

# CHAPTER TWELVE

## CHINS POST-DISPOSITION

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## **CHAPTER TWELVE**

### **CHINS POST-DISPOSITION**

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#### **I. JURISDICTION PRESUMED TO END AT 12 MONTHS**

There is a rebuttable presumption that jurisdiction over the child in a child in need of services proceeding continues for not longer than twelve (12) months after the date of the original dispositional decree or twelve (12) months after the child in need of services was removed from the child's parent, guardian, or custodian, whichever comes first. Ind. Code § 31-34-21-7(d).

A court may retain continuing jurisdiction over the parties and the subject matter after final judgment in CHINS cases, as they are permitted to retain by judgment itself or by statute. Rosenbarger v. Marion Circuit Court, 155 N.E.2d 125, 137 (Ind. 1959).

Wardship shall be terminated when the child no longer fits within the legal definition of CHINS neglect. Lake County FCS v. Charlton, 631 N.E. 2d 526 (Ind. Ct. App. 1994).

##### **A. DCS MAY REBUT THE PRESUMPTION THAT JURISDICTION ENDS**

The state may rebut the presumption and show that jurisdiction should continue by proving that the objectives of the dispositional decree have not been accomplished, that a continuation of the decree with or without any modifications is necessary, and that it is in the child's best interests for the court to maintain its jurisdiction over the child. Ind. Code § 31-34-21-7(d).

##### **B. IF DCS DOES NOT SUSTAIN BURDEN FOR CONTINUED JURISDICTION**

If the department does not sustain its burden for continued jurisdiction, the court shall: (1) direct the department to establish a permanency plan within thirty (30) days; or (2) discharge the child and the child's parent, guardian or custodian. Ind. Code § 31-34-21-7(d).

##### **C. COURT MAY RETAIN JURISDICTION TO CARRY OUT PERMANENCY PLAN**

The court may retain jurisdiction to the extent necessary to carry out any orders under Ind. Code § 31-34-21-7(d)(1) [permanency plan]. Ind. Code § 31-34-21-7(d).

#### **II. REASONABLE EFFORTS TO PRESERVE FAMILY**

Pursuant to Ind. Code § 31-34-21-5.5(b), except as provided in Ind. Code § 31-34-21-5.6, the department shall make reasonable efforts to preserve and reunify families as follows: (1) If a child has not been removed from the child's home, to prevent or eliminate the need for removing the child from the child's home. (2) If a child has been removed from the child's home, to make it possible for the child to return safely to the child's home as soon as possible. K.T. v. DCS, 20A-JT-271 (Ind. Ct. App., October 21, 2020), mother and child had a strong bond which DCS severed and made no true attempt to repair. DCS cannot remove a child from a fit parent, stall reunification until there is no relationship left and then claim reunification cannot occur because of lack of relationship.

##### **A. CHILD'S HEALTH AND SAFETY IS PRIORITY**

In determining the extent to which reasonable efforts to reunify or preserve a family are appropriate under Ind. Code § 31-34-21, the child's health and safety are of paramount concern. Ind. Code § 31-34-21-5.5(a).

Inkenhaus v. Vanderburgh County Office of Family & Children (In re A.I.), 825 N.E.2d 798, 813 (Ind. Ct. App. 2005) (DCS made reasonable efforts to preserve family where plan was

for child to remain in home and father would leave, including a protective order to remove father, and services were offered.).

## **B. DCS MAY CONDUCT A CRIMINAL HISTORY CHECK**

Pursuant to Ind. Code § 31-34-21-5.5(c), the department may, before reunification of the child with a parent, guardian, or custodian, conduct a criminal history check (as defined in Ind. Code § 31-9-2-22.5) of: (1) The child's: (A) parent; (B) guardian; or (C) custodian; or (2) A household member of the: (A) parent; (B) guardian; or (C) custodian.

### **1. DCS May Use Criminal History Results**

The department may use the results of a criminal history check conducted under Ind. Code § 31-34-21-5.5(c) to decide whether it is safe for the child to return home. Ind. Code § 31-34-21-5.5(d).

## **C. EXCEPTIONS TO REQUIREMENT TO MAKE REASONABLE EFFORTS TO PRESERVE AND REUNIFY THE FAMILY**

See also *Permanency Plan and Concurrent Planning sections below.*

Pursuant to Ind. Code § 31-34-21-5.6(b), reasonable efforts to reunify a child with the child's parent, guardian, or custodian or preserve a child's family as described in Ind. Code § 31-34-21-5.5 are not required if the court finds any of the following:

- (1) A parent, guardian, or custodian of a child who is a child in need of services has been convicted of:
  - (A) An offense described in Ind. Code § 31-35-3-4(1)(B) or Ind. Code § 31-35-3-4(1)(D) through Ind. Code § 31-35-3-4(1)(J) against a victim who is: (i) A child described in Ind. Code § 31-35-3-4(2); or (ii) A parent of the child; or
  - (B) A comparable offense as described in clause (A) in any other state, territory, or country by a court of competent jurisdiction.
- (2) A parent guardian or custodian of a child who is a child in need of services:
  - (A) Has been convicted of: (i) Murder (Ind. Code § 35-42-1-1) or voluntary manslaughter (Ind. Code § 35-42-1-3) of a victim who is a child described in Ind. Code § 31-35-3-4(2)(B) or a parent of the child; or (ii) A comparable offense described in item (i) in any other state, territory, or country; or
  - (B) Has been convicted of: (i) Aiding, inducing, or causing another person; (ii) Attempting; or (iii) Conspiring with another person; to commit an offense described in clause (A).
- (3) A parent, guardian, or custodian of a child who is a child in need of services has been convicted of:
  - (A) Battery (Ind. Code § 35-42-2-1(a)(5)) as a Class A felony (for a crime committed before July 1, 2014) or Level 2 felony (for a crime committed after June 30, 2014);
  - (B) Battery (Ind. Code § 35-42-2-1(a)(4)) as a Class B felony (for a crime committed before July 1, 2014) or Level 3 or Level 4 felony (for a crime committed after June 30, 2014);
  - (C) Battery (Ind. Code § 35-42-2-1(a)(3)) as a Class C felony (for a crime committed before July 1, 2014) or Level 5 felony (for a crime committed after June 30, 2014);
  - (D) Aggravated battery (Ind. Code § 35-42-2-1.5);

- (E) Criminal recklessness (Ind. Code § 35-42-2-2) as a Class C felony (for a crime committed before July 1, 2014) or Level 5 felony (for a crime committed after June 30, 2014);
- (F) Neglect of a dependent (Ind. Code § 35-46-1-4) as a Class B felony (for a crime committed before July 1, 2014) or a Level 1 or Level 3 felony (for a crime committed after June 30, 2014); or
- (G) Promotion of human labor trafficking, promotion of human sexual trafficking, promotion of child sexual trafficking, promotion of sexual trafficking of a younger child, child sexual trafficking, or human trafficking (Ind. Code § 35-42-3.5-1 through Ind. Code § 35-42-3.5-1.4) as a felony; or
- (H) A comparable offense described in clauses (A) through (G) under federal law or in another state, territory, or country;

against a child described in Ind. Code § 31-35-3-4(2)(B).

- (4) The parental rights of a parent with respect to a biological or adoptive sibling of a child who is a child in need of services have been involuntarily terminated by a court under:
  - (A) Ind. Code § 31-35-2 (involuntary termination involving a delinquent child or a child in need of services);
  - (B) Ind. Code § 31-35-3 (involuntary termination involving an individual convicted of a criminal offense); or
  - (C) Any comparable law described in clause (A) or (B) in any other state, territory, or country.
- (5) The child is an abandoned infant, provided that the court; (A) has appointed a guardian ad litem or court appointed special advocate for the child; and (B) after receiving a written report and recommendation from the guardian ad litem or court appointed special advocate, and after a hearing, finds that reasonable efforts to locate the child's parents or reunify the child's family would not be in the best interest of the child.

