

Children's Law Center of Indiana



2019 Legislative Highlights

Katherine Meger Kelsey, J.D.

October 2019

Foster Parents. A long-term foster parent for the purposes of IC 31-32-2.5 and IC 31-34-21 is defined as a foster parent who has provided care and supervision for a child: (1) for at least the twelve most recent months; (2) for at least fifteen months of the most recent twenty-two months; or (3) if the child is less than twelve months of age, for at least six months.

--Placement with Foster Parents. DCS may waive certain foster parent requirements and restrictions (such as how many children are placed in a home) if (A) child is being placed in the foster family home for a second or subsequent time; (B) placement would not cause the foster family home to be out of compliance with federal law; and (C) DCS determines that the placement would not present a safety risk for the child or for any other resident of the foster family home. IC 31-27-4-8.

If a child who was previously placed out of their home is returned to an out of home placement the court and DCS must make a reasonable attempt to place the child in the same out of home placement that the child was previously in. This is subject to the placement being appropriate and being in the child's best interests. IC 31-34-23-5.

--Involvement in Proceedings. A new chapter was added dealing with a foster parent's ability to intervene in CHINS and TPR proceedings. IC 31-32-2.5. Certain qualifying foster parents may petition to intervene as a party at any stage of the proceedings of a CHINS or TPR case. There are some circumstances where a court must hold a hearing, but most circumstances do not require a hearing. The court shall grant the petition to intervene if the court determines that intervention is in the child's best interests.

IC 31-34-21-4-(e) provides that DCS and other collaborators must provide a form for foster parents to use to provide written testimony to place before the court. DCS must include information from the foster parent in their reports. IC 31-34-22-1.

--Foster Parents and TPR. If a child who is a CHINS has been removed from a parent and under DCS supervision for at least 15 of the last 22 months, and a petition to terminate the parent-child relationship has not been filed, a foster parent, relative, or de facto custodian of the child with whom the child has been placed for at least six months can file a notice with the court that the petition to terminate the parent-child relationship has not yet been filed. IC 31-35-2-4.5. Once this notice is filed, if the termination petition is not filed, the court must schedule a hearing on the notice within 30 days.

Parenting Time in Dissolution and Paternity Cases. Senate Bill 323 is effective July 1, 2019. It amended IC 31-14-14-1 by modifying subsection (d), inserting a new subsection (e), and moving the former subsection (e) to subsection (f). The statute now provides that except as otherwise provided in subsection (e), if a court grants parenting time to a parent who has been convicted of child molesting or child exploitation, there is a rebuttable presumption that the parenting time with the child must be supervised. IC 31-14-14-1(d). The new subsection (e) provides that if the parent's convictions for child molesting or child exploitation have occurred within the previous five years, the court shall order that the parenting time for that parent must be supervised. IC 31-14-14-1(e). These amendments should be construed together and combined provide that if a parent has been convicted of child molesting or child exploitation within the past five years, that parent's parenting time, if awarded by a court, must be supervised. If the conviction for child molesting or child exploitation is more than five years in the past, then there remains a rebuttable presumption for supervised parenting time.

Previously, dissolution code did not have an analogous statute providing for a rebuttable presumption of supervised parenting time for a parent who has been convicted of child molesting or child exploitation. 2019 amendments added IC 31-17-4-1(d) and (e), which make the same provisions in dissolution law as there are in paternity law. The statute now provides that except as otherwise provided in subsection (e), if a court grants parenting time to a parent who has been convicted of child molesting or child exploitation, there is a rebuttable presumption that the parenting time with the child must be supervised. IC 31-17-4-1(d). The new subsection (e) provides that if the parent's convictions for child molesting or child exploitation have occurred within the previous five years, the court shall order that the parenting time for that parent must be supervised. IC 31-17-4-1(e). Again, these amendments together provide that if a parent has been convicted of child molesting or child exploitation within the past five years, that parent's parenting time, if awarded by a court, must be supervised. If the conviction for child molesting or child exploitation is more than five years in the past, then there remains a rebuttable presumption for supervised parenting time.

