

# CHAPTER ELEVEN

## DISPOSITIONAL HEARING

### TABLE OF CONTENTS

---

<b>I. PREDISPOSITIONAL REPORT .....</b>	<b>128</b>
A. WHO MAY PREPARE PREDISPOSITIONAL REPORT.....	128
1. Alternative Pre-dispositional Report .....	128
B. WHO MAY BE CONSULTED .....	128
1. Child, Parent, Guardian, or Custodian May Have Examination .....	128
2. Representatives Who May be Present at a Conference .....	128
3. Mandatory Attendance at Conference .....	128
4. Conference Participants Must Assist Report Preparer .....	128
C. CONTENTS OF PREDISPOSITIONAL REPORT .....	129
1. Recommendation on Care, Treatment, Rehabilitation, or Placement .....	129
2. Extent of Participation of Parent, Guardian, or Custodian .....	129
3. Relative Out-of-Home Placements Must Be Considered Before Other Out of Home Placements.....	129
4. Financial Report on Parent or Estate of Child.....	130
5. Criminal History Check, if Out-of-Home Placement Being Considered .....	130
D. DISTRIBUTION OF PREDISPOSITIONAL REPORT INFORMATION .....	130
1. Who Receives the Report .....	130
2. Discretionary Distribution of Factual Summary of Report .....	130
3. Time frame for Pre-dispositional Report Distribution .....	130
<b>II. PETITION FOR PARENTAL PARTICIPATION.....</b>	<b>130</b>
A. WHO MAY FILE PETITION FOR PARENTAL PARTICIPATION.....	130
B. CONTENT OF PETITION FOR PARENTAL PARTICIPATION .....	130
1. Caption .....	131
2. Allegations .....	131
3. Verification.....	131
C. HEARING .....	131
1. Advisement of Failure to Participate .....	131
2. Decree Entered.....	131
<b>III. NO CONTACT ORDER PETITION .....</b>	<b>132</b>
1. Who May File Petition For No Contact Order .....	132
2. Petition Requirements .....	132
3. Findings.....	132
4. Protective Order Depository.....	132
<b>IV. DISPOSITIONAL HEARING .....</b>	<b>132</b>
A. TIME FRAME .....	132
1. If Dispositional Hearing Not Timely Held, Case Dismissed.....	133

B.	ATTENDANCE.....	133
1.	Notice of Dispositional Hearing.....	133
2.	Preparer of the Pre-dispositional Report Must Attend, If Possible .....	133
C.	DISPOSITIONAL HEARING PROCEDURES.....	133
1.	Issues for Consideration .....	133
2.	Right to be Heard .....	134
3.	Evidence .....	134
4.	Advisement of Modification Procedures.....	135
<b>V.</b>	<b>DISPOSITIONAL DECREE.....</b>	<b>135</b>
A.	ERROR IF NO DISPOSITIONAL DECREE .....	135
B.	FACTORS TO BE CONSIDERED.....	135
1.	Additional Factors For Out-of-Home Placement .....	135
C.	RECOMMENDATIONS TO BE CONSIDERED .....	136
1.	If Initial DCS Recommendation is Accepted .....	136
2.	If Initial DCS Recommendation is Not Accepted .....	136
3.	If Court Rejects Final/Supplemental DCS Recommendation .....	137
4.	Order Must Relate to Needs .....	138
D.	DISPOSITION OPTIONS.....	138
1.	Supervision of Child by DCS.....	138
2.	Order the Child to Receive Outpatient Treatment.....	138
3.	Place Child in Another Home or Shelter Care Facility .....	139
4.	Award Wardship of Child to DCS .....	141
5.	Partially or Completely Emancipate Child.....	142
6.	Order Parent, Guardian, or Custodian to Complete Services .....	142
7.	Order Parent to Take Medication .....	143
8.	Order a Party to Refrain from Direct or Indirect Contact with Child.....	143
9.	Order Perpetrator of CHINS Removed From Home .....	143
10.	Visitation with Parents .....	143
11.	Corporal Punishment.....	144
12.	DCS or Court May Determine Which School the Child Will Attend .....	144
13.	Civil Commitment of Mentally Ill Child.....	144
14.	Fees and Costs.....	145
15.	Reimbursement for Expenses.....	145
E.	FINDINGS AND CONCLUSIONS .....	149
1.	May Incorporate Findings and Conclusions from Other Sources .....	149
2.	Findings of Magistrate/Referee Must Be Specified For Judge’s Review .....	149
3.	Determination of Legal Settlement .....	150
4.	Best Interest Standard.....	150
5.	Specific Findings Required If Child Removed From Home or Made a Ward .....	150
6.	Specific Findings If Child Placed with Felon or Perpetrator.....	151
7.	Specific Findings for Emancipated Child .....	151
F.	DISTRIBUTION OF DISPOSITIONAL DECREE.....	151
1.	Distribution to Each Person Who Receives Placement or Wardship .....	151
2.	Dispositional Decree with a No Contact Order.....	151
<b>VI.</b>	<b>DOUBLE JEOPARDY .....</b>	<b>152</b>

# CHAPTER ELEVEN

## DISPOSITIONAL HEARING

---

### **I. PREDISPOSITIONAL REPORT**

#### **A. WHO MAY PREPARE PREDISPOSITIONAL REPORT**

Pursuant to Ind. Code § 31-34-18-1(a), upon finding that a child is a child in need of services, the juvenile court shall order the department or a caseworker to prepare a pre-dispositional report that contains a: (1) Statement of the needs of the child for care, treatment, rehabilitation, or placement; and (2) Recommendation for the care, treatment, rehabilitation, or placement of the child.

##### **1. Alternative Pre-dispositional Report**

Pursuant to Ind. Code § 31-34-18-1(b), any of the following may prepare an alternative report for consideration by the court: (1) The child. (2) The child's: (A) parent; (B) guardian; (C) guardian ad litem; (D) court appointed special advocate; or (E) custodian.

#### **B. WHO MAY BE CONSULTED**

The person preparing the report under Ind. Code § 31-34-18-1: (1) may; or (2) if directed by the court, shall; confer with the individuals who may have expertise in professional areas related to the child's needs in the areas of appropriate care, treatment, rehabilitation, or placement for a child in need of services. Ind. Code § 31-34-18-1.1(a).

##### **1. Child, Parent, Guardian, or Custodian May Have Examination**

Pursuant to Ind. Code § 31-34-18-5, the juvenile court may do the following: (1) Authorize any examination of the child under Ind. Code § 31-32-12 [mental or physical examination]. (2) Make provision for similar examination of the parent, guardian, or custodian if the person gives consent.

##### **2. Representatives Who May be Present at a Conference**

Pursuant to Ind. Code § 31-34-18-1.1(b), a conference held under Ind. Code § 31-34-18-1.1, may include representatives of the following: (1) The child's school. (2) The probation department. (3) The department. (4) A community mental health center located in the child's county of residence. (5) A community intellectual disability and other developmental disabilities center located in the child's county of residence. (6) Other persons as the court may direct.

##### **3. Mandatory Attendance at Conference**

If a child in need of services is known to be eligible for special education services or placement under Ind. Code § 20-35 [Special Education Services] and 511 IAC § 7, the conference described in Ind. Code § 31-34-18-1.1 must include a representative from the child's school. Ind. Code § 31-34-18-1.2.

##### **4. Conference Participants Must Assist Report Preparer**

The individuals participating in a meeting described in Ind. Code § 31-34-18-1.1 shall assist the person preparing the report in recommending the care, treatment, rehabilitation, or placement of the child. Ind. Code § 31-34-18-1.3(a).

**a. Conference Participants Must Provide Information about Resources and Programs**

The individuals shall inform the person preparing the report of resources and programs that are available for the child. Ind. Code § 31-34-18-1.3(b).

**C. CONTENTS OF PREDISPOSITIONAL REPORT**

Pursuant to Ind. Code § 31-34-18-6.1(a), the predispositional report prepared by the department or caseworker must include the following information:

- (1) A description of all dispositional options considered in preparing the report.
- (2) An evaluation of each of the options considered in relation to the plan of care, treatment, rehabilitation, or placement recommended under the guidelines in Ind. Code § 31-34-18-4.
- (3) A description of the due diligence efforts that the department has made to identify all adult relatives of the child.
- (4) The name, occupation and position, and any relationship to the child of each person with whom the preparer of the report conferred as provided in Ind. Code § 31-34-18-1.1.
- (5) The report and recommendations of the dual status assessment team if the child is a dual status child under Ind. Code § 31-41.