Ind. Code § 31-34-21-5.6 satisfies substantive due process requirements where the statute serves compelling state interest in protecting children and was narrowly tailored to serve that interest—the statute is narrowly tailored to include only those parents who have had at least one chance to reunify with a different child through the aid of governmental resources and have failed to do so. G.B. v. Dearborn County Div. of Family & Children (In re G.B.), 754 N.E.2d 1027, 1032 (Ind. Ct. App. 2001).

DCS plays an integral part in ensuring that procedural safeguards are strictly followed, and may not simply wash its hands of a case even after a court has determined that reunification services are no longer required—such a policy ensures that the best interests of the children are protected. C.T. v. Marion County Dep't of Child Servs., 896 N.E.2d 571, 583-84 (Ind. Ct. App. 2008).

#### **1. Court May Make Findings at Any Point**

Except as provided in subsection (c), a court may make a finding of reasonable efforts to reunify the child at any phase of a child in need of services proceeding. Ind. Code § 31-34-21-5.6(a).

### **D. INCARCERATED PARENT**

Failure to provide services may be excusable when the parent is serving an extended prison sentence. Castro v. State Office of Family & Children, 842 N.E.2d 367, 377 (Ind. Ct. App. 2006) (40-year sentence). Individuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children. In re

Termination of Parent-Child Relationship of A.C.B., 598 N.E.2d 570, 572 (Ind. Ct. App. 1992).

A.Z. v. Marion County Dep't of Child Servs. (In re H.L.), 915 N.E.2d 145, 148 (Ind. Ct. App. 2009) (Father was repeatedly incarcerated and county jails did not provide reunification services. Child was severely ill and could only leave home for medical treatment. Absence of services was due to parent's incarceration, rather than DCS' failure to provide visitation or classes).

Rowlett v. Vanderburgh County Office of Family & Children, 841 N.E.2d 615, 617 (Ind. Ct. App. 2006) (trial court abused its discretion in denying the father's motion for a continuance. The trial court should have granted the father's continuance and reset the dispositional hearing after the father was given a sufficient period of time following his release from prison, which occurred six weeks after the scheduled dispositional hearing, to show his willingness and ability to assume parental duties. Further, given the positive strides that the father made toward turning his life around, the county agency did not present clear and convincing evidence that there was a reasonable probability that the conditions which resulted in the children's removal would not be remedied.

### III. CASE PLAN

In accordance with federal law, a case plan is required for each child in need of services who is under the supervision of the county as a result of: (1) out-of-home placement; or (2) issuance of a dispositional decree under Ind. Code § 31-34-20. Ind. Code § 31-34-15-1.

#### A. TIME FOR COMPLETION

Pursuant to Ind. Code § 31-34-15-2, the department, after negotiating with: (1) The child's parent, guardian, or custodian; (2) The child, if the child is at least fourteen (14) years of age; and (3) Any child representatives selected by the child under section 7 of this chapter; shall complete a child's case plan not later than sixty (60) days after: the date of the child's first placement or the date of a dispositional decree, whichever occurs first.

In re A.H., 751 N.E.2d 690 (Ind. Ct. App. 2001) (DCS did not complete case plan in timely matter and parents did not have opportunity to negotiate the case plan; no violation of due process rights because CHINS findings would not have been different if parents had been included in negotiations or timeframes had been followed.).

**PRACTICE POINTER:** By policy, DCS will prepare the case plan at a Child and Family Team meeting. See details of Child and Family Team below.

#### 1. Updates to Case Plan

Pursuant to DCS procedures (available at: <https://www.in.gov/dcs/files/5.08%20Developing%20the%20Case%20Plan.pdf>, DCS will ensure that the Case Plan is updated at least every 180 days from the effective date of the previous plan and anytime there is a significant change (e.g., change in placement, identified needs, change in permanency plan, parents failure to participate in services, parents cannot be located, changes with parent's income and employment, child's income and resources, etc.).

#### B. CONTENTS

##### 1. Form

A child's case plan must be set out in a form prescribed by the department that meets the specifications set by 45 CFR § 1356.21. Ind. Code § 31-34-15-4.

##### 2. Contents

Pursuant to Ind. Code § 31-34-15-4, the case plan must include a description and discussion of the following:

- (1) A permanent plan for the child and an estimated date for achieving the goal of the plan.
- (2) The appropriate placement for the child based on the child's special needs and best interests.
- (3) The least restrictive family-like setting that is close to the home of the child's parent, custodian, or guardian if out-of-home placement is recommended. If an out-of-home placement is appropriate, the local office or department shall consider whether a child in need of services should be placed with the child's suitable and willing blood or adoptive relative caretaker, including a grandparent, an aunt, an uncle, or an adult sibling, before considering other out-of-home placements for the child.
- (4) Family services recommended for the child, parent, guardian, or custodian.
- (5) Efforts already made to provide family services to the child, parent, guardian, or custodian.
- (6) Efforts that will be made to provide family services that are ordered by the court.
- (7) If the parent of a child is incarcerated: (A) the services and treatment available to the parent at the facility at which the parent is incarcerated; and (B) how the parent and the child may be afforded visitation opportunities, unless visitation with the parent is not in the best interests of the child.
- (8) A plan for ensuring the educational stability of the child while in foster care that includes assurances that the:
  - (A) Placement of the child in foster care considers the appropriateness of the current educational setting of the child and the proximity to the school where the child is presently enrolled; and
  - (B) Department has coordinated with local educational agencies to ensure: (i) The child remains in the school where the child is enrolled at the time of removal; or (ii) Immediate, appropriate enrollment of the child in a different school, including arrangements for the transfer of the child's school records to the new school, if remaining in the same school is not in the best interests of the child.
- (9) Any age appropriate activities that the child is interested in pursuing.
- (10) If the case plan is for a child in foster care who is at least fourteen (14) years of age, the following:
  - (A) A document that describes the rights of the child with respect to: (i) education, health, visitation, and court participation; (ii) the right to be provided with the child's medical documents and other medical information; and (iii) the right to stay safe and avoid exploitation.
  - (B) A signed acknowledgement by the child that the: (i) child has been provided with a copy of the document described in clause (A); and (ii) rights contained in the document have been explained to the individual in an age appropriate manner.
- (11) Any efforts made by the department to enable the child's school to provide appropriate support to and protect the safety of the child, if, in developing the case plan, the department coordinates with officials in the child's school to enable the



school to provide appropriate support to and protect the safety of the child.

Case plan statute does not require parent's signature. Hancock v. Clay County Div. of Family & Children (In re S.P.H.), 806 N.E.2d 874, 879 (Ind. Ct. App. 2004).

Hancock v. Clay County Div. of Family & Children (In re S.P.H.), 806 N.E.2d 874, 879 (Ind. Ct. App. 2004) (Incarcerated father received copies of case plan and was put on notice of contents of case plan. Mother who was not incarcerated negotiated contents of case plan).

McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 195-96 (Ind. Ct. App. 2003) (Mother provided draft plan within required 60-day timeframe, but she did not sign it until four months later. Any alleged deficiencies did not deprive mother of her due process rights in CHINS and TPR proceedings.).