IC 31-17-2-21.8 is a new statute added to the body of dissolution law. It provides that a court may require a parent to submit to drug testing as a condition of being able to exercise that parent's parenting time, if certain conditions are met. IC 31-17-2-21.8(a). Those conditions must include one of the following: (1) the court must find the parent has a history of unlawful drug use within the previous five years; or (2) there is a reasonable likelihood that the parent is currently using unlawful drugs. IC 31-17-2-21.8(a). The court may determine the manner and frequency of drug testing, and the parent must pay the costs of the drug testing. IC 31-17-2-21.8(b) and (c). No provision was made for an analogous statute in the paternity code.

Relocation Definitions

Multiple amendments were made to statutes regarding relocation. The definition statutes, which define nonrelocating individuals, nonrelocating parents, relocating individuals, and relocation, were all amended to provide that they apply to both dissolution law (IC 31-17-2.2) and paternity law (IC 31-14-13). The definition of nonrelocating individual at IC 31-9-2-84.6 was amended to

provide that nonrelocating individual is defined as an individual who has, or has filed an action seeking custody of or parenting time with the child, whether by court order or paternity affidavit, or grandparent visitation with the child. The definition of nonrelocating parent is now a parent of a child who has or is seeking custody of or parenting time with the child, whether by court order or paternity affidavit, and does not intend to move their principal residence. IC 31-9-2-84.7. Relocating individual is defined as an individual who has or is seeking custody of or parenting time with the child, whether by court order or paternity affidavit, and who intends to move their principal residence. IC 31-9-2-107.5. This does not include a person granted grandparent visitation rights. IC 31-9-2-107.5.

Relocation Paternity Code

IC 31-14-13-10 was repealed—this statute had provided that a person who had been awarded custody under paternity code who also intended to relocate must file a notice and comply with the relocation statutes. A new statute, IC 31-14-13-10.2 was added, and it applies to people who have or are seeking custody of a child, parenting time with a child, or grandparent visitation with a child. The statute provides that these individuals must at all times keep other people who have or are seeking the same delineated rights advised of the individuals' home address, all telephone numbers, and all emails. IC 31-14-13-10.2. There are exceptions to this, found at IC 31-17-2.2-4. Information required under IC 31-14-13-10.2 must be given in writing, which includes electronic delivery, to all people entitled to the information.

IC 31-14-13-10.5 was added to the paternity code and provides that both a nonrelocating individual and a relocating individual must comply with IC 31-17-2.2, the relocation statutes.

Relocation Dissolution Code

Dissolution code now explicitly provides that in order to promote amicable settlements during the dissolution of a marriage, parties may agree in writing to provisions for, among other things, the relocation of the children of the parties. IC 31-15-2-17(a)(4).

Dissolution code makes an identical provision to the statute found in paternity code regarding to whom the relocation laws apply, and what information must be shared. IC 31-17-2.2-0.5 applies to people who have or are seeking custody of a child, parenting time with a child, grandparent visitation with a child, and provides that these individuals must at all times keep other people who have or are seeking the same delineated rights advised of the individuals' home address, all telephone numbers, and all emails. IC 31-17-2.2-0.5. There are exceptions to this, found at IC 31-17-2.2-4. Information required under IC 31-17-2.2-0.5 must be given in writing, which includes electronic delivery, to all people entitled to the information.

Relocation Statutes of General Applicability

—Where To File. Significant amendments were made to IC 31-17-2.2-1. Except as provided in subsection (b), a relocating individual must file a notice of their intent to move with the clerk of the court that issued the custody or parenting time order. IC 31-17-2.2-1(a)(1). If there is no court which issued a custody or parenting time order, then the relocating individual must file

their notice with a court that has jurisdiction over the legal proceedings concerning custody and parenting time of the child. IC 31-17-2.2-1(a)(2).

