO): An “officer of the court” employed by DJJS, who provides investigation and supervision services regarding children and youth who disobey state laws (RSA 170-G:16).

Parental Responsibility: In NH, parental responsibility laws and court orders require the parents or legal guardians to attend and participate in all juvenile court proceedings regarding their minor children, to participate in the rehabilitation and treatment services and programs ordered by the court, and to reimburse the state for the costs of court-ordered services, programs and placements.

Petitioner: This is the person who files the juvenile petition (the complaint or charging document) with the juvenile court regarding a child or minor. In CHINS proceedings, only the parent/guardian/custodian, a police officer or a school official may file the juvenile petition. The petitioner must sign the juvenile petition under oath, witnessed by a court clerk, notary public or justice of the peace, and must then appear in court to prove the allegations of the juvenile petition, “beyond a reasonable doubt”, by offering evidence and witness

testimony to the judge.

Permanency Hearing: A court hearing for a minor in an out-of-home placement to review, modify, and/or implement the permanency plan or adopt the concurrent plan (RSA 169-D:2, XII). A permanency plan can be reunification of the child with the parent, guardianship with a fit and willing relative or other person, termination of parental rights followed by adoption, or another planned permanent living arrangement. A concurrent plan is an alternative plan to be implemented when the permanency plan cannot be achieved.

RSA (Revised Statutes Annotated): New Hampshire state laws, as adopted and periodically revised by the NH House of Representatives and Senate, and signed into law by the Governor.

School Resource Officer (SRO): A police officer assigned to a public school on a part-time or full-time basis. The SRO usually has an office at the school.

Service: The official notice to appear in court is by a summons or witness subpoena “served” or delivered by a law enforcement officer or officer of the court to the person whose court appearance is required. The serving officer then records the date and time the notice was delivered and notifies the court. Juveniles (minors or children) are not served; their parents/guardians are served and are required to bring the minor/child to court for the scheduled court hearing.

Status Offender: A minor who has been adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be an offense if committed by an adult. Status offenses typically include running away from home, truancy from school and disobeying parents or guardians.

True/Not True: Pleas made by a child at the “Initial Appearance” in response to the allegations made against him or her by a parent/guardian/custodian, school official or law enforcement officer. Also, these same terms refer to the factual findings made by the court following an adjudicatory hearing or trial.

For Information and Referral,
you may contact one of the following:

NAMI New Hampshire
15 Green Street Concord, NH 03301
800-242-6264

OR

2-1-1 NH
United Ways of New Hampshire
P.O. Box 211 Manchester, NH 03105
Need help?
Want to give help?
Dial 2-1-1 or visit www.211nh.org