**PRACTICE POINTER:** While statutes and case law do not require the parent's signature on the case plan, DCS policy requires parents, guardians, and custodians to sign. If the parent has appointed counsel, the counsel should review the document before allowing the client to sign the document, as the document contains services for the client and the child. Ensure the services on the case plan tie directly to the dispositional order. Whether there is space for an attorney signature or not, the attorney may sign the document to prove that the attorney was present.

### **3. Foster Parent Participates in Developing Case Plan**

Pursuant to Ind. Code § 31-34-15-5, each foster parent of a child and the department shall cooperate in the development of the case plan for the child. The department shall discuss with at least one (1) foster parent of a child the foster parent's role regarding the following: (1) Rehabilitation of the child and the child's parents, guardians, and custodians. (2) Visitation arrangements. (3) Services required to meet the special needs of the child.

## **C. DISTRIBUTION OF CASE PLAN**

A copy of the completed case plan shall be sent, not later than ten (10) days after the plan's completion, to: (1) the child's parent, guardian, or custodian; (2) the child, if the child is at least fourteen (14) years of age; (3) any child representatives selected by the child under section 7 of this chapter; and (4) any agency having the legal responsibility or authorization to care for, treat, or supervise the child. Ind. Code § 31-34-15-3.

A.P. v. Porter County Office of Family & Children, 734 N.E.2d 1107, 1114 (Ind. Ct. App. 2000) (Failure to provide parents with copies of case plan following CHINS determination could have substantially increased the risk of error in the TPR, in that the parents may have been deprived of some degree of notice as to what conduct on their part could lead to the termination of those rights.).

S.O. v. Ind. Dep't of Child Servs. (In re J.S.O.), 938 N.E.2d 271, 277 (Ind. Ct. App. 2010) (Father's due process rights were violated where DCS had actual knowledge of father's name and whereabouts, but trial court and DCS failed to notify the father of CHINS proceedings.).

## **IV. CHILD AND FAMILY TEAM MEETINGS**

*The following is from the DCS Child Welfare Manual, Ch. 5, Sec. 7, available at <http://www.in.gov/dcs/files/5.07%20Child%20and%20Family%20Team%20Meetings.pdf>*

### **A. PURPOSE OF CHILD AND FAMILY TEAM**

The Child and Family Team model encourages a strengths-based approach to initial and ongoing assessments of children and their families; the meeting process focuses on the underlying needs

of the family rather than behavioral symptoms. The child and the family's identified strengths play an essential role in determining what interventions might be most successful. DCS will utilize the Child and Family Team meetings to develop a plan for assessment and delivering ongoing services to families and children under DCS supervision.

## **B. FREQUENCY OF MEETINGS**

DCS will have Child and Family Team meetings at critical junctures in the life of the case, including, but not limited to:

- (1) Assessing the need for and/or preventing removals;
- (2) Developing the case plan;
- (3) Revising permanency goals;
- (4) Safety and service planning;
- (5) Exploring or changing placement options;
- (6) Request of any team member; and
- (7) Case closure.

## **C. MEETING PARTICIPANTS**

The Child and Family Team includes the DCS Family Case Manager, the parent, guardian, custodian, and the child. The family is encouraged to include the noncustodial parent, resource parent, CASA, and/or GAL.

**PRACTICE POINTER:** If the attorney's appointment is an ongoing appointment during the life of the CHINS case, consider attending the Child and Family Team meetings, especially when the case plan and other documents that will be submitted to the court are being developed and reviewed. Ensure that the client does not sign any documents to be submitted to the court without reviewing the document with his/her assigned attorney.

## **D. DISTRIBUTION OF MEETING NOTES**

The family case manager will ensure that all meeting notes are distributed to the parties within one week of the Child and Family Team meeting, including the resource caregiver and CASA/GAL.

# **V. PROGRESS REPORTS**

## **A. TIME FOR COMPLETION**

### **1. At Any Time By Order of the Court**

At any time after the date of an original dispositional decree, the juvenile court may order the department to file a report on the progress made in implementing the decree. Ind. Code § 31-34-21-1(a).

### **2. Every Three Months Following Disposition**

The juvenile court shall order the department to file a report every three (3) months after the dispositional decree is entered on the progress made in implementing the decree. Ind. Code § 31-34-21-1(b).

### **3. Prior to a Case Review Hearing**

Before a [periodic] case review [hearing] under Ind. Code § 31-34-21-2, the department shall prepare a report in accordance with Ind. Code § 31-34-22 on the progress made in

implementing the dispositional decree. Ind. Code § 31-34-21-3.

Before a case review under Ind. Code § 31-34-21-2 or hearing under Ind. Code § 31-34-21-7 [permanency hearing], the department shall prepare a report on the progress made in implementing the dispositional decree, including the progress made in rehabilitating the child, preventing placement out-of-home, or reuniting the family. Ind. Code § 31-34-22-1(a).

#### **4. Prior to Permanency Hearing**

Before a hearing under Ind. Code § 31-34-21-7, the department shall prepare a report in accordance with Ind. Code § 31-34-22 on the progress made in implementing the dispositional decree. Ind. Code 31-34-21-8.

Before a case review under Ind. Code § 31-34-21-2 or hearing under Ind. Code § 31-34-21-7 [permanency hearing], the department shall prepare a report on the progress made in implementing the dispositional decree, including the progress made in rehabilitating the child, preventing placement out-of-home, or reuniting the family. Ind. Code § 31-34-22-1(a).

### **B. PROGRESS REPORT CONTENTS**

#### **1. If Modification of Disposition is Recommended**

If modification of the dispositional decree is recommended, the department shall prepare a modification report containing the information required by Ind. Code § 31-34-18 and request a formal court hearing. Ind. Code § 31-34-22-1(c).

#### **2. DCS Shall Consult With Foster Parent**

When preparing the report required by Ind. Code § 31-34-22-1(a), if the child is placed in foster care, the department shall consult the foster parent of the child about the child's progress made while in the foster parent's care. Ind. Code § 31-34-22-1(b). The department shall include as part of the report the information gathered from the foster parent.

#### **3. Explain Efforts To Place Child With Adult Relatives**

If the child has been removed from the child's home for less than twelve (12) months, the report must include an explanation of the department's ongoing effort to identify all adult relatives of the child and adult siblings who may be considered as out-of-home placements for the child.

### **C. PROGRESS REPORT DISTRIBUTION**

Except as provided in Ind. Code § 31-34-22-2(b), a report prepared by the state: (1) for the juvenile court's review of the court's dispositional decree; or (2) prepared for use at a periodic case review under Ind. Code § 31-34-21-2 or hearing under Ind. Code § 31-34-21-7; shall be made available to the child, and the child's parent, guardian, foster parent, guardian ad litem, court appointed special advocate, custodian, or any other person who is entitled to receive notice of the periodic review or permanency hearing under Ind. Code § 31-34-21-4 at least forty-eight (48) hours before the hearing. Ind. Code § 31-34-22-2(a).

#### **1. Attorneys and CASA Must Receive Copy**

Pursuant to Ind. Code § 31-34-22-2(b), if the court determines on the record that the report contains information that should not be released to any person entitled to receive a report under Ind. Code § 31-34-22-2(a), the court is not required to make the report available to the person as required in Ind. Code § 31-34-22-2(a). However, the court shall provide a copy of the report to the following:

- (1) Each attorney or guardian ad litem representing the child.

- (2) Each attorney representing the child's parent, guardian, or custodian.
- (3) Each court appointed special advocate.

**2. Factual Summary May Be Substituted for Progress Report**

The court may also provide a factual summary of the report to the child or the child's parent, foster parent, guardian, or custodian. Ind. Code § 31-34-22-2(c).