**1. Recommendation on Care, Treatment, Rehabilitation, or Placement**

Pursuant to Ind. Code § 31-34-18-4, if consistent with the safety and best interest of the child and the community, the person preparing the report shall recommend care, treatment, rehabilitation, or placement that:

- (1) Is: (A) in the least restrictive (most family like) and most appropriate setting available; and (B) close to the parent's home, consistent with the best interest and special needs of the child;
- (2) Least interferes with family autonomy;
- (3) Is least disruptive to family life;
- (4) Imposes the least restraint of freedom on the child and the child's parent, guardian, or custodian; and
- (5) Provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

**2. Extent of Participation of Parent, Guardian, or Custodian**

In addition to providing the court with a recommendation for the care, treatment, or rehabilitation of the child, the person preparing the report shall consider the necessity, nature, and extent of the participation by a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for the child. Ind. Code § 31-34-18-2(a).

**3. Relative Out-of-Home Placements Must Be Considered Before Other Out of Home Placements**

If the department or caseworker believes that an out-of-home placement would be appropriate for a child in need of services, the department or caseworker shall exercise due diligence to identify all adult relatives of the child and adult siblings, and consider whether the child should be placed with the child's suitable and willing blood or adoptive relative caregiver, including a grandparent, an aunt, an uncle, or an adult sibling, before considering other out-of-home placements for the child. Ind. Code § 31-34-18-2(b).

#### **4. Financial Report on Parent or Estate of Child**

The department or caseworker shall also prepare a financial report on the parent or the estate of the child to assist the juvenile court in determining the person's financial responsibility for services provided for the child or the person. Ind. Code § 31-34-18-3.

#### **5. Criminal History Check, if Out-of-Home Placement Being Considered**

Pursuant to Ind. Code § 31-34-18-6.1(b), if the department or caseworker is considering an out-of-home placement, including placement with a blood or an adoptive relative caretaker, the department or caseworker shall conduct a criminal history check (as defined in Ind. Code § 31-9-2-22.5) for each person who is currently residing in the location designated as the out-of-home placement. The results of the criminal history check must be included in the pre-dispositional report.

##### **a. When Criminal History Check is not Required**

Pursuant to Ind. Code § 31-34-18-6.1(c), the department or caseworker is not required to conduct a criminal history check under this section if: (1) The department or caseworker is considering only an out-of-home placement to an entity or a facility that: (A) is not a residence (as defined in Ind. Code § 3-5-2-42.5); or (B) is licensed by the state; or (2) Placement under this section is undetermined at the time the pre-dispositional report is prepared.

### **D. DISTRIBUTION OF PREDISPOSITIONAL REPORT INFORMATION**

#### **1. Who Receives the Report**

Pursuant to Ind. Code § 31-34-18-6(b), the court shall provide a copy of the report to: (1) Each attorney, guardian ad litem, or court appointed special advocate representing the child; and (2) Each attorney representing the child's parent, guardian, or custodian.

#### **2. Discretionary Distribution of Factual Summary of Report**

The court may provide a factual summary of the report to: (1) the child; or (2) the child's parent, guardian, or custodian. Ind. Code § 31-34-18-6(c).

#### **3. Time frame for Pre-dispositional Report Distribution**

Pre-dispositional reports shall be made available at least forty-eight (48) hours before the dispositional hearing, unless the juvenile court determines on the record that the reports contain information that should not be released to the child or the child's parent, guardian, or custodian. Ind. Code § 31-34-18-6(a).

## **II. PETITION FOR PARENTAL PARTICIPATION**

### **A. WHO MAY FILE PETITION FOR PARENTAL PARTICIPATION**

Pursuant to Ind. Code § 31-34-16-1, any of the following may sign and file a petition for the juvenile court to require the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for a child: (1) The attorney for the department. (2) The guardian ad litem or court appointed special advocate.

DCS had statutory discretion to enter in parental participation plan to assist parent in regaining custody of child; DCS does not have to petition court for approval before formulating plan; termination of parental rights may occur independently of a parental participation plan in some cases. D.D. v. Allen County Office of Family & Children (In re J.C.), 646 N.E.2d 693, 695 (Ind. Ct. App. 1995).

### **B. CONTENT OF PETITION FOR PARENTAL PARTICIPATION**

### **1. Caption**

A petition seeking participation of a parent, guardian, or custodian must be entitled “In the Matter of the Participation of \_\_\_\_\_ the Parent, Guardian, or Custodian of \_\_\_\_\_”. Ind. Code § 31-34-16-3.

### **2. Allegations**

Pursuant to Ind. Code § 31-34-16-3, the petition must allege the following:

- (1) That the respondent is the child’s parent, guardian, or custodian.
- (2) That the child has been adjudicated a child in need of services.
- (3) That the parent, guardian, or custodian should: (A) Obtain assistance in fulfilling obligations as a parent, guardian, or custodian; (B) Provide specified care, treatment, or supervision for the child; (C) Work with a person providing care, treatment, or rehabilitation for the child; (D) Refrain from direct or indirect contact with the child.

### **3. Verification**

A petition filed under Ind. Code § 31-34-16-1 must be verified. Ind. Code § 31-34-16-2.

## **C. HEARING**

The court may hold a hearing on a petition concurrently with a dispositional hearing or with a hearing to modify a dispositional decree. Ind. Code § 31-34-16-4(a).

### **1. Advisement of Failure to Participate**

If the order concerns participation of a parent, the juvenile court shall advise the parent that failure to participate as required by an order issued under Ind. Code § 31-34-20-3 [order for parental participation] (or Ind. Code § 31-6-4-15.8 before its repeal) can lead to the termination of the parent-child relationship under Ind. Code § 31-35. Ind. Code § 31-34-16-4(b).

### **2. Decree Entered**

If the court finds that the allegations under Ind. Code § 31-34-16-3 [petition allegations] are true, the court shall enter a decree. Ind. Code § 31-34-16-4(c).

#### **a. Order Contents**

Pursuant to Ind. Code § 31-34-20-3, if the juvenile court determines that a parent, guardian, or custodian should participate in a program of care, treatment, or rehabilitation for the child, the court may order the parent, guardian, or custodian to do the following: (1) Obtain assistance in fulfilling the obligations as a parent, guardian, or custodian. (2) Provide specified care, treatment, or supervision for the child. (3) Work with a person providing care, treatment, or rehabilitation for the child. (4) Participate in a program operated by or through the department of correction.

A.C. v. Marion County Dep't of Child Servs., 905 N.E.2d 456, 464 (Ind. Ct. App. 2009) (CHINS finding was affirmed, but participation decree orders requiring mother to participate in drug and alcohol assessment, random drug testing, substance abuse treatment, and to establish paternity was vacated where trial court used boilerplate language and ordered services that were not shown to be necessary or relevant to the child’s removal from mother’s care. Although the juvenile court has broad discretion in determining programs and services in which a parent is required to participate, the requirements must relate to some behavior or circumstance that was revealed by the evidence).

### **III. NO CONTACT ORDER PETITION**

The court may hold a hearing on a petition [for no contact order] concurrently with a dispositional hearing. Ind. Code § 31-34-25-4(a).

#### **1. Who May File Petition For No Contact Order**

Pursuant to Ind. Code § 31-34-25-1, any of the following may sign and file a petition for the juvenile court to require a person to refrain from direct or indirect contact with a child or a member of a foster family home (as defined in Ind. Code § 31-9-2-46.9):

- (1) The attorney for the department.
- (2) The guardian ad litem or court appointed special advocate.

#### **2. Petition Requirements**

A petition filed under Ind. Code § 31-34-25-1 must be verified. Ind. Code § 31-34-25-2.

Pursuant to Ind. Code § 31-34-25-3, a petition seeking to restrain a person from contact must be entitled “In the Matter of a No Contact Order for \_\_\_\_\_”. The petition must allege the following:

- (1) That the respondent is likely to have direct or indirect contact with the child in the absence of an order under this chapter.
- (2) That the child has been adjudicated a child in need of services.
- (3) That the best interests of the child will be served if the person refrains from direct or indirect contact with the child.

#### **3. Findings**

If the court finds that the allegations under Ind. Code § 31-34-25-3 are true, the court shall enter a decree. Ind. Code § 31-34-25-4(b).

#### **4. Protective Order Depository**

If a court enters a decree that requires a person to refrain from direct or indirect contact with a child, the clerk of court shall comply with Ind. Code § 5-2-9. Ind. Code § 31-34-25-5.

### **IV. DISPOSITIONAL HEARING**

#### **A. TIME FRAME**

The juvenile court shall complete a dispositional hearing not more than thirty (30) days after the date the court finds that a child is a child in need of services. Ind. Code § 31-34-19-1.