—*When Notice of Relocation is Not Required.* Subsection (b) of IC 31-17-2.2-1 is entirely new. A relocating individual is not required to file their notice of intent to relocate if the following applies:

- (1) the relocation has already been addressed by a prior court order, including a court order which relieves the relocating individual of the requirement to file a notice; AND
- (2) the relocation will either result in a decrease in the distance between the parties' residences, OR result in an increase between residences of no more than twenty miles; AND
- (3) The relocation allows the child to stay in the same school.

—*Complying With Notice Requirements.* IC 31-17-2.2-3 also underwent significant amendments and now provides that a person required to file notice required by IC 31-17-2.2-1 must:

- (1) file and serve the notice on each nonrelocating person who is a party to the case, in accordance with the Indiana Rules of Trial Procedure, thirty days before the date of the intended relocation or within fourteen days of when the relocating person becomes aware of the relocation, whichever is sooner;
- (2) send notice to any nonrelocating person who is NOT a party to the case by registered or certified mail, thirty days before the date of the intended relocation or within fourteen days of when the relocating person becomes aware of the relocation, whichever is sooner; and
- (3) provide the following information in the notice: (A) the intended new residence, which includes the address and the mailing address of the relocating person, if that is different from the address of the new residence; (B) all telephone numbers for the relocating person; (C) the date the relocating person intended to move; (D) a brief statement of specific reasons for the proposed relocation of the child; (E) a statement that the relocating person either does or does not believe that a change in parenting time or grandparent visitation is necessary; (F) a statement that a nonrelocating parent must file a response regarding the relocation of the child with court within twenty days of receiving the notice; (G) a statement that a party may file a petition requesting an order to prevent the temporary or permanent relocation of the child, and a statement that a nonrelocating person can file a petition to modify a custody, parenting time, grandparent visitation or child support order; (H) a statement that all existing orders for custody, parenting time, grandparent visitation, and child support remain in effect until the court modifies any of those orders.

—*When Disclosing Required notice Information Creates A Substantial Risk.* Minor amendments were made to IC 31-17-2.2-4 to reflect the changes in definitions and other changes. It now provides that if a court finds that disclosure of the information required under IC 31-14-13-10.2 or IC 31-17-2.2-0.5 or -3 creates a significant risk of substantial harm to the person who is required to disclose the information or to the child, the court may order that the address, telephone number, or other identifying information of the person or child not be shared with other individuals or disclosed in pleadings, other than documents filed in the proceeding, or the

final order. The other orders which the court may make to protect the person required to disclose the new information or the child remain in effect and are found at IC 31-17-2.2-4(2) through (4).

—*Court Orders and Court’s Ability to Modify Orders*. Even though a person may not be required to file a notice to intent to relocate, IC 31-17-2.2-1(c) now provides that this exemption does not affect a court’s ability to modify a custody order, parenting time order, grandparent visitation order, or child support order if someone requests a hearing to allow or restrain a relocation. IC 31-17-2.2-1(c) provides that if a party so requests, the court has to set the matter for hearing to either allow or restrain the relocation of the child, and to review and modify if necessary orders regarding the child.

If a relocation occurs, all existing orders for custody, parenting time, grandparent visitation, and child support remain in effect until modified by the court. IC 31-17-2.2-1(e).

—*Responses Required from a Nonrelocating Parent*. IC 31-17-2.2-5 was completely rewritten. It now provides that except as otherwise provided, a nonrelocating parent must file a response within twenty days after that parent is served with notice from relocating person. The nonrelocating parent’s response must include one of the following:

- (1) a statement that the nonrelocating parent does not object to the relocation of the child and does not request the modification of any custody, parenting time, grandparent visitation, or child support orders;
- (2) a statement that the nonrelocating parent does not object to the relocation of the child, and a motion to modify custody, parenting time, grandparent visitation, or child support as the result of relocation, and a request for hearing on that motion;
- (3) a statement that the nonrelocating parent objects to the relocation of the child, a motion to temporarily or permanently restrain the child from relocating, a motion to modify custody, parenting time, grandparent visitation, or child support as the result of relocation, and a request for hearing on that motion.