**D. ADMISSIBILITY OF PROGRESS REPORT**

Any report may be admitted into evidence to the extent that the report contains evidence of probative value even if the evidence would otherwise be excluded. Ind. Code § 31-34-22-3(a).

**1. Factual Summary May Be Admitted**

If a report contains information that should not be released to the child or the child's parent, guardian, custodian, or other person who is entitled to receive a report under Ind. Code § 31-34-22-2, a factual summary of the report may be admitted. Ind. Code § 31-34-22-3(b).

**2. People Entitled to Controvert the Progress Report**

Pursuant to Ind. Code § 31-34-22-3(c), the following shall be given a fair opportunity to controvert any part of the report admitted into evidence:

- (1) The child.
- (2) The child's parent, guardian, or custodian.
- (3) The person representing the interests of the state.
- (4) Any other person who is entitled to receive a report under Ind. Code § 31-34-22-2.

**E. COURT MAY REQUEST MODIFICATION BASED ON PROGRESS REPORT**

If, after reviewing the [progress] report, the juvenile court seeks to consider modification of the dispositional decree, the juvenile court shall proceed under Ind. Code § 31-34-23 [Modification of Dispositional Decrees]. Ind. Code § 31-34-21-1(c).

**VI. PERIODIC CASE REVIEW HEARING**

**A. JUVENILE COURT MUST CONDUCT FORMAL CASE REVIEW HEARING**

Each periodic case review must be conducted by the juvenile court in a formal court hearing. Ind. Code § 31-34-21-2(c).

**B. TIME FOR COMPLETION OF CASE REVIEW**

**1. At Least Every Six Months**

The case of each child in need of services under the supervision of the department must be reviewed at least once every six (6) months, or more often, if ordered by the court. Ind. Code § 31-34-21-2(a).

**2. When First Case Review Must Occur**

Pursuant to Ind. Code § 31-34-21-2(b), the first of the periodic case reviews must occur:

- (1) At least six (6) months after the date of the child's removal from the child's parent, guardian, or custodian; or
  - (2) At least six (6) months after the date of the dispositional decree;
- whichever comes first.

### **3. Discretionary Case Review Any Time After Progress Report**

The court may perform a periodic case review any time after a progress report is filed as described in Ind. Code § 31-34-21-1. Ind. Code § 31-34-21-2(d).

## **C. FOSTER PARENT MAY INTERVENE IN CASE REVIEW HEARING**

A foster parent, long-term foster parent, or a person who has been a foster parent may petition the court to request intervention as a party to a proceeding as set forth in Ind. Code § 31-32-2.5. Ind. Code § 31-34-21-4.5(a).

The department and the office of judicial administration, in collaboration with foster parents and other stakeholders, shall prepare a form that may be used to provide written testimony to the court under Ind. Code § 31-34-21-4. Ind. Code § 31-34-21-4(e). The department shall post the form on the department's Internet web site. Id. Foster parents may provide written testimony to the court in a format other than the form described in Ind. Code § 31-34-21-4(e). Id.

## **D. NOTICE OF CASE REVIEW HEARING**

### **1. Time of Notice of Case Review Hearing**

Except as provided in Ind. Code § 31-34-21-4(f) [certain parents of abandoned child], at least seven (7) days before the periodic case review, including a case review that is a permanency hearing under Ind. Code § 31-34-21-7, the department shall provide notice of the review. Ind. Code § 31-34-21-4(a).

### **2. Method of Notice of Case Review Hearing**

For further discussion of due process and notice requirements, see Ch. 4 – Constitutional and Statutory Rights.

The department shall provide notices as provided in Ind. Code § 31-32-1-4. Ind. Code § 31-34-21-4(c).

### **3. Who Must Receive Notice of Case Review Hearing**

Pursuant to Ind. Code § 31-34-21-4(a), the department shall provide notice of the review to each of the following:

- (1) The child's parent, guardian, or custodian.
- (2) An attorney who has entered an appearance on behalf of the child's parent, guardian, or custodian.
- (3) A prospective adoptive parent named in a petition for adoption of the child filed under Ind. Code § 31-19-2 if:
  - (A) Each consent to adoption of the child that is required under Ind. Code § 31-19-9-1 has been executed in the form and manner required by Ind. Code 31-19-9 and filed with the local office;
  - (B) The court having jurisdiction in the adoption case has determined under any applicable provision of Ind. Code § 31-19-9 that consent to adoption is not required from a parent, guardian, or custodian; or
  - (C) A petition to terminate the parent-child relationship between the child and any parent who has not executed a written consent to adoption under Ind. Code § 31-19-9-2 has been filed under Ind. Code § 31-35 and is pending.
- (4) The child's foster parent or long-term foster parent.

(5) Any other person who: (A) the department has knowledge is currently providing care for the child; and (B) is not required to be licensed under Ind. Code § 12-17.2 or Ind. Code § 31-27 to provide care for the child.

(6) Any other suitable relative or person whom the department knows has had a significant or caretaking relationship to the child.

Incarcerated parent has statutory right to be present at CHINS review hearings pursuant to Ind. Code § 31-34-21-4(b). A.P. v. Porter County Office of Family & Children, 734 N.E.2d 1107 (Ind. Ct. App. 2000).

**a. In Addition, Each Party Must Receive Notice**

Except as provided in Ind. Code § 31-34-21-4(g) [involving certain abandoned children], Ind. Code § 31-34-21-4 does not exempt the department from sending a notice of the review to each party to the child in need of services proceeding. Ind. Code § 31-34-21-4(f).

**b. No Notice Required to Certain Parents of an Abandoned Child**

If the parent of an abandoned child does not disclose the parent's name as allowed by Ind. Code § 31-34-2.5-1(c) [abandoned to emergency medical services provider], the parent is not required to be notified of a proceeding described in Ind. Code § 31-34-21-4(a). Ind. Code § 31-34-21-4(g).

**4. DCS Must Provide Proof of Service**

The department shall present proof of service of the notice required by Ind. Code § 31-34-21-4(a) at the periodic case review. Ind. Code § 31-34-21-4(b).

**E. PROGRESS REPORT REQUIRED FOR CASE REVIEW**

Before a case review under Ind. Code § 31-34-21-2, the department shall prepare a report in accordance with Ind. Code § 31-34-22 on the progress made in implementing the dispositional decree. Ind. Code § 31-34-21-3.

**F. PERIODIC CASE REVIEW PROCEDURES**

**1. Notice to Parents of Possible Termination of Parental Rights at First Hearing**

At a child's first periodic case review occurring after June 30, 1998, the local office (DCS) is required to advise the child's parent, guardian, or custodian in writing that a petition to terminate the parent-child relationship must be filed with respect to the child after June 30, 1999, if the child has been removed from the child's parent and has been under the supervision of a local office (DCS) for at least fifteen (15) of the most recent twenty-two (22) months. Ind. Code § 31-34-21-0.2.

**a. If Parents Fail To Appear, Notice Must Be Mailed**

If a child's parent, guardian, or custodian fails to appear at the first periodic case review occurring after June 30, 1998, the local office (DCS) shall make reasonable efforts to send notice of the advisement to the last known address of the parent, guardian, or custodian. Ind. Code § 31-34-21-0.2.