Trial court does not lose jurisdiction over CHINS proceeding due to its failure to conduct fact-finding and dispositional hearings within the statutory time limits for such hearings, as neither statute specified any adverse consequences for failure to comply with the time limit; dismissal of CHINS cases due to failure to conduct a hearing within a designated time frame would thwart the legislative purpose of the CHINS statutes, which was to assist parents in fulfilling their parental obligations. Parmeter v. Cass County Dep’t of Child Servs., 878 N.E.2d 444, 448 (Ind. Ct. App. 2007).

Petition must be authorized to adjudicate question whether child is CHINS before court holds dispositional or fact-finding hearings which could potentially result in decree to terminate or alter parental rights to custody of child. Wardship of Nahrwold v. Dept. of Public Welfare of Allen County, 427 N.E.2d 474, 479 (Ind. Ct. App. 1981).

### **1. If Dispositional Hearing Not Timely Held, Case Dismissed**

If the dispositional hearing is not completed in the time set forth in Ind. Code § 31-34-19-1(a), upon a filing of a motion with the court, the court shall dismiss the case without prejudice. Ind. Code § 31-34-19-1(b).

## **B. ATTENDANCE**

### **1. Notice of Dispositional Hearing**

For specifics on notice requirements, see Ch. 4 – Constitutional and Statutory Rights, Right to Due Process.

Pursuant to Ind. Code § 31-34-19-1.3(a), the department shall provide notice of the date, time, place, and purpose of the dispositional hearing under Ind. Code § 31-34 to each: (1) Party or person for whom a summons is required to be issued under Ind. Code § 31-34-10-2; and (2) Foster parent or other caretaker with whom the child is placed for temporary care; at the time the dispositional hearing is scheduled.

Van Walters v. Board of Children's Guardian of Marion County, 32 N.E. 568, 569 (Ind. 1892) (The interests and rights of the parents were guarded by the requirement that their children should not be taken from them without a hearing upon due notice.).

### **2. Preparer of the Pre-dispositional Report Must Attend, If Possible**

Pursuant to Ind. Code § 31-34-19-1.1, at a dispositional hearing under Ind. Code § 31-34, the person that prepared the pre-dispositional report:

- (1) Must be present, if possible; and
- (2) If present, shall provide testimony when requested to explain how the individuals participating in the conference described in Ind. Code § 31-34-18: (A) Examined the available options; and (B) Recommended the options that most closely coincide with the guidelines provided in Ind. Code § 31-34-18-4.

## **C. DISPOSITIONAL HEARING PROCEDURES**

### **1. Issues for Consideration**

Pursuant to Ind. Code § 31-34-19-1, the juvenile court shall consider the following:

- (1) Alternatives for the care, treatment, rehabilitation, or placement of the child.
- (2) The necessity, nature, and extent of the participation by a parent, guardian, or a custodian in the program of care, treatment, or rehabilitation for the child.
- (3) The financial responsibility of the parent or guardian of the estate for services provided for the parent or guardian of the child.
- (4) The recommendations and report of a dual status assessment team if the child is a dual status child.

Judge should analyze and investigate each case and should consider individual's home, circumstances, environment, and background, as well as weigh psychological needs and problems of the child. Anton v. State, 224 N.E.2d 516, 517 (Ind. Ct. App. 1967).

Indiana Code section § 31-34-19-6(1)(A) requires the juvenile court to enter a dispositional decree that is "the least restrictive (most family like) . . ." If an out-of-home placement is required, the court shall consider whether the child should be placed with a blood relative before considering other out-of-home placements. See Ind. Code § 31-34-19-7. N.L. v. Ind. Dep't of Child Servs. (In re N.E.), 919 N.E.2d 102, 108 (Ind. 2010). C.B. v. DCS, 141 N.E.3d



75 (Ind. Ct. App. 2020), judicial system is obliged to explore least restrictive means to assure well-being of children.

## **2. Right to be Heard**

The court shall provide a person required to be notified under Ind. Code § 31-34-19-1.3(a) [party, child, child's parent guardian, custodian, guardian ad litem, court appointed special advocate, any person necessary for the proceedings, foster parent, and child's caretaker] an opportunity to be heard. Ind. Code § 31-34-19-1.3(b)(1).

In re A.B., 332 N.E.2d, 226 (Ind. Ct. App. 1975) (It was an abuse of discretion to deny the natural father the right to be heard where paternity was not disputed, even though father had not established paternity.).

Alleged fathers are now included in the statutory definition of "parent" and must be provided notice and a right to be heard.

"Parent", for purposes of the juvenile law, means a biological or an adoptive parent. Ind. Code § 31-9-2-88(a). Unless otherwise specified, the term includes both parents, regardless of their marital status. Id. "Parent", for purposes of Ind. Code § 31-34-1, Ind. Code § 31-34-8, Ind. Code § 31-34-16, Ind. Code § 31-34-19, Ind. Code § 31-34-20 and Ind. Code § 31-35-2, includes an alleged father. Ind. Code § 31-9-2-88(b).

## **3. Evidence**

### **a. Recommendations for Needs of Child**

The court shall allow a person described in Ind. Code § 31-34-19-1.3(a) [party, child, child's parent guardian, custodian, guardian ad litem, court appointed special advocate, any person necessary for the proceedings, foster parent, and child's caretaker] to make recommendations to the court at the dispositional hearing. Ind. Code § 31-34-19-1.3(b)(2).

### **b. Pre-dispositional Report**

Any pre-dispositional report may be admitted into evidence to the extent that the report contains evidence of probative value even if the report would otherwise be excluded. Ind. Code § 31-34-19-2(a).

### **c. Factual Summary May be Admitted Instead of Pre-dispositional Report**

If a report contains information that should not be released to the child or the child's parent, guardian, or custodian, a factual summary of the report may be admitted. Ind. Code § 31-34-19-2(b).

### **d. Parties May Convert Report**

The (1) child; (2) child's parent, guardian, or custodian; (3) person representing the interests of the state; and (4) foster parent or other caretaker who is entitled to notice of the dispositional hearing under Ind. Code § 31-34-19-1.3; shall be given a fair opportunity to controvert any part of the report admitted into evidence. Ind. Code § 31-34-19-2(c).

E.M.W. v. State, 762 N.E.2d 1283 (Ind. Ct. App. 2002) (Juvenile failed to preserve whether failure to provide pre-dispositional report prior to disposition hearing and failing to strictly comply with statutory requirement for completing the report deprived her of an opportunity to counter placement recommendations contained in the report; juvenile failed to raise alleged deficiencies during disposition hearing and failed to request continuance to prepare argument rebutting the recommendations.).

**e. DCS Caseworker Has Judicial Immunity for Recommendation**

H.B. v. State of Indiana-Elkhart Div. of Family & Children, 713 N.E.2d 300, 302-03 (Ind. Ct. App. 1999) (Caseworkers were acting to assist juvenile court in decision regarding care and custody of child and therefore enjoyed common law judicial immunity from children's civil suit claiming caseworkers were negligent in ordering reunification and in failing to report molestation allegation to law enforcement.).

**4. Advisement of Modification Procedures**

The juvenile court shall advise the child and the child's parent, guardian, or custodian of the procedures under Ind. Code § 31-34-23. Ind. Code § 31-34-19-9.

**V. DISPOSITIONAL DECREE**

The Juvenile Court is the final arbiter of the appropriate treatment for a child adjudicated CHINS. J.W. v. Hendricks County Office of Family and Children, 697 N.E.2d 480, 484 (Ind. Ct. App. 1998).

**A. ERROR IF NO DISPOSITIONAL DECREE**

T.Q. v. Ind. Dep't of Child Servs. (In re N.Q.), 996 N.E.2d 385, 395-96 (Ind. Ct. App. 2013) (TPR was reversed because the parents were without the direction of a dispositional decree prior to DCS filing the initial petitions for termination.).

**B. FACTORS TO BE CONSIDERED**

Pursuant to Ind. Code § 31-34-19-6, if consistent with the safety of the community and the best interests of the child, the juvenile court shall enter a dispositional decree that:

- (1) Is: (A) in the least restrictive (most family like) and most appropriate setting available; and (B) close to the parent's home, consistent with the best interest and special needs of the child;
- (2) Least interferes with family autonomy;
- (3) Is least disruptive of family life;
- (4) Imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian;
- (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: (A) is incarcerated; and (B) has maintained a meaningful role in the child's life to maintain a relationship with the child.

Ind. Code section § 31-34-19-6(1)(A) requires the juvenile court to enter a dispositional decree that is "the least restrictive (most family like) . . ." If an out-of-home placement is required, the court shall consider whether the child should be placed with a blood relative before considering other out-of-home placements. N.L. v. Ind. Dep't of Child Servs. (In re N.E.), 919 N.E.2d 102, 108 (Ind. 2010).

