



## **2010 Legislative Changes to Involuntary Termination of the Parent-Child Relationship, Adoption, and Paternity Law<sup>1</sup>**

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Legislation effective March 25, 2010, makes significant changes in Termination of the Parent-Child Relationship, Adoption, and Paternity Law. The full text of this legislation, Senate Enrolled Act 140, may be found at [www.in.gov/legislative](http://www.in.gov/legislative). More information on the cases cited in this article may be found on this website, [www.kidsvoicein.org](http://www.kidsvoicein.org), click on Children's Law Center, then on Adoption, Caselaw Updates.

**1. Two separate CHINS adjudications, in conjunction with other statutory requirements, can form a basis for involuntary termination of the parent-child relationship.** IC 31-34-2-4 and IC 31-34-3-5 were amended by adding the following alternate ground in the termination petition statutes, "The child has, on two (2) separate occasions, been adjudicated a child in need of services." IC 31-35-2-4(B)(iii). IC 31-35-3-5(D)(iii).

**2. Restrictions on executing subsequent consents to have another person adopt the child have been enacted.** IC 31-19-9-2 was amended by adding subsection (e) which states that a person who executes a written consent to the adoption of a child may not execute a second or

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subsequent written consent to have another person adopt the child unless one (1) or more of the following apply:

- (1) Each original petitioner provides a written statement that the petitioner is not adopting the child.
- (2) The person consenting to the adoption has been permitted to withdraw the first consent to adoption under IC 31-19-10.
- (3) The court dismisses the petition for adoption filed by the original petitioner or petitioners for adoption based upon a showing, by clear and convincing evidence, that it is not in the best interests of the child that the petition for adoption be granted.
- (4) The court denies the petition to adopt the child filed by the original petitioner or petitioners for adoption.

Practitioners should carefully consider and follow IC 31-19-9-2(e), especially in conjunction with IC 31-19-9-3(b). IC 31-19-9-3(b) allows an adoption petitioner to be substituted if the mother's executed consent to adoption contains a statement that the mother voluntarily agrees that a petitioner for the adoption may be substituted without additional consent from the mother, or the mother executes a written consent to the substitution of a petitioner for the adoption. See In Re Adoption of A.S., 912 N.E.2d 840 (Ind. Ct. App. 2009) (in considering former version of consent statute, Court opined that Adoption Code does not hold that all subsequent adoption consents are void and Code does not limit the ability to file additional consents, although Code limits the ability to withdraw a consent or substitute adoption petitioner.)

**3. Only attorneys licensed to practice law in Indiana or child placing agencies licensed in Indiana may place a paid advertisement or paid listing of a telephone number in a telephone directory that a child is offered or wanted for adoption or the person is able to place, locate, or receive a child for adoption.** IC 35-46-1-21, which defines the crime of "unauthorized adoption advertising," a class A misdemeanor, was amended to allow only Indiana licensed

attorneys or child placing agencies licensed in Indiana to advertise adoption services in the telephone directory. This statute formerly allowed any licensed attorney or a child placing agency licensed under the laws of any state or the District of Columbia to place adoption advertisements.

**4. Child placing agencies licensed in another state and attorneys licensed in another state may not provide adoption services to a birth parent or prospective adoptive parent who resides in Indiana.** IC 35-46-1-22(d) states that a person who knowingly or intentionally provides, engages in, or facilitates adoption services to a birth parent or prospective adoptive parent who resides in Indiana commits unauthorized adoption facilitation. IC 35-46-1-22(c) was amended, eliminating child placing agencies licensed under the laws of another state and attorneys licensed to practice law in another state (new language underlined) from the list of persons to whom the statute does not apply. The others to whom the statute does not apply include: (1) DCS, an agency or person authorized to act on behalf of DCS or a similar agency or county office in another state; (2) the division of family resources, and agency or person authorized to act on behalf of the division of family resources, or a similar agency or county office in another state; (3) prospective biological or adoptive parent acting on the individual's own behalf; (4) attorney licensed in Indiana or child placing agency licensed in Indiana.

**5. The content of the statutory adoption notice which Indiana law requires to be given to some putative fathers in specific situations has been amended.** IC 31-19-4-4 sets out the Notice to Unnamed Father. As amended, the Notice states:

“NOTICE TO UNNAMED FATHER

The unnamed putative father of the child born to \_\_\_\_\_(mother's name) on \_\_\_\_\_(date), or the person who claims to be the father of the child born to \_\_\_\_\_(mother's name) on \_\_\_\_\_(date), is notified that a petition for adoption of the child was filed in the office of the clerk of \_\_\_\_\_ court, \_\_\_\_\_(address of court).

If the unnamed putative father seeks to contest the adoption of the child, the unnamed putative father must file a motion to contest the adoption in accordance with IC 31-19-10-1 in the above

named court within thirty (30) days after the date of service of this notice. This notice may be served by publication.

If the unnamed putative father does not file a motion to contest the adoption within thirty (30) days after service of this notice, the above named court shall hear and determine the petition for adoption. The unnamed putative father's consent is irrevocably implied and the unnamed putative father loses the right to contest the adoption or the validity of the unnamed putative father's implied consent to the adoption. The unnamed putative father loses the right to establish paternity of the child under IC 31-14.

Nothing \_\_\_\_\_ (mother's name) or anyone else says to the unnamed putative father of the child relieves the unnamed putative father of his obligations under this notice.

Under Indiana law, a putative father is a person who is named as or claims that he may be the father of a child born out of wedlock but who has not yet been legally proven to be the child's father.

This notice complies with IC 31-91-4-4 but does not exhaustively set forth the unnamed putative father's legal obligations under the Indiana adoption statutes. A person being served with this notice should consult the Indiana adoption statutes.”.