**2. Testimony in case review hearing**

Pursuant to Ind. Code § 31-34-21-4(d), the court shall provide to a person described in Ind. Code § 31-34-21-4(a) an opportunity to be heard and to make any recommendations to the

court in a periodic case review, including a permanency hearing under Ind. Code § 31-34-21-7. The right to be heard and to make recommendations includes: (1) The right of a person described in Ind. Code § 31-34-21-4(a) to submit a written statement to the court that, if served upon all parties to the child in need of services proceeding and the persons described in Ind. Code § 31-34-21-4(a), may be made a part of the court record; and (2) The right to present oral testimony to the court and cross-examine any of the witnesses at the hearing.

#### **G. DETERMINATIONS OF COURT FOLLOWING CASE REVIEW HEARING**

Pursuant to Ind. Code § 31-34-21-5(a), the court shall determine:

- (1) Whether the child's case plan, services, and placement meet the special needs and best interest of the child;
- (2) Whether the department has made reasonable efforts to provide family services; and
- (3) A projected date for the child's return home, the child's adoption placement, the child's emancipation, or the appointment of a legal guardian for the child under Ind. Code § 31-34-21-7.5(c)(1)(E).

#### **H. FINDINGS OF COURT FOLLOWING CASE REVIEW HEARING**

Pursuant to Ind. Code § 31-34-21-5(b), the determinations of the court under Ind. Code § 31-34-21-5(a) must be based on findings written after consideration of the following:

- (1) Whether the department, the child, or the child's parent, guardian, or custodian has complied with the child's case plan.
- (2) Written documentation containing descriptions of:
  - (A) The family services that have been offered or provided to the child or the child's parent, guardian, or custodian;
  - (B) The dates during which the family services were offered or provided; and
  - (C) The outcome arising from offering or providing the family services.
- (3) The extent of the efforts made by the department to offer and provide family services.
- (4) The extent to which the parent, guardian, or custodian has enhanced the ability to fulfill parental obligations.
- (5) The extent to which the parent, guardian, or custodian has visited the child, including the reasons for infrequent visitation.
- (6) The extent to which the parent, guardian, or custodian has cooperated with the department.
- (7) The child's recovery from any injuries suffered before removal.
- (8) Whether any additional services are required for the child or the child's parent, guardian, or custodian, and, if so, the nature of those services.
- (9) The extent to which the child has been rehabilitated.
- (10) If the child is placed out-of-home, whether the child is in the least restrictive, most family-like setting, and whether the child is placed close to the home of the child's parent, guardian, or custodian.
- (11) The extent to which the causes for the child's out-of-home placement or supervision have been alleviated.

- (12) Whether current placement or supervision by the department should be continued.
- (13) The extent to which the child's parent, guardian, or custodian has participated or has been given the opportunity to participate in case planning, periodic case reviews, dispositional reviews, placement of the child, and visitation.
- (14) Whether the department has made reasonable efforts to reunify or preserve a child's family unless reasonable efforts are not required under Ind. Code § 31-34-21-5.6.
- (15) Whether it is an appropriate time to prepare or implement a permanency plan for the child under Ind. Code § 31-34-21-7.5.

## **1. Review of Child's Legal Settlement**

This section applies when a juvenile court reviews the implementation of a decree under Ind. Code § 31-34-21 or any other law concerning a child placed in a state licensed private or public health care facility, child care facility, or foster family home. Ind. Code § 31-34-21-10(a).

### **a. Court Shall Determine if Circumstances Have Changed**

The juvenile court shall review the court's findings under Ind. Code § 31-34-20-5 and determine whether circumstances have changed the legal settlement of the child. Ind. Code § 31-34-21-10(b).

If the child's legal settlement has changed, the court shall issue an order that modifies the court's findings of fact concerning the legal settlement of the child. Ind. Code § 31-34-21-10(c).

### **b. Court Shall Make Findings, if Previously Omitted**

If the court has not previously made findings of fact concerning legal settlement as provided in Ind. Code § 31-34-20-5, the court shall make the appropriate findings in its order entered under Ind. Code § 31-34-21. Ind. Code § 31-34-21-10(d).

### **c. Court Shall Report As Required**

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 § 31-34-21-10(e).

## **2. Discharge of Child**

When the juvenile court finds that the objectives of the dispositional decree have been met, the court shall discharge the child and the child's parent, guardian or custodian. Ind. Code § 31-34-21-11.

R.K.H. v. Morgan County Office of Family & Children (In re Infant Girl W.), 845 N.E.2d 229, 245 (Ind. Ct. App. 2006) (The dispositional goal of the CHINS case was adoption, and that goal was met. Following the adoption, the child was no longer a CHINS, and under those circumstances, the juvenile court was statutorily required to dismiss the CHINS case.).

Lake County Dep't of Child Servs. (In re A.T.), 889 N.E.2d 365, 368-69 (Ind. Ct. App. 2008) (Court could not reinstate jurisdiction of 19-year-old former CHINS after court had discharged wardship when she was 18 years old. Court relinquished jurisdiction at time of discharge.).

## **VII. MODIFICATION OF DISPOSITIONAL DECREE**

Orders and decrees in CHINS proceedings are valid, subject to the right of review, until modified or



set aside. State ex rel. Geckler v. Cox, 9 N.E.2d 93 (Ind. 1937).

In re T.S., 906 N.E.2d 801 (Ind. 2009) (DCS's request that the trial court in a child in need of services proceeding modify its order on initial disposition and return the child to the mother's care transformed a periodic review hearing into a modification hearing; the placement order thus was a new dispositional decree).

#### **A. WHO MAY REQUEST A MODIFICATION OF DISPOSITIONAL DECREE**

Pursuant to Ind. Code § 31-34-23-1, while the juvenile court retains jurisdiction under Ind. Code § 31-30-2, the juvenile court may modify any dispositional decree:

- (1) Upon the juvenile court's own motion;
- (2) Upon the motion of: (A) The child; (B) The child's: (i) parent; (ii) guardian; (iii) custodian; (iv) court appointed special advocate; or (v) guardian ad litem; or (C) The attorney for the department; or
- (3) Upon the motion of any person providing services to the child or to the child's parent, guardian, or custodian under a decree of the court.

##### **1. Court May Seek Modification After Reviewing Progress Report**

If, after reviewing the [progress] report, the juvenile court seeks to consider modification of the dispositional decree, the juvenile court shall proceed under Ind. Code § 31-34-23 [Modification of Dispositional Decrees]. Ind. Code § 31-34-21-1(c).

#### **B. NOTICE OF MODIFICATION HEARING**

For further discussion of due process and notice requirements, see Ch. 4 – Constitutional and Statutory Rights.

Notice of any hearing under Ind. Code § 31-34-23 shall be given in accordance with Ind. Code § 31-34-19-1.3. Ind. Code § 31-34-23-4.

If the motion requests any other modification [other than an emergency change of placement], the department shall give notice to the person affected and the juvenile court shall hold a hearing on the question. Ind. Code § 31-34-23-3(c).

#### **C. MODIFICATION REPORT**

The report shall be prepared if the department of any person other than the child or the child's parent, guardian, guardian ad litem, court appointed special advocate, or custodian is requesting the modification. Ind. Code § 31-34-23-4.

##### **1. If Modification Hearing is Required**

If a hearing is required, Ind. Code § 31-34-18 and Ind. Code § 31-34-19 apply to the preparation and use of a modification report. Ind. Code § 31-34-23-4.

##### **2. If Modification of Disposition is Requested**

If modification of the dispositional decree is recommended, the department shall prepare a modification report containing the information required by Ind. Code § 31-34-18 and request a formal court hearing. Ind. Code § 31-34-22-1(c).

#### **D. MODIFICATION HEARING**

If the motion [to modify disposition] requests any other modification [other than an emergency change of placement], the juvenile court shall hold a hearing on the question. Ind. Code § 31-34-23-3(c).