**1. Additional Factors For Out-of-Home Placement**

In addition to the factors under Ind. Code § 31-34-19-6, if the court enters a dispositional decree regarding a child in need of services that include an out-of-home placement, the court shall: (1) order the department to continue exercising due diligence to identify all adult relatives of the child and adult siblings who may be considered as out-of-home placements for the child until the child has been in an out-of-home placement for at least twelve (12)

months; and (2) consider whether the child should be placed with the child's suitable and willing relative before considering other out-of-home placements for the child. Ind. Code § 31-34-19-7(a).

The trial court must be convinced that placement with a person other than the natural parent represents a substantial and significant advantage to the child; the presumption will not be overcome merely because "a third party could provide the better things in life for the child." Hendrickson v. Binkley, 316 N.E.2d 376, 381 (Ind. Ct. App. 1974). A generalized finding that a placement other than with the natural parent is in a child's best interests will not be adequate to support such determination, and detailed and specific findings are required. In re Marriage of Huber, 723 N.E.2d 973, 976 (Ind. Ct. App. 2000). There is a presumption that a child's best interests are ordinarily served by placement in the custody of the natural parent. In re Guardianship of B.H., 770 N.E.2d 283, 287 (Ind. 2002).

**a. Types of Relatives to be Considered**

A juvenile court shall consider placing a child described in Ind. Code § 31-34-19-7(a) with a relative related by blood, marriage, or adoption before considering any other placement of the child. Ind. Code § 31-34-19-7(b).

**b. Home Evaluation and Background Check Required**

Before a child is placed with a relative or de facto custodian, a home evaluation and background checks described in Ind. Code § 31-34-4-2 are required. Ind. Code § 31-34-19-7(c).

**C. RECOMMENDATIONS TO BE CONSIDERED**

Pursuant to Ind. Code § 31-34-19-6.1(a), before entering its dispositional decree or a modification to a dispositional decree, the juvenile court shall do the following:

- (1) Consider the recommendations for the needs of the child for care, treatment, rehabilitation, or placement made by the department in the department's pre-dispositional report.
- (2) Consider the recommendations for the needs of the child for care, treatment, rehabilitation, or placement made by the parent, guardian, or custodian, guardian ad litem or court appointed special advocate, foster parent, other caretaker of the child, or other party to the proceeding.
- (3) If the juvenile court determines that the best interests of the child require consideration of other dispositional options, submit the juvenile court's own recommendations for care, treatment, rehabilitation, or placement of the child.

**1. If Initial DCS Recommendation is Accepted**

If the juvenile court accepts the recommendations in the department's pre-dispositional report, the juvenile court shall enter its dispositional decree with its findings and conclusions under Ind. Code § 31-34-19-10. Ind. Code § 31-34-19-6.1(b).

**2. If Initial DCS Recommendation is Not Accepted**

**a. Dispositional Hearing Must Be Continued for Not More Than Seven Days for Further DCS Analysis**

If during or after conclusion of the dispositional hearing or modification hearing, the juvenile court does not accept recommendations of the department as set out under Ind. Code § 31-34-19-6.1(a), in the pre-dispositional report and states that the juvenile court wants the department to consider the recommendations made under Ind. Code § 31-34-

19-6.1(a)(2) [another party] or (a)(3) [the court], the dispositional hearing or modification hearing shall be continued for not more than seven (7) business days after service of notice of the juvenile court's determination. Ind. Code § 31-34-19-6.1(c).

**b. DCS Must Consider Juvenile Court's Recommendation and Submit Supplemental Report**

The department shall consider the recommendations that the juvenile court requested the department to consider and submit to the juvenile court a supplemental pre-dispositional report stating the department's final recommendations and reasons for accepting or rejecting the recommendations that were not included in the department's original pre-dispositional report. Ind. Code § 31-34-19-6.1(c).

**c. If Court Accepts DCS Supplemental Recommendation**

If the juvenile court accepts the recommendations in the department's supplemental report, the juvenile court may adopt the recommendations as its findings and enter its dispositional decree. Ind. Code § 31-34-19-6.1(c).

**3. If Court Rejects Final/Supplemental DCS Recommendation**

**a. Court Must Enter Findings that DCS Recommendation was Unreasonable or Contrary to Welfare of Child**

Pursuant to Ind. Code § 31-34-19-6.1(d), the juvenile court shall accept each final recommendation of the department contained in a supplemental pre-dispositional report submitted under Ind. Code § 31-34-19-6.1(c), unless the juvenile court finds that a recommendation is:

- (1) Unreasonable, based on the facts and circumstances of the case; or
- (2) Contrary to the welfare and best interests of the child.

**b. Court Must State Why DCS Recommendation was Rejected**

Pursuant to Ind. Code § 31-34-19-6.1(e), if the juvenile court does not accept one (1) or more of the department's final recommendations contained in the department's supplemental pre-dispositional report, the juvenile court shall:

- (1) Enter its dispositional decree with its findings and conclusions under Ind. Code § 31-34-19-6 and Ind. Code § 31-34-19-10; and
- (2) Specifically state why the juvenile court is not accepting the final recommendations of the department.

**c. DCS May Seek Expedited Appeal**

If the juvenile court enters its findings and decree under Ind. Code § 31-34-19-6.1(d) and (e), the department may appeal the juvenile court's decree under any available procedure provided by the Indiana Rules of Trial Procedure or the Indiana Rules of Appellate Procedure to allow any disputes arising under Ind. Code § 31-34-19-6.1 to be decided in an expeditious manner. Ind. Code § 31-34-19-6.1(f).

**(1) If DCS Wins Appeal, DCS May Pay Certain Costs**

Pursuant to Ind. Code § 31-34-19-6.1(g), if the department prevails on appeal, the department shall pay the following costs and expenses incurred by or on behalf of the child before the date of the final decision:

- (1) Any programs or services implemented during the appeal initiated under Ind. Code § 31-34-19-6.1(f), other than the cost of an out-of-home placement ordered by the juvenile court.
- (2) Any out-of-home placement ordered by the juvenile court and implemented after entry of the dispositional decree or modification order, if the court has made written findings that the placement is an emergency required to protect the health and welfare of the child.

**(2) If DCS Wins Appeal, County Responsible for Placement Cost if No Emergency Existed**

If the court has not made written findings that the placement is an emergency, the department shall file a notice with the Indiana judicial center. Ind. Code § 31-34-19-6.1(g).

**4. Order Must Relate to Needs**

Juvenile court generally has broad discretion to determine programs and services in which a parent should participate in order to pursue reunification; however, “the requirements must relate to some behavior or circumstance that was revealed by the evidence.” A.C. v. Marion County Dep’t of Child Servs., 905 N.E.2d 456, 464 (Ind. Ct. App. 2009).

A.C. v. Marion County Dep’t of Child Servs., 905 N.E.2d 456, 464 (Ind. Ct. App. 2009) (The appellate court vacated portions of the participation order because it utilized boilerplate language requiring the mother to undergo services where there was no evidence in the record to support the need for those services.).

J.H. v. Ind. Dep’t of Child Servs. (In re V.H.), 967 N.E.2d 1066, 1074 (Ind. Ct. App. 2012) (Court discouraged use of boilerplate requirements, such as boilerplate safety requirements that were unnecessary where mother was ordered to permit the DCS family case manager to make unannounced visits “to ensure the safety of the child” when V.H.’s safety was not an issue; reversed and remanded with instructions to vacate the participation order.).

**D. DISPOSITION OPTIONS**

**PRACTICE POINTER:** Move to strike any requirements in a dispositional decree or participation decree if the need is not supported by evidence, especially if the court uses a boilerplate form. O.A.C. v. Marion County Dept. of Child Services, 905 N.E.2d 456 (Ind. Ct. App. 2009).

**1. Supervision of Child by DCS**

The juvenile court may order supervision of the child by the department. Ind. Code § 31-34-20-1(a)(1).

**2. Order the Child to Receive Outpatient Treatment**

Pursuant to Ind. Code § 31-34-20-1(a)(2), the juvenile court may order the child to receive outpatient treatment: (A) At a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or (B) From an individual practitioner.

A.H. v. Bartholomew County Office of Family & Children, 751 N.E.2d 690, 700 (Ind. Ct. App. 2001) (Independent evaluation was appropriate despite family’s involvement in counseling when staff psychologist and therapist both admitted that they were unaware that child had been molested multiple times by the father and that child was a ward of DCS).