If the nonrelocating parent, in their response, files one of the delineated motions to modify a child related order in response to a proposed relocation, that motion must state whether the relocating person and the nonrelocating parent have participated in mediation or another form of alternative dispute resolution. IC 31-17-2.2-5(c).

—*Nonrelocating Parent Exemption From Filing Response*. The exceptions to the requirements for the nonrelocating parent to file one of the above responses are found at IC 31-17-2.2-5(b). This subsection provides that a nonrelocating parent is not required to file a response if the parties have executed and filed with the court a written agreement resolving all issues relating to custody, parenting time, grandparent visitation, and child support resulting from relocation of the child. This agreement must include a child support worksheet, signed by the parties and attached to the agreement if there is to be a modification of child support.

The remaining subsections of IC 31-17-2.2-5 remain in effect, with minor changes such as renumbering the subsections and reflecting changes in definitions.

—*Mediation Orders*. Upon either the motion of a party or the court’s own motion, the court can order the relocating and the nonrelocating people to participate in mediation or another alternative dispute resolution process. IC 31-17-2.2-1(d).

—*Temporary Orders Denying or Granting Relocation*. IC 31-17-2.2-6 was amended to reflect the new responses that a nonrelocating parent could file in response to a proposed relocation of the child. It was also amended to reflect that a court may temporarily restrain the relocation of a child if the court finds that the new notice requirements were not served in a timely manner and the parties have not presented an agreement concerning the relocation of the child; the other grounds on which a court may temporarily restrain a child from moving remain unchanged. IC 31-17-2.2-6(a). Subsection (b) was amended to provide that a court may grant a temporary order allowing the child’s relocation pending a final hearing if the court finds that new notice requirements were provided in a timely fashion, if the court issues orders which are necessary for temporary custody, parenting time, child support, and grandparent visitation with the child, and if the court reviews the evidence presented at the temporary hearing and determines there is a likelihood that after the final hearing, the court will approve the relocation. IC 31-17-2.2-6(b). Lastly, subsection (c) was amended to reflect that the focus is on the relocation of the child, not allowing or restraining the relocating person from relocating.

—*Factors Considered in Relocation Determinations*. The factors that a court must take into consideration in determining whether to modify a custody, parenting time, grandparent visitation, or child support order have not changed, but are now found at IC 31-17-2.2-1(c).

General CHINS Provisions

IC 31-9-2-129.5 was amended. This statute lays out the definition of a therapeutic foster family home. Subsection (B) now provides that a therapeutic foster family home means a home that provides care for an individual who is at least eighteen (18) but less than twenty-one (21) years of age receiving collaborative care under IC 31-28-5.8.

—*Family Case Managers*. IC 31-25-2-5 was amended. The statute now provides that a family case manager will have no more than twelve (12) families monitored and supervised in active cases relating to ongoing in-home services or thirteen (13) children monitored and supervised in active cases relating to ongoing services who are in out-of-home placements. IC 31-25-2-5(a).

IC 31-25-6 is a new chapter, which deals with Family Case Manager Assistance. DCS must implement and make available ways to contact family case managers for the purposes of providing access to assistance in finding placement with a relative, foster placement or other suitable placements for a child. These contacts must be available 24 hours per day, seven days per week to provide assistance.

Case managers must exercise due diligence to identify all relatives for placement and provide a description of those efforts. IC 31-34-18-2; -6.2. A court must order DCS to continue exercising this due diligence until the child has been placed out of the home for twelve months. IC 31-34-19-7.

—Transitional Services Plan. IC 31-25-2-21 amended the age of an individual who shall receive a transitional services plan. It now provides that an individual who is at least eighteen (18) but less than twenty-one (21) years of age; and is receiving collaborative care under IC 31-28-5.8 shall receive a transitional services plan.