**1. Changing Placement of Child Who Has Been in Same Out-of-Home Placement for at Least One Year**

Before changing the out of before changing the out-of-home placement of a child who has been in the same out-of-home placement for at least one (1) year, the department must file a motion requesting a change in placement. Upon filing the motion, the department shall give notice to the persons affected. The notice must state that the person with whom the child is placed may file a written objection to the motion to change out-of-home placement not later than fifteen (15) days after receipt that requests a hearing on the question. If an objection is timely filed, the juvenile court shall hold a hearing on the question. The department must show that the change in out-of-home placement is in the best interests of the child. Ind. Code § 31-34-23-3(a).

**2. Temporary Order for Change of Placement if Child's Life or Health in Imminent Danger**

If the department determines that the out-of-home placement of a child is placing the child's life or health in imminent danger, the department shall either: (1) change the placement of the child and file an emergency motion with the court; or (2) request the court to issue a temporary order for an emergency change in the child's residence.

If the department requests an emergency change in the child's residence, the court may issue a temporary order. However, the department shall then give notice to the persons affected and the juvenile court shall hold a hearing on the question. Ind. Code § 31-34-23-3(b).

**E. PLACEMENT OF CHILD IN SAME OUT-OF-HOME PLACEMENT**

If a child who was:

- (1) placed in an out-of-home placement during child in need of services proceedings; and
- (2) moved from the out-of-home placement to an in-home placement;

is returned to an out-of-home placement, the court and the department shall make a reasonable attempt to place the child in the out-of-home placement in which the child was placed under subdivision (1) if the out-of-home placement is appropriate under IC 31-27-4 and IC 31-34-4-2 and the placement is in the child's best interests. Ind. Code § 31-34-23-5(a).

If a child described above has been placed in more than one (1) out-of-home placement before being removed from the in-home placement described in subsection (a)(2), the court and the department shall place the child in the out-of-home placement that is in the best interests of the child. Ind. Code § 31-34-23-5(b).

**PRACTICE POINTER:** Failure to follow the statutory requirements for modifying the CHINS disposition, including notice and opportunity to be heard, may provide a due process violation basis for challenging a subsequent TPR.

**F. NO CONTACT ORDER PETITION**

The court may hold a hearing on a petition [for no contact order] concurrently with a... hearing to modify a dispositional decree. 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.

# **G. LEGAL SETTLEMENT DETERMINATION**

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) the dispositional order; (B) the modification order; or (C) the other decree; making or changing the placement of the child.

# **H. MODIFICATION CONSIDERATIONS**

Pursuant to Ind. Code § 31-34-19-6.1(a), before entering 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 predispositional 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.

## **I. JUVENILE COURT SHALL ACCEPT DCS RECOMMENDATIONS ABOUT THE NEEDS OF THE CHILD IN MOST CASES**

Pursuant to Ind. Code § 31-34-19-6.1(c), if during or after the conclusion of the modification hearing, the juvenile court does not accept the 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) or (a)(3), the modification hearing shall be continued for not more than seven (7) business days after service of notice of the juvenile court's determination. 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. 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.

## **J. WRITTEN FINDINGS AND CONCLUSIONS**

Written findings and conclusions on the record are required for a modification, just as they were for the original disposition decree, especially if the modification results in an out-of-home placement. A.P. v. Porter County Office of Family & Children, 734 N.E.2d 1107, 1116 (Ind. Ct. App. 2000).

## **K. EXPEDITED INTERLOCUTORY APPEAL**

Ind. Code § 31-34-19-6.1, which allows for expedited interlocutory appeal of trial court's disposition order applies to the process of modifying a dispositional decree, where trial court does not follow DCS' recommendation. Ind. Dep't of Child Servs. v. LaPorte Circuit Court (In re T.S.), 906 N.E.2d 801, 803 (Ind. 2009).

# **VIII. PERMANENCY PLAN AND HEARING**

## **A. PERMANENCY PLAN**

### **1. Permanency Plan Contents**

Pursuant to Ind. Code § 31-34-21-7.5(c), a permanency plan under Ind. Code § 31-34-21 includes the following:

- (1) The intended permanent or long term arrangements for care and custody of the child that may include any one (1), or two (2), if concurrent planning, of the following arrangements that the department or the court considers most appropriate and consistent with the best interests of the child:
  - (A) Return to or continuation of existing custodial care within the home of the child's parent, guardian, or custodian or placement of the child with the child's noncustodial parent.
  - (B) Placement of the child for adoption.
  - (C) Placement of the child with a responsible person, including: (i) an adult sibling; (ii) a grandparent; (iii) an aunt; (iv) an uncle; (v) a custodial parent of a sibling of the child; or (vi) another relative; who is able and willing to act as the child's permanent custodian and carry out the responsibilities required by the permanency plan.
  - (D) Appointment of a legal guardian. The legal guardian appointed under this section is a caretaker in a judicially created relationship between the child and caretaker that is intended to be permanent and self-sustaining as evidenced by the transfer

to the caretaker of the following parental rights with respect to the child: (i) Care, custody, and control of the child. (ii) Decision making concerning the child's upbringing.

- (E) A supervised independent living arrangement or foster care for the child with a permanency plan of another planned, permanent living arrangement. However, a child less than sixteen (16) years of age may not have another planned, permanent living arrangement as the child's permanency plan.
- (2) A time schedule for implementing the applicable provisions of the permanency plan.
- (3) Provisions for temporary or interim arrangements for care and custody of the child, pending completion of implementation of the permanency plan.
- (4) Other items required to be included in a case plan under Ind. Code § 31-34-15 or federal law, consistent with the permanent or long term arrangements described by the permanency plan.

## **2. Criminal History Check May Be Required For Permanency Plan**

Before requesting juvenile court approval of a permanency plan, the department 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 § 31-34-21-7.5(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. However, the department is not required to conduct a criminal history check under this section if criminal history information under Ind. Code § 31-34-4-2, Ind. Code § 31-34-18-6.1, or Ind. Code § 31-34-20-1.5 establishes whether a person described in Ind. Code § 31-34-21-7.5(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 § 31-34-21-7.5(b).

## **3. When Reasonable Efforts to Reunify or Preserve the Family are Not Required**

This section applies at any phase of a child in need of services proceeding whenever a court enters a finding that reasonable efforts to reunify or preserve a child's family are not required under Ind. Code § 31-34-21-5.6. Ind. Code § 31-34-21-5.7(a).

### **a. DCS Shall Do a Permanency Plan**

Pursuant to Ind. Code § 31-34-21-5.7(b), the department shall do the following:

- (1) Complete a permanency plan for the child that complies with the requirements of Ind. Code § 31-34-21-7.5.
- (2) Seek court approval of the permanency plan under Ind. Code § 31-34-21-7.
- (3) Refer a case to the permanency roundtable if the department places a child in a child caring institution, group home, or private secure facility.

### **b. Certain Reports Are Not Required**

Pursuant to Ind. Code § 31-34-21-5.7(c), notwithstanding any otherwise applicable requirements under Ind. Code § 31-34, whenever the department seeks approval of a permanency plan for the child under Ind. Code § 31-34-21-5.7(b), the following reports, orders, and hearings are not required:

- (1) A pre-dispositional report to consider participation of a child's parent, guardian,

or custodian in any program of care, treatment, or rehabilitation of the child.

- (2) A dispositional decree under Ind. Code § 31-34-19-6 and findings and conclusions under Ind. Code § 31-34-19-10 that concern:
  - (A) Participation of the child's parent, guardian, or custodian in a program for future care or treatment of the child; or
  - (B) Reasonable efforts to prevent the child's removal from the child's home or to reunite the child with the child's parent, guardian, or custodian.