### **3. Place Child in Another Home or Shelter Care Facility**

The juvenile court may remove the child from the child's home and authorize the department to place the child in another home or shelter care facility. Ind. Code § 31-34-20-1(a)(3).

Blasius v. Wilhoff, 863 N.E.2d 1223, 1229 (Ind. Ct. App. 2007) (Evidence supported award of custody of child to third party custodians, rather than the adjudicated biological father; a significant bond existed between the child and custodians, and the child's therapist testified that separating the child from the custodians would traumatize the child.).

#### **a. DCS Authorized to Control and Discipline Child**

Placement under Ind. Code § 31-34-20-1(a)(3) includes authorization to control and discipline the child. Ind. Code § 31-34-20-1(a)(3).

#### **b. Placement with Certain Individuals Prohibited**

Except as provided by Ind. Code § 31-34-20-1.5(d), the juvenile court may not enter a dispositional decree approving or ordering placement of a child in another home under Ind. Code § 31-34-20-1(a)(3) or awarding wardship to the department that will place the child in another home under Ind. Code § 31-34-20-1(a)(4) if a person who is currently residing in the home in which the child would be placed under Ind. Code § 31-34-20-1(a)(3) or -1(a)(4) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in Ind. Code § 31-27-4-13 if committed by an adult, or has a conviction for a felony listed in Ind. Code § 31-27-4-13. Ind. Code § 31-34-20-1.5(a).

#### **c. Criminal History Check Performed by DCS**

The department or caseworker who prepared the pre-dispositional report shall conduct a criminal history check (as defined in Ind. Code § 31-9-2-22.5) to determine if a person described in Ind. Code § 31-34-20-1.5(a) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in Ind. Code § 31-27-4-13 if committed by an adult, or has a conviction for a felony listed in Ind. Code § 31-27-4-13. Ind. Code § 31-34-20-1.5(b).

##### **(1) No Criminal History Check Required Under Certain Conditions**

The department or caseworker is not required to conduct a criminal history check under Ind. Code § 31-34-20-1.5 if criminal history information under Ind. Code § 31-34-4-2 or Ind. Code § 31-34-18-6.1 establishes whether a person described in Ind. Code § 31-34-20-1.5(a) has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in Ind. Code § 31-27-4-13(a) if committed by an adult, or has a conviction for a felony listed in Ind. Code § 31-27-4-13(a). Ind. Code § 31-34-20-1.5(b).

Pursuant to Ind. Code § 31-34-20-1.5(c), the department or caseworker is not required to conduct a criminal history under this section if:

- (1) The department or caseworker is considering only an out-of-home placement to an entity or a facility that: (A) is not a residence (as defined in Ind. Code § 3-5-2-42.5); or (B) is licensed by the state; or
- (2) Placement under this section is undetermined at the time the pre-dispositional report is prepared.

## **(2) Court May Order Placement if Convictions Irrelevant**

Pursuant to Ind. Code § 31-34-20-1.5(d), a juvenile court may enter a dispositional decree that approves placement of a child in another home or award wardship to the department that will place the child in a home with a person described in Ind. Code § 31-34-20-1.5(a) if:

- (1) The person described in Ind. Code § 31-34-20-1.5(a) has:
    - (A) Committed an act resulting in a substantiated report of child abuse or neglect;
    - (B) Been convicted or had a juvenile adjudication for:
      - (i) A Battery offense included in Ind. Code § 35-42-2 as a felony;
      - (ii) Criminal Confinement (Ind. Code § 35-42-3-3) as a felony;
      - (iii) Carjacking (Ind. Code § 35-42-5-2) (repealed) as a felony;
      - (iv) Arson (Ind. Code § 35-43-1-1) as a felony;
      - (v) A felony involving a weapon under Ind. Code § 35-47 or Ind. Code § 35-47.5;
      - (vi) A felony relating to controlled substances under Ind. Code § 35-48-4;
      - (vii) A felony under Ind. Code § 9-30-5; or
      - (viii) A felony that is substantially equivalent to a felony listed in this clause for which the conviction was entered in another jurisdiction; and
  - if the conviction did not occur within the last five (5) years.
  - (C) Had a juvenile adjudication for an act listed in Ind. Code § 31-27-4-13(a) that, if committed by an adult, would be a felony; and
- (2) The person's commission of the offense, delinquent act, or act of abuse or neglect described in subdivision (1) is not relevant to the person's present ability to care for a child, and placing a child in another home or awarding wardship to the department is in the best interest of the child.

However, a court may not enter a dispositional decree that approves placement of a child in another home or awards wardship to the department if the person has been convicted of a felony listed in Ind. Code § 31-27-4-13(a) that is not specifically excluded under Ind. Code § 31-34-20-1.5(d)(1)(B).

### **d. Court Considerations**

Pursuant to Ind. Code § 31-34-20-1.5(e), in considering placement under Ind. Code § 31-34-20-1.5(d), the court shall consider the following:

- (1) The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect.
- (2) The severity of the offense, delinquent act, or abuse or neglect.
- (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

**e. Placement Outside Indiana**

Pursuant to Ind. Code § 31-34-20-1(b), a juvenile court may not place a child in a home or facility that is located outside Indiana unless:

- (1) The placement is recommended or approved by the director of the department or the director's designee; or
- (2) The juvenile court makes written findings based on clear and convincing evidence that:
  - (A) The out-of-state placement is appropriate because there is not a comparable facility with adequate services located in Indiana;
  - (B) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship; or
  - (C) The location of the home or facility is within a distance not greater than fifty (50) miles from the county of residence of the child.

Natural parents are entitled to the custody of their minor children, except when they are unsuitable persons to be entrusted with their care, control, and education. In re Guardianship of B.H., 770 N.E.2d 283, 285 (Ind. 2002).

M.S. v. Ind. Dep't of Child Servs., 999 N.E.2d 1036, 1040-41 (Ind. Ct. App. 2013) (Child placed with out-of-state father, who had nothing to do with CHINS allegations; DCS dismissed case following placement stating there was no good cause why the trial court should continue jurisdiction in the matter; placement with a natural parent is a unique situation and is not comparable to placement in a facility, related to out-of-state facility placements at Ind. Code 31-34-20-1; father's home passed inspections; he was employed, and the child wished to continue to live with him).

**f. Placement in Home Where Same Language Spoken Not Required**

E.R. v. Marion County Office of Family & Children, 729 N.E.2d 1052, 1060 (Ind. Ct. App. 2000) (Failure to place Mexican children in Hispanic or Spanish-speaking foster home was not contrary to best interests of children where county and juvenile court had made efforts to recruit Hispanic or Spanish-speaking foster parents with little success. Children were placed in foster home well-suited to their needs and provided with Spanish-speaking caseworkers and counselors.).

**4. Award Wardship of Child to DCS**

The juvenile court may award wardship of the child to the department for supervision, care, and placement. Ind. Code § 31-34-20-1(a)(4).

Court may make child "ward" of court without itself becoming child's guardian. Matter of S.T., 621 N.E.2d 371, 374-75 (Ind. 1993). Court may place CHINS under wardship of government entity only if entity is appropriate, which is determined by examining entity's resources, purpose, power, and function, as set out by relevant statutes. In re E.I., 653 N.E.2d 503, 510-11 (Ind. Ct. App. 1995).

In re Fickle, 192 N.E. 104, 105-06 (Ind. Ct. App. 1934) (Finding that child was neglected and that it was socially and morally unsafe for the child to reside in home with stepfather and that child should reside with grandmother was held sufficient to support judgment that child was made ward of county board of children's guardians.).



**a. Certain Households Prohibited**

See Ind. Code § 31-34-20-1.5 noted in § V(C)(3) above.

**5. Partially or Completely Emancipate Child**

The juvenile court may partially or completely emancipate the child under Ind. Code § 31-34-20-6. Ind. Code § 31-34-20-1(a)(5).

**a. Conditions Necessary for Emancipation**

Pursuant to Ind. Code § 31-34-20-6(a), the juvenile court may emancipate a child under Ind. Code § 31-34-20-1(5) if the court finds that the child:

- (1) Wishes to be free from parental control and protection and no longer needs that control and protection;
- (2) Has sufficient money for the child's own support;
- (3) Understands the consequences of being free from parental control and protection; and
- (4) Has an acceptable plan for independent living.

**b. Child Still Subject to School Attendance Laws**

An emancipated child remains subject to Ind. Code § 20-33-2 concerning compulsory school attendance. Ind. Code § 31-34-20-6(c)(1).

**c. Child Still Subject to Court Jurisdiction**

An emancipated child remains subject to the continuing jurisdiction of the court. Ind. Code § 31-34-20-6(c)(2).