—Older Youth Definition. IC 31-28-5.8-4 amended the definition of an older youth to mean any individual who is at least eighteen (18) years of age but less than twenty-one (21) years of age.

—Age Eligibility for Collaborative Care Services. IC 31-28-5.8-5 was amended to provide that an older youth who received foster care under a court order on the day the individual attains eighteen (18) years of age is eligible to receive collaborative care services under applicable rules of the department at any time until the individual becomes twenty-one (21) years of age. IC 31-28-5.8-5(a).

--Definition of Child. Subsection (j) of IC 31-9-2-13 is entirely new. The new subsection for the purposes of IC 31-35-2-4.5 defines “child” to mean an individual who is: (1) less than eighteen (18) years of age; and (2) a delinquent child or a child in need of services.

--Best Interests. For the purposes of IC 31-33, IC 31-34, and IC 31-35, all decisions made by DCS or the court must be made with consideration of the best interests of the children involved.

Assessment and CHINS

—Report of Suspected Child Abuse or Neglect Timeframe. IC 31-33-7-8 was amended to change the time the department has to send a report from an entity listed in IC 31-33-7-8(a). The statute now provides that the department will not later than forty-five (45) days after the date the department initiates an assessment or investigation of a report of suspected child abuse or neglect from a person described in subsection (a). IC 31-33-7-8(b).

—Imminent Danger Onsite Assessment Timeframe. If the department believes that a child is in imminent danger of serious bodily harm, the department shall initiate an onsite assessment immediately, but no later than two (2) hours, after receiving the report. IC 31-33-8-1(d).

—Child in Need of Services Definition. IC 31-34-1-1 added two new provisions to the definition of what makes a child in need of services. The child’s physical or mental condition is seriously impaired or seriously endangered add a result of the inability, refusal, or neglect of the child’s parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:

- (A) when the parent, guardian, or custodian is financially able to do so; or
 - (B) due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so; and
- (2) the child needs care, treatment, or rehabilitation that:
- (A) the child is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

Adoptions

—Unauthorized Adoption Advertising. IC 35-46-1-2 was amended. This statute pertains to adoption advertising, and provides that only a licensed Indiana attorney or a Indiana licensed child placing agency can place an advertisement that a child is wanted or offered for adoption, or that the person placing the advertisement is able to place, locate, or receive a child for adoption. IC 35-46-1-2(b). The original subsection (c) was deleted, and the subsections were re-lettered to reflect that deletion. Subsection (d) now provides that this prohibition against unauthorized adoption advertising may not be enforced against an Indiana resident seek to adopt a child on the resident's own behalf, in addition to the already existing exceptions for a federal agency and the Indiana department of child services.

—Copies of Identifying Adoption Information. IC 31-19-25-2 was amended by adding a new subsection (c) and making other conforming changes. This statute pertains to who may request the release of identifying information regarding an adoption, and who may release that information. The new subsection provides that a person who is permitted to release information under IC 31-19-25-2(b) shall, upon request by the person asking for the identifying information, provide copies of the identifying information to the requesting individual who is described under IC 31-19-25-2(a).

--Nonwaivable Offenses. IC 31-9-2-84.8 added new nonwaivable offenses, which include involuntary manslaughter, feticide, strangulation, criminal recklessness within the last five years, reckless supervision, nonsupport of a dependent within the last five years, operating a motorboat while intoxicated within the last five years, a felony related to the health or safety of a child or an endangered adult. IC 31-19-11-1 was also amended to reflect these nonwaivable offenses; however, a court is not prohibited from granting an adoption based on a felony conviction for battery, criminal recklessness, criminal confinement, arson, nonsupport of a dependent, operating a motorboat while intoxicated, a felony involving a weapon, and a felony relating to controlled substances. Conforming changes were also made to other statutes for permanency placement.

Minor's Consent to Pregnancy Care.

IC 16-36-1-3 was amended by adding