#### **4. When Permanency Plan is Not Reunification**

This section applies only if a court has approved a permanency plan for a child under Ind. Code § 31-34-2-7(b)(5). Ind. Code § 31-34-21-5.8(a).

##### **a. DCS Will Find Permanent Placement for Child**

Pursuant to Ind. Code § 31-34-21-5.8(b), if the continuation of reasonable efforts to preserve and reunify a CHINS with the child's family is inconsistent with the child's permanency plan, the department shall make reasonable efforts to:

- (1) With court approval place the child in an out-of-home placement in accordance with the permanency plan; and
- (2) Complete whatever steps are necessary to finalize the permanent placement of the child in a timely manner.

##### **b. Periodic Progress Reports, Case Reviews, and Post-Dispositional Hearings Not required**

Pursuant to Ind. Code § 31-34-21-5.8(c), this subsection applies whenever the child's approved permanency plan under Ind. Code § 31-34-21-7 is placement of the child for adoption or another planned, permanent living arrangement. Periodic progress reports, case reviews, and post-dispositional hearings to determine whether or the extent to which the following have occurred are not required:

- (1) Whether reasonable efforts have been made to eliminate the need for removal of the child from the child's home or to make it possible for the child to safely return to the child's home.
- (2) Whether the child is placed in close proximity to the home of the child's parent, guardian, or custodian.

#### **B. CONCURRENT PLANNING**

*The following is from the DCS Child Welfare Manual, Ch. 5, Sec. 15, available at <http://www.in.gov/dcs/files/5.15%20Concurrent%20Planning%20-%20An%20Overview.pdf>*

##### **1. Concurrent Planning Defined**

Concurrent planning requires DCS to plan and work towards both reunification and another permanency plan. The intent of concurrent planning is that both plans will be pursued simultaneously and aggressively.

**PRACTICE POINTER:** Concurrent planning will often feel threatening to the parent, especially if the foster parents are the pre-adoptive home, where the foster parent is supposed to be assisting with the parent's reunification plan and hoping for adoption simultaneously. For instance, the children should not be allowed to call the foster parents "Mom" and "Dad" when the permanency plan is still reunification to try to minimize any attachment arguments during the TPR.

## **2. “Mandatory” Development of Concurrent Plan**

DCS will develop a concurrent plan for children in out-of-home or in-home care that meet at least one of the following mandatory concurrent planning indicators:

- (1) The parent(s) have a history of voluntary termination of parental rights;
- (2) The minor parent is under the age of 16 with no support system and placement of the child and parent together has previously failed due to the minor parent’s behavior;
- (3) The parent, guardian or custodian has asked to relinquish the child on more than one occasion following the initial intervention;
- (4) The parent, guardian, or custodian has a diagnosed mental illness or substance abuse problem that renders him or her unable to provide for or protect the child, which, upon assessment, indicates:
  - (A) A history of treatment without response; or
  - (B) The parent, guardian, or custodian in treatment has a pattern of noncompliance with medication or treatment intervention.

## **3. “Discretionary” Development of Concurrent Plan**

DCS may develop a concurrent plan for children in out-of-home or in-home care that meet at least one of the following concurrent planning indicators:

- (1) There has been a single severe incident of child abuse or neglect, such as a near fatality of the child or a sibling or a fatality of a sibling;
- (2) The family has a history of repeated, failed attempts to correct conditions, which resulted in child maltreatment;
- (3) The child or siblings have been in out-of-home care on at least one other occasion for a period of six (6) months or more, or have had two or more prior placements with DCS involvement;
- (4) There has been an ongoing pattern of documented domestic violence lasting at least one year in the household; or
- (5) The parent, guardian, or custodian has a developmental disability or emotional impairment which, upon assessment, indicates that the parent may be unable to provide, protect, or nurture the child, and the parent, guardian, or custodian has no other relatives or social supports able or willing to assist in parenting.
- (6) Any other time when appropriate.

## **4. Parents Are To Be Informed of Concurrent Planning**

DCS will ensure that all parents, guardians, custodians, and members of the Child and Family Team are informed about concurrent planning, and DCS will collaborate with these participants to create a primary plan and a concurrent plan.

## **5. Recommended Visitation for Concurrent Planning**

Visitation between the parent and child under a concurrent plan is recommended to be two times per week face-to-face.

## **6. Primary Plan May Be Changed to Concurrent Plan After 6 Months**

The primary plan should be changed to the concurrent plan if little or no progress is made six (6) months following removal or at the discretion of the Child and Family Team.

## **7. Adoption and Safe Families Act Encourages Concurrent Planning**

The Adoption and Safe Families Act of 1997 encourages states to engage in concurrent planning. Benefits of concurrent planning include:

- (1) Achieves early permanence for children within or outside the birth family;
- (2) Decreases a child's length of stay in foster care;
- (3) Develops a pool of resource families that can be of assistance to both the child and family;
- (4) Maintains family relationships;
- (5) Reducing the number of placements;
- (6) Reducing the length of time in care;
- (7) Increase in voluntary TPR; and
- (8) Improving the long-term adjustments of the child by an increase in the degree of openness.

## **C. PERMANENCY HEARING**

A permanency hearing will also involve the procedures laid out for the periodic case review hearing.

### **1. Time for Completion**

Pursuant to Ind. Code § 31-34-21-7(a), the court shall hold a permanency hearing:

- (1) Not more than thirty (30) days after a court finds that reasonable efforts to reunify or preserve a child's family are not required as described in Ind. Code § 31-34-21-5.6;
- (2) Every twelve (12) months after: (A) the date of the original dispositional decree; or (B) a child in need of services was removed from the child's parent, guardian or custodian; whichever comes first; or
- (3) More often if ordered by the juvenile court.

### **2. Notice to Foster Child Transitioning to Independent Living and Opportunity to be Heard**

Pursuant to Ind. Code § 31-34-21-7(c), if the child is at least sixteen (16) years of age and the proposed permanency plan provides for another planned permanent living arrangement, the court shall, at each permanency hearing, do all of the following:

- (1) Require the department to provide notice of the permanency hearing to the child, in accordance with Ind. Code § 31-34-21-4(a).
- (2) Provide to the child an opportunity to be heard and to make recommendations to the court, in accordance with Ind. Code § 31-34-21-4(d).
- (3) Require the department to document or provide testimony regarding the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made by the department to return the child home or secure a placement for the child with a fit and willing relative, legal guardian, or adoptive parent, including efforts through the use of search technology, such as social media, to find biological or adoptive family members for the child.



- (4) Ask the child about the desired permanency outcome for the child and document the child's response.
- (5) Make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to: (A) return home; (B) be placed for adoption; (C) be placed with a legal guardian; or (D) be placed with a fit and willing relative.
- (6) Require the department to document or provide testimony regarding the steps the department is taking to ensure that: (A) the child's foster family home, group home, secure private facility, or child caring institution is following the reasonable and prudent parent standard; and (B) the child has a regular, ongoing opportunities to engage in age or developmentally appropriate activities, including consulting with the child in an age appropriate manner about the opportunities for the child to participate in the activities.

### **3. Progress Report Required**

Before a hearing under Ind. Code § 31-34-21-7, the department shall prepare a report in accordance with Ind. Code § 31-34-22 on the progress made in implementing the dispositional decree. Ind. Code § 31-34-21-8.