IC 31-19-4-5 sets out the Notice to Named Father. As amended, the Notice states:

“NOTICE TO NAMED FATHER

\_\_\_\_\_ (putative father's name), who has been named the father of the child born to \_\_\_\_\_ (mother's name) on \_\_\_\_\_ (date), or who claims to be the father of the child born to \_\_\_\_\_ (mother's name) on \_\_\_\_\_ (date), is notified that a petition for adoption of the child was filed in the office of the clerk of \_\_\_\_\_ court, \_\_\_\_\_ (address of the court).

If \_\_\_\_\_ (putative father's name) seeks to contest the adoption of the child, he must file a motion to contest the adoption in accordance with IC 31-19-10-1 in the above named court not later than thirty (30) days after the date of service of this notice.

If \_\_\_\_\_ (putative father's name) does not file a motion to contest the adoption within thirty (30) days after service of this notice, the above named court will hear and determine the petition for adoption. His consent will be irrevocably implied and he will lose his right to contest either the adoption or the validity of his implied consent to the adoption. He will lose his right to establish his paternity of the child under IC 31-14.

Nothing \_\_\_\_\_ (mother's name) or anyone else says to \_\_\_\_\_ (putative father's name) relieves \_\_\_\_\_ (putative father's name) of his obligations under this notice.

Under Indiana law, a putative father is a person who is named as or claims that he may be the father of a child born out of wedlock but who has not yet been legally proven to be the child's father. For purposes of this notice, \_\_\_\_\_ (putative father's name) is a putative father under the laws in Indiana regarding adoption.

This notice complies with IC 31-19-4-5 but does not exhaustively set forth a putative father's legal obligations under the Indiana adoption statutes. A person being served with this notice should consult the Indiana adoption statutes.”.

**6. The requirements outlined at IC 31-19-9-12 under which a putative father's consent to adoption is irrevocably implied without further court action have been clarified.** As amended, IC 31-19-9-12 provides that a putative father's consent to adoption is irrevocably implied without further court action if the putative father: (1) fails to file a motion to contest the adoption in accordance with IC 31-19-10 within thirty days after service of notice under IC 31-19-4 in the court in which the adoption is pending (new language underlined); (2) having filed a motion to contest the adoption in accordance with IC 31-19-10, fails to appear at the hearing set to contest the adoption; (3) having filed a paternity action under IC 31-14, fails to establish paternity in the action; or (4) is required to but fails to register with the putative father registry established by IC 31-19-5 within the period under IC 31-19-5-12. See In Re B.W., 908 N.E.2d 586 (Ind. 2009) (in case decided prior to this amendment, trial court's judgment granting adoption reversed and remanded; Court found that trial court erroneously determined that putative father's consent was irrevocably implied because he filed his motion to contest the adoption in a paternity case he initiated, not in the court where the adoption petition was pending).

**7. A man who is barred from establishing paternity under IC 31-19 may not establish paternity by filing a paternity action as next friend of the child or by requesting the prosecutor to file a paternity action.** A new paternity statute, IC 31-14-5-9, was added. It applies to a man who is barred from establishing paternity under IC 31-19 (adoption law). (See item 6 immediately above for legal reasons in adoption law that bar a man from establishing paternity.) In an opinion construing former law, In Re E.L., 913 N.E.2d 1276 (Ind. Ct. App. 2009), the Court affirmed the trial court's dismissal of putative father's paternity petition filed in putative father's name because the putative father had failed to register timely with the putative father registry, which constituted an irrevocably implied consent to adoption. The Court reversed and remanded the case because the trial court erred in dismissing the paternity petition the father filed as the child's next friend. The child's paternity petition was not barred by statute.

**8. Court may not grant adoption if petitioner has been convicted of attempt or conspiracy to commit listed felonies or an equivalent offense under laws of another jurisdiction, including a military court.** IC 31-19-11-1(c) lists the following felonies: murder, causing suicide, assisting suicide, voluntary manslaughter, reckless homicide, felony battery, domestic battery, aggravated battery, kidnapping, criminal confinement, a felony sex offense under IC 35-42-4, carjacking, arson, incest, neglect of a dependent, child selling, a felony involving a weapon under IC 35-47 or IC 35-47.5, a felony relating to controlled substances under IC 35-48-4, an offense relating to material or performance that is harmful to minors or obscene under IC 35-49-3. The court is not prohibited from granting an adoption based on a felony conviction or a substantially equivalent felony under the laws of another jurisdiction, including a military court, for felony battery, carjacking, arson, a felony involving a weapon under IC 35-47 or IC 35-47.5, or a felony relating to controlled substances under IC 35-48.4 if the offense was not committed within the immediately preceding five year period. IC 31-19-11-1(c) was amended, adding that the court may not grant an adoption if a petitioner has: (1) a conviction for an attempt or conspiracy to commit any of the listed felonies; or (2) a conviction of a substantially equivalent felony under the laws of another jurisdiction, including a military court (new language underlined). The Court addressed the former version of IC 31-19-11-1(c) in In Re Adoption of J.L.S., 908 N.E.2d 1245 (Ind. Ct. App. 2009) (Court determined that prospective adoptive father had been found guilty by jury of aggravated battery but had been sentenced for and had judgment

of conviction entered for attempted murder which was not listed as a conviction prohibiting a court from granting adoption; trial court's denial of adoption was reversed and remanded for determine of whether adoption was still in child's best interests). IC 31-19-11-1(d) was also amended, adding that the court may not grant an adoption if the petitioner is a sexually violent predator (as defined in IC 35-38-1-7.5) (new language underlined).