**6. Order Parent, Guardian, or Custodian to Complete Services**

The juvenile court may order the child's parent, guardian, or custodian to complete services recommended by the department and approved by the court under Ind. Code § 31-34-16, Ind. Code § 31-34-18, and Ind. Code § 31-34-19. Ind. Code § 31-34-20-1(a)(6).

Pursuant to Ind. Code § 31-34-20-3, if the juvenile court determines that a parent, guardian, or custodian should participate in a program of care, treatment, or rehabilitation for the child, the court may order the parent, guardian, or custodian to do the following:

- (1) Obtain assistance in fulfilling the obligations as a parent, guardian, or custodian.
- (2) Provide specified care, treatment, or supervision for the child.
- (3) Work with a person providing care, treatment, or rehabilitation for the child.
- (4) Participate in a program operated by or through the department of correction.

**PRACTICE POINTER:** The specified treatment should be appropriate and specific to the case, rather than a standard order for all parents. For instance, if the parents have been in long-term mental health treatment, it may not be necessary for the parent to undergo a mental health evaluation. O.A.C. v. Marion County Dept. of Child Services, 905 N.E.2d 456 (Ind. Ct. App. 2009).

**PRACTICE POINTER:** If the child is removed from the home, ensure that the treatment programs ordered can be completed in a timeframe before DCS must file for termination of parental rights (child removed 15 of last 22 months.) In some counties, the parents are only allowed to do one service at a time, which makes it difficult to complete all services before the filing deadline.

**PRACTICE POINTER:** If the parent is ordered to do many services, some counties require that all services be performed simultaneously, which can be overwhelming for a client to juggle the demands of their normal life, visitation, and services. Consider asking the court to prioritize the services, with the most critical being ordered first.

## **7. Order Parent to Take Medication**

The right of competent adults to make informed decisions about their medical care and that of their children is not without limitation; a parent may not refuse life-saving treatment of their child, and a court may compel an adult to take medicine in certain instances. If the parent objects to order to take medication and presents evidence of side effects and religious objections, additional evidence is necessary to overcome the parent's constitutionally protected liberty interest in remaining free of unwarranted intrusions into the mind and body. In re A.M.-K., 983 N.E.2d 210, 216-17 (Ind. Ct. App. 2013). See also In re Mental Commitment of M.P., 510 N.E.2d 645, 646 (Ind. 1987); and Schmidt v. Mut. Hosp. Servs., Inc., 832 N.E.2d 977, 981-82 (Ind. 2005). A competent adult is entitled to make informed decisions about their medical care and that of their children. In re Lawrance, 579 N.E.2d 32, 38-39 (Ind. 1991).

In re Mental Commitment of M.P., 510 N.E.2d 645, 647-48 (Ind. 1987) (sets out requirements for a forced medication order in an involuntary commitment case).

## **8. Order a Party to Refrain from Direct or Indirect Contact with Child**

See also No Contact Order in section III above.

The juvenile court may order a person who is a party to refrain from direct or indirect contact with the child. Ind. Code § 31-34-20-1(a)(7).

J.J. v. Tippecanoe County Div. of Family & Children (In re J.J.), 711 N.E.2d 872, 875 (Ind. Ct. App. 1999) (Requirement that child's father not have contact with child until father submitted to psychological evaluation and participated in anger management training was the least restrictive intervention that was in child's best interest; father's delay in getting evaluation and failure to participate in anger management training, and not existence of court's order, kept him from establishing relationship with child.).

## **9. Order Perpetrator of CHINS Removed From Home**

The juvenile court may order a perpetrator of child abuse or neglect to refrain from returning to the child's residence. Ind. Code § 31-34-20-1(a)(8).

A.H. v. Bartholomew County Office of Family & Children (In re A.H.), 751 N.E.2d 690, 700 (Ind. Ct. App. 2001) (Father was properly removed from home given the CHINS finding that father had sexually abused child.).

## **10. Visitation with Parents**

Ind. Code § 31-17-4-2 provides that a court shall not restrict parenting time "unless the court

finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development;" J.W. v. Ind. Dep't of Child Servs. (In re E.W.), 26 N.E.3d 1006 (Ind. Ct. App. 2015).

"Best interests" standard is constitutionally permissible when applied to determine visitation rights of parent whose child has been found to be dependent and neglected. In re Joseph, 416 N.E.2d 857, 859-60 (Ind. Ct. App. 1981).

In re E.W., 26 N.E.3d 1006 (Ind. Ct. App. 2015) (evidence was sufficient to support juvenile court's order terminating Mother's supervised visitation and phone contact with daughter where, during visits, Mother's behavior often included inappropriate sexual comments and behaviors, especially where E.W. already had a sexual history at the age of 10, which was one reason she was adjudicated a CHINS.).

McCarthy v. McCarthy, 401 N.E.2d 759, 763 (Ind. Ct. App. 1980) (After making CHINS determination, where court changed custody from mother to father, visitation order that provided mother with a two-week visit for the first two years and then a one-month visit each summer in subsequent years was not an abuse of discretion.).

**PRACTICE POINTER:** Ongoing visitation can be critical for reunification and to rebut evidence of the child's attachment to a different caregiver at a subsequent TPR hearing. If the parent has transportation issues due to poverty, this should be addressed with DCS and the court for accommodations. If the parent is mentally handicapped or mentally ill and is incapable of maintaining a calendar of events independently, this should be addressed with DCS and the court for accommodations.

## **11. Corporal Punishment**

Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372-73 (Ind. Ct. App. 2007) (Blanket policy prohibiting corporal punishment for parents ordered to participate in family counseling was not permissible. Condition of father's visitation that father repudiate all forms of corporal punishment was not illegal due to father's history of unreasonable corporal punishment, his refusal to work with DCS, father's inability to distinguish between reasonable and unreasonable corporal punishment, and his unwillingness to acknowledge that beating of one child was unreasonable.).

## **12. DCS or Court May Determine Which School the Child Will Attend**

The department or a juvenile court may place a child in a public school, regardless of whether the public school has a waiting list for admissions, if the department or juvenile court determines that the school's program meets the child's educational needs and the school agrees to the placement. A placement under this subsection does not affect the legal settlement of the child. Ind. Code § 31-34-20-5(e).

## **13. Civil Commitment of Mentally Ill Child**

Pursuant to Ind. Code § 31-34-19-3, if it appears to the juvenile court that a child has a mental illness, the court may: (1) Refer the matter to the court having probate jurisdiction for civil commitment proceedings under Ind. Code § 12-26; or (2) Initiate a civil commitment proceeding under Ind. Code § 12-26.

### **a. Child Discharged or Proceedings Continued**

Pursuant to Ind. Code § 31-34-19-4, if:

- (1) A child is referred to a probate court;
- (2) The juvenile court initiates a commitment proceeding; or

(3) The court transfers a commitment proceeding under Ind. Code § 12-26-1-4; the juvenile court shall discharge the child or continue the court's proceedings under the juvenile law.

**b. No Release of DCS from Its Obligations**

If the child is under the custody or supervision of a local office or the department, the juvenile court may not release the local office from the obligations of the local office or the department to the child pending the outcome of the proceeding under Ind. Code § 12-26. Ind. Code § 31-34-19-4.

If the court authorizes a child who is under the custody or supervision of a local office or the department to be placed in a state institution (as defined in Ind. Code § 12-7-2-184) for voluntary treatment in accordance with Ind. Code § 12-26-3, the court may not release the department from obligations of the local office or the department to the child until a parent, guardian, or other responsible person approved by the court assumes the obligations. Ind. Code § 31-34-19-5.

**14. Fees and Costs**

The fees in juvenile court proceedings are set under Ind. Code § 33-37-4-3. Ind. Code § 31-31-2-1.

**a. Court Costs**

The clerk shall collect a juvenile costs fee of one hundred twenty dollars (\$120) for each action filed under Ind. Code § 31-34 (CHINS). Ind. Code § 33-37-4-3(a)(1).

**b. Other Costs May Be Required**

In addition to the juvenile costs fee, the clerk shall collect fees specified in this section if they are required under Ind. Code § 33-37-5. Ind. Code § 33-37-4-3(b).

**c. Other Costs Not Listed Are Prohibited**

Except as provided by Ind. Code § 31-31-2-1 and -2, no other costs may be charged to any person in any proceeding in the juvenile court. Ind. Code § 31-31-2-3.

**15. Reimbursement for Expenses**

**a. Obligation for Payment of Services Provided by DCS**

**(1) Parent or Guardian Responsible for Payments**

Pursuant to Ind. Code § 31-40-1-3(a), a parent or guardian of the estate of: (1) A child in need of services; or (2) A participant in a program of informal adjustment approved by a juvenile court under Ind. Code § 31-34-8; is financially responsible as provided in this chapter for any services provided by or through the department unless the court makes a specific finding that the parent or guardian is unable to pay or that justice would not be served by ordering payment from the parent or guardian. Ind. Code § 31-40-1-3(c)(4).

**(2) Court Shall Order Payment Unless Parent Unable to Pay or Justice not Served by Ordering Payment**

At (1) a detention hearing; (2) a hearing that is held after the payment of costs by the department under Ind. Code § 31-40-1-2; (3) the dispositional hearing; or (4) any other hearing to consider modification of a dispositional decree; the juvenile court shall order the child's parents or guardian of the child's estate to pay for, or

reimburse the department for the costs of services provided to the child or the parent or guardian unless the court makes a specific finding that the parent or guardian is unable to pay or that justice would not be served by ordering payment from the parent or guardian. Ind. Code § 31-40-1-3(c).

**(3) Court Shall Use a Child Support Worksheet**

Each person described in Ind. Code § 31-40-1-3(a) shall, before a hearing under Ind. Code § 31-40-1-3(c), concerning payment or reimbursement of costs, furnish the court and the department with an accurately completed and current child support obligation worksheet on the same form that is prescribed by the Indiana Supreme Court for child support orders. Ind. Code § 31-40-1-3(b).

**(4) Payments are Remitted to DCS**

Pursuant to Ind. Code § 31-40-1-3(d), any parental reimbursement obligation under this section shall be paid directly to the department and not to the local court clerk so long as the CHINS case is open. The department shall keep track of all payments made by each parent and shall provide a receipt of each payment received. At the end of the CHINS action, the department shall provide an accounting of payments received, and the court may consider additional evidence of payment activity and determine the amount of parental reimbursement obligation that remains unpaid. The court shall reduce the unpaid balance to a final judgment that may be enforced in any court having jurisdiction over such matters.

**b. Obligations for Payment of Services Provided by the County**

**(1) Court May Hold Hearing About Payments to County**

If a county is responsible for the payment of any costs or expenses of services for or the placement of a child in need of services, the juvenile court ordering the services that the county is responsible for may hold a hearing. Ind. Code § 31-40-1-3.8(a).

**(2) Court May Order Payment**

At (1) a detention hearing; (2) a hearing that is held after the payment of costs by the county; (3) the dispositional hearing; or (4) any other hearing to consider modification of a dispositional decree; the juvenile court shall order the child's parents to pay for, or reimburse the county for, the costs of services provided to the child or the parent unless the court makes a specific finding that the parent or guardian is unable to pay or that justice would not be served by ordering payment from the parent. Ind. Code § 31-40-1-3.8(c).

**(3) Court Shall Use Child Support Worksheet**

The juvenile court shall use the Child Support Rules and Guidelines of the Indiana Supreme Court and the child support obligation worksheet developed by the Indiana Supreme Court to determine what each parent should pay for the services provided for the child under this section. If the parent participates with the treatment plans developed by the department or court, the parent or parents are entitled to receive a parenting time credit under the Child Support Rules and Guidelines. Ind. Code § 31-40-1-3.8(a).

Each person described in Ind. Code § 31-40-1-3.8(a) shall, before a hearing under Ind. Code § 31-40-1-3.8(c), concerning payment or reimbursement of costs, furnish the court with an accurately completed and current child support obligation worksheet on the same form that is prescribed by the Indiana Supreme Court for child support orders. Ind. Code § 31-40-1-3.8(b).

**(4) Payments are Remitted to Clerk of Courts**

Pursuant to Ind. Code § 31-40-1-3.8(d), any parental reimbursement obligation under this section shall be paid directly to the clerk of court so long as the CHINS case is open. The clerk of the court shall keep track of all payments made by each parent and shall provide a receipt of each payment received. At the end of the CHINS action, the clerk of court shall provide an accounting of payments received, and the court may consider additional evidence of payment activity and determine the amount of parental reimbursement obligation that remains unpaid. The court shall reduce the unpaid balance to a final judgment that may be enforced in any court having jurisdiction over such matters.

**(5) When Services End, the Support Obligations End**

Upon release from services ordered under this section, the parental reimbursement obligation payment ends. If there was a child support order for the child adjudicated delinquent, it reverts to the most recent child support order in effect before the child's adjudication. Ind. Code § 31-40-1-3.8(g).

**c. If Child Placed Out-of-Home Long-Term, New Support Order Shall be Established**

If the child is placed with a person other than a custodial parent, the juvenile court shall establish a new support order for the benefit of the child. Ind. Code § 31-40-1-3.8(g).

**(1) Costs of Out-of-Home Placement - Effect on support orders**

This section applies whenever the court approves removal of a child from the home of a child's parent or guardian and the department places the child in a child caring institution, a foster family home, a group home, or the home of a relative of the child that is not a foster family home. Ind. Code § 31-40-1-5(a).

**(2) Parent or Guardian Ordered to Reimburse DCS**

The court may at or after a hearing described in Ind. Code § 31-40-1-3 order the child's parent or the guardian of the child's estate to reimburse the department for all or any portion of the expenses for the services provided to or for the benefit of the child that are paid by the department during the placement of the child out of the home of the parent or guardian, in addition to amounts reimbursed through payments in accordance with a support order assigned or entered as provided in this section, subject to applicable federal law. Ind. Code § 31-40-1-5(g).

**(3) Existing Child Support Order May be Redirected**

Pursuant to Ind. Code § 31-40-1-5(b), if an existing support order is in effect, the juvenile court shall order the support payments to be assigned to the department for the duration of the placement out of the home of the child's parent or guardian. The juvenile court shall notify the court that: (1) Entered the existing support order; or (2) Had jurisdiction, immediately before the placement, to modify or enforce the existing support order; of the assignment and assumption of jurisdiction by the juvenile court under this section.

**(4) Court Shall Order Support, if No Order Exists**

Pursuant to Ind. Code § 31-40-1-5(c), if an existing support order is not in effect, the court shall do the following:

- (1) Include in the order for out-of-home placement of the child an assignment to the department or confirmation of an assignment that occurs or is required

under applicable federal law, of any rights to support, including support for the cost of any medical care payable by the state under Ind. Code 12-15, from any parent or guardian who has a legal obligation to support the child.

- (2) Order support paid to the department by each of the child's parents or the guardians of the child's estate to be based on child support guidelines adopted by the Indiana Supreme Court and for the duration of the placement of the child out of the home of the child's parent or guardian, unless:
  - (A) The court finds that entry of an order based on the child support guidelines would be unjust to inappropriate considering the best interests of the child and other necessary obligations of the child's family; or
  - (B) The department does not make foster care maintenance payments to the custodian of the child. For purposes of this clause, "foster care maintenance payments" means any payments for the cost of (in whole or in part) providing food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable amounts for travel to the child's home for visitation. In the case of a child caring institution, the term also includes the reasonable costs of administration and operation of the institution as are necessary to provide the items described in this clause.
- (3) If the court: (A) does not enter a support order; or (B) enters an order that is not based on the child support guidelines; the court shall make findings as required by 45 CFR § 302.56(g).

**(5) Payment Remitted to Clerk of Courts**

Payments in accordance with a support order assigned under Ind. Code § 31-40-1-5(b) or entered under Ind. Code § 31-40-1-5(c) shall be paid through the clerk of the circuit court as trustee for remittance to the department; or state central collection unit established in Ind. Code § 31-25-3-1. Ind. Code § 31-40-1-5(d).

**(6) IV-D Court Enforces Support Order**

Pursuant to Ind. Code § 31-40-1-5(e), the Title IV-D agency shall establish, modify, or enforce a support order assigned or entered by a court under this section in accordance with Ind. Code § 31-25-3, Ind. Code § 31-25-4, and 42 U.S.C. § 654. The department shall, if requested, assist the Title IV-D agency in performing its duties under this subsection.

Contempt power may be used to enforce support, but only until child reaches age of majority or is emancipated. Richardson v. Lake County Dep't of Public Welfare, 439 N.E.2d 722, 724 (Ind. Ct. App. 1982).

**d. If Out-of-Home Placement is Terminated**

Pursuant to Ind. Code § 31-40-1-5(f), if the juvenile court terminates placement of the child out of the home of the child's parent or guardian, the court shall:

- (1) Notify the court that: (A) entered a support order assigned to the department under Ind. Code § 31-40-1-5(b); or (B) had jurisdiction, immediately before the placement, to modify or enforce the existing support order; of the termination of jurisdiction of the juvenile court with respect to the support order;
- (2) Terminate a support order entered under Ind. Code § 31-40-1-5(c) that requires payment of support by a custodial parent or guardian of the child, with respect to support obligations that accrue after termination of the placement; or

- (3) Continue in effect, subject to modification or enforcement by a court having jurisdiction over the obligor, a support order entered under Ind. Code § 31-40-1-5(c) that requires payment of support by a noncustodial parent or guardian of the estate of the child.

**e. Parent or Guardian Ordered to Reimburse DCS for Costs in Addition to Child Support**

The court may at or after a hearing described in Ind. Code § 31-40-1-3 order the child's parent or the guardian of the child's estate to reimburse the department for all or any portion of the expenses for the services provided to or for the benefit of the child that are paid by the department during the placement of the child out of the home of the parent or guardian, in addition to amounts reimbursed through payments in accordance with a support order assigned or entered as provided in this section, subject to applicable federal law. Ind. Code § 31-40-1-5(g).

**E. FINDINGS AND CONCLUSIONS**

Pursuant to Ind. Code § 31-34-19-10, the juvenile court shall accompany the court's dispositional decree with written findings and conclusions upon the record concerning the following:

- (1) The needs of the child for care, treatment, rehabilitation, or placement.
- (2) The need for participation by the parent, guardian, or custodian in the plan of care for the child.
- (3) Efforts made, if the child is a child in need of services, to: (A) Prevent the child's removal from; or (B) Reunite the child with; the child's parent, guardian, or custodian in accordance with federal law.
- (4) Family services that were offered and provided to: (A) A child in need of services; or (B) The child's parent, guardian, or custodian; in accordance with federal law.
- (5) The court's reasons for the disposition.
- (6) Whether the child is a dual status child under Ind. Code § 31-41.

**1. May Incorporate Findings and Conclusions from Other Sources**

The juvenile court may incorporate a finding or conclusion from a pre-dispositional report as a written finding or conclusion upon the record in the court's dispositional decree. Ind. Code § 31-34-19-10(b).

McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 196 (Ind. Ct. App. 2003) (Dispositional order met statutory requirements where court expressly incorporated DCS reports that contained family history, background information, and placement options.).

**2. Findings of Magistrate/Referee Must Be Specified For Judge's Review**

A juvenile court referee shall submit findings and recommendations in writing to the juvenile court, which shall enter such order as it considers proper. Ind. Code § 31-31-3-6(2).

An audio transcript of the fact-finding hearing is not adequate to meet the requirements of specific findings. The juvenile court should be able to read the recommended order drafted by the referee, glean all relevant facts therefrom, and come to an informed decision about whether or not to adopt the referee's recommendations. J.J. v. State, 925 N.E.2d 796, 801 (Ind. Ct. App. 2010).



### **3. Determination of Legal Settlement**

This section applies if the department or a juvenile court: (1) places a child, (2) changes the placement of a child; or (3) reviews the implementation of a decree under Ind. Code § 31-34-21 or a child placed; in a state licensed private or public health care facility, child care facility, foster family home, or the home of a relative or other unlicensed caretaker. Ind. Code § 31-34-20-5(a).

#### **a. Findings of Legal Settlement**

Pursuant to Ind. Code § 31-34-20-5(b), the juvenile court shall do the following:

- (1) Make findings of fact concerning the legal settlement of the child.
- (2) Apply Ind. Code § 20-26-11-2(1) through Ind. Code § 20-26-11-2(8) to determine where the child has legal settlement.
- (3) Include the findings of fact required by this section in the (A) dispositional order; (B) the modification order; or (C) the other decree; making or changing the placement of the child.

#### **(1) Legal Settlement May be Where Child Will Attend School**

The juvenile court may determine that the legal settlement of the child is in the school corporation in which the child will attend school under Ind. Code § 20-26-11-8(d). Ind. Code § 31-34-20-5(c).

#### **b. Court Shall Report Legal Settlement as Required to Schools**

The juvenile court shall comply with the reporting requirements under Ind. Code § 20-26-11-9 concerning the legal settlement of the child. Ind. Code § 31-34-20-5(d).

#### **c. Court or DCS May Place Child in Public School**

The department or juvenile court may place a child in a public school, regardless of whether the public school has a waiting list for admissions, if the department or juvenile court determines that the school's program meets the child's educational needs and the school agrees to the placement. A placement under this subsection does not affect the legal settlement of the child. Ind. Code § 31-34-20-5(e).

### **4. Best Interest Standard**

A parent has no absolute right to custody of minor child; only guiding principle is best interests of child. Schleuter v. Canatsy, 47 N.E. 825, 826-27 (Ind. 1897). Parental rights are subordinate to best interests of child. Franks v. Franks, 323 N.E.2d 678, 679 (Ind. Ct. App. 1975).

Hunter v. State, 360 N.E.2d 588, 596 (Ind. Ct. App. 1977) (Order removing child from custody of parents and ordering support payments for care of child was not punishing parents, but was for child's welfare.).

Matter of Joseph, 416 N.E.2d 857, 861 (Ind. Ct. App. 1981) ("Best interests" test promoted compelling state interest in environment conducive to child's mental and physical development, which may justify interference with parents' right to parent.).

### **5. Specific Findings Required If Child Removed From Home or Made a Ward**

Pursuant to Ind. Code 31-34-20-1(c), if a dispositional decree under Ind. Code § 31-34-20-1:

- (1) Orders or approves removal of a child from the child's home or awards wardship of the child to the department; and

- (2) Is the first juvenile court order in the child in need of services proceeding that authorizes or approves removal of the child from the child's parent, guardian, or custodian;

the juvenile court shall include in the decree the appropriate findings and conclusions described in Ind. Code § 31-34-5-3(b) and Ind. Code § 31-34-5-3(c).

#### **6. Specific Findings If Child Placed with Felon or Perpetrator**

Pursuant to Ind. Code § 31-34-20-1.5(e), in making its written finding under Ind. Code § 31-34-20-1.5(d), the court shall consider the following: (1) The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect. (2) The severity of the offense, delinquent act, or abuse or neglect. (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

#### **7. Specific Findings for Emancipated Child**

Pursuant to Ind. Code § 31-34-20-6(b), if the juvenile court partially or completely emancipates the child, the court shall specify the terms of the emancipation, which may include the following:

- (1) Suspension of the parent's or guardian's duty to support the child. In this case the judgment of emancipation supersedes the support order of a court.
- (2) Suspension of the following: (A) The parent's or guardian's right to the control or custody of the child. (B) The parent's right to the child's earnings.
- (3) Empowering the child to consent to marriage.
- (4) Empower the child to consent to military enlistment.
- (5) Empower the child to consent to: (A) medical; (B) psychological; (C) psychiatric; (D) educational; or (E) social; services.
- (6) Empowering the child to contract.
- (7) Empowering the child to own property.

### **F. DISTRIBUTION OF DISPOSITIONAL DECREE**

#### **1. Distribution to Each Person Who Receives Placement or Wardship**

The juvenile court shall send a copy of the dispositional report described in Ind. Code § 31-34-19-10 to each person who receives placement or wardship of the child. Ind. Code § 31-34-19-8.

#### **2. Dispositional Decree with a No Contact Order**

##### **a. Clerk Submits Data to Protective Order Depository – Form Used**

Pursuant to Ind. Code § 31-34-20-2, if a court enters a dispositional decree that includes a no contact order under Ind. Code § 31-34-20-1(7): (1) The clerk of the court that enters a dispositional decree that includes a no contact order under Ind. Code § 31-34-20-1(7) shall comply with Ind. Code § 5-2-9; and (2) The petitioner shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

**b. Dispositional Decree Distributed to Parties and Law Enforcement**

The clerk of the court that enters a dispositional decree under Ind. Code § 31-34-20 that requires a person to refrain from direct or indirect contact with a child shall provide a copy of the decree to the following: (1) each party, (2) the sheriff, (3) the law enforcement agency of the municipality, if any, in which the child resides. Ind. Code § 31-34-20-4(a).

**c. Law Enforcement Maintains Decree in Depository Until Specified Date**

Pursuant to Ind. Code § 31-34-20-4(b), each sheriff and law enforcement agency that receives a decree under Ind. Code § 31-34-20-4(a) shall maintain a copy of the decree in the depository established by Ind. Code § 5-2-9. The decree may be removed from the depository after the later of the following occurs: (1) The lapse of one (1) year after the decree is entered. (2) The date specified in the decree if any.

**VI. DOUBLE JEOPARDY**

Jeopardy does not attach at a juvenile court hearing where the child is taken from parents, where parents are subsequently prosecuted for neglect of the child. Hunter v. State, 360 N.E.2d 588, 597 (Ind. Ct. App. 1977).