### **4. Court Determinations**

Pursuant to Ind. Code 31-34-21-7(b), the court shall:

- (1) Make the determination and findings required by Ind. Code 31-34-21-5;
- (2) Consider the question of continued jurisdiction and whether the dispositional decree should be modified;
- (3) Consider recommendations of persons listed under Ind. Code 31-34-21-4, before approving a permanency plan under Code Ind. Code 31-34-21-7(b)(5);
- (4) Consult with the child in person, or through an interview with or written statement or report submitted by: (A) a guardian ad litem or court appointed special advocate for the child; (B) a case manager; or (C) the person with whom the child is living and who has primary responsibility for the care and supervision of the child; in an age appropriate manner as determined by the court, regarding the proposed permanency plan;
- (5) Consider and approve a permanency plan for the child that complies with the requirements set forth in Ind. Code 31-34-21-7.5;
- (6) Determine whether an existing permanency plan must be modified; and
- (7) Examine procedural safeguards used by the department to protect parental rights.

For example:

A.C. v. Ind. Dep't of Child Servs. (In re B.W.), 17 N.E.3d 299, 310-11 (Ind. Ct. App. 2014) ("Throughout the CHINS proceedings, there was an undercurrent of suspicion that [Mother] knows more than she is telling about the injuries to [the child]. The mother has met every requirement in the parental participation order. Mother's unwillingness to take a polygraph was the main issue for DCS, despite it being unreliable. DCS presented no evidence to demonstrate any conditions existing at the time of the final permanency hearing to justify permanent removal of the children. The mother complied with and satisfied every condition of the permanency plan, the purpose of which was to reunify

Mother with the children.).

**a. Guardian Appointed Under Normal Guardianship Proceedings**

If the juvenile court approves a permanency plan under Ind. Code § 31-34-21-7 that provides for the appointment of a guardian for a child, the juvenile court may appoint a guardian of the person and administer a guardianship for the child under Ind. Code § 29-3-3. Ind. Code 31-34-21-7.7(a).

**(1) Transfer from Probate Court to Juvenile Court**

If a guardianship of the person proceeding for the child is pending in a probate court, the probate court shall transfer the proceeding to the juvenile court. Ind. Code § 31-34-21-7.7(b).

**(2) Guardianship Order May Include Conditions**

In creating a guardianship of a minor, a probate or juvenile court may include in an order the requirements and terms and conditions described in Ind. Code § 29-3-8-9(a). Ind. Code § 31-34-21-7.7(c).

**(3) If Juvenile Court Closes CHINS Case after Guardianship Created**

**(4) Juvenile Court Order Survives Closure of CHINS**

If the juvenile court closes a CHINS case after creating a guardianship, the juvenile court order creating the guardianship survives the closure of the CHINS case. Ind. Code § 31-34-21-7.7(d).

**(5) Probate Court May Assume/Resume Jurisdiction**

If the juvenile court closes the CHINS case after creating a guardianship, the probate court may assume or reassume jurisdiction of the guardianship and take further action as necessary. Ind. Code § 31-34-21-7.7(e).

**b. Permanency Plan Approval Involving Criminal or Juvenile Delinquency History**

**(1) Circumstances for Approval of Permanency Plan**

Pursuant to Ind. Code § 31-34-21-7.5(d), a juvenile court may approve a permanency plan if:

- (1) A person described in Ind. Code § 31-34-21-7.5(a) has:
  - (A) Committed an act resulting in a substantiated report of child abuse or neglect; or
  - (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 recklessness (Ind. Code § 35-42-2-2) as a felony;
    - (iii) Criminal confinement (Ind. Code § 35-42-3-3) as a felony;
    - (iv) Arson (Ind. Code § 35-43-1-1) as a felony;
    - (v) Non-support of a dependent child (Ind. Code § 35-45-1-5);
    - (vi) Operating a motorboat while intoxicated (Ind. Code § 35-46-9-6) as a felony;
    - (vii) A felony involving a weapon under Ind. Code § 35-47 or a felony involving controlled explosives under Ind. Code § 35-47.5;
    - (viii) A felony relating to controlled substances under Ind. Code 35-48-4;
    - (ix) A felony under Ind. Code 9-30-5;
    - (x) Attempt to commit a felony listed in items (i) through (xi); or

(xi) A felony that is substantially equivalent to a felony listed in this clause for which the conviction was entered in another jurisdiction;

if the conviction did not occur within the past five (5) years; or

(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 Ind. Code § 31-34-21-7.5(d)(1) is not relevant to the person's present ability to care for a child, and that approval of the permanency plan is in the best interest of the child.

## **(2) Certain Households Prohibited**

Except as provided in Ind. Code § 31-34-21-7.5(d), the juvenile court may not approve a permanency plan under Ind. Code § 31-34-21-7.5(c)(1)(D) [adoption], (c)(1)(E) [placement with responsible person], or (c)(1)(F) [adoption] if a person who is current residing with a person described in Ind. Code § 31-34-21-7.5(c)(1)(D) or (c)(1)(E) or in a residence in which the child would be placed under Ind. Code § 31-34-21-7.5(c)(1)(F) 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 § 31-34-21-7.5(a).

A court may not approve a permanency plan in the person has been convicted of a felony listed in Ind. Code § 31-27-4-13 that is not specifically excluded under Ind. Code § 31-34-21-7.5(d)(1)(B), or 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 that is not specifically excluded under Ind. Code § 31-34-21-7.5(d)(1)(B). Ind. Code § 31-34-21-7.5(d)(2).

## **(3) Court Considerations When Determining an Exception Exists**

Pursuant to Ind. Code § 31-34-21-7.5(e), in making its written finding under Ind. Code § 31-34-21-7.5(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.

## **IX. EXPEDITED APPEAL BY DCS ABOUT PLACEMENT FUNDING**

See the Appellate Manual from the Indiana Public Defender Council and Indiana Appellate Rule 14.1.

## **X. APPEAL**

### **A. FINAL JUDGMENTS**

#### **1. Denial of Motion to Modify Permanency Plan Is Not Final, Appealable Judgment**

Change in permenance plan from reunification to termination is not an appealable final judgement because parents are not prejudiced by the permanency plan because the change does not terminate parents' rights and parents may challenge the propriety of terminating

their parental rights and hold DCS to the stricter burden of proof required in such cases. In re K.F., 797 N.E.2d 310 (Ind. Ct. App. 2003).

T.W. v. Dept. of Child Services, 52 N.E.3d 839 (Ind. Ct. App. 2016) (appeal dismissed for lack of subject matter jurisdiction because order that denied Mother's motion to modify CHINS permanency plan and that also granted DCS's motion to terminate visitation was not a final appealable judgment under Appellate Rule 2(H); Court distinguished In re: E.W., 26 N.E.3d 1006 (Ind. Ct. App. 2015), where Court addressed Mother's appeal even though the trial court's order was not a final judgment; child in In re: E.W. was much older and had another planned permanent living arrangement, which was not at issue in this case).

For more guidance on appeals, see the Appellate Manual from the Indiana Public Defender Council and Ch. 15 – Post TPR.

## **B. INTERLOCUTORY APPEAL**

Interlocutory appeal of a change in the permanency plan is generally premature. C.Q. v. Ind. Dep't of Child Servs. (In re A.Q.), 104 N.E.3d 628 (Ind. Ct. App. 2018).

C.Q. v. Ind. Dep't of Child Servs. (In re A.Q.), 104 N.E.3d 628 (Ind. Ct. App. 2018) (change in the permanency plan from reunification to termination is generally not suitable for interlocutory review, particularly where, as here, DCS and the court continue reunification services, because parents cannot show actual harm from the change; they can only show the potential for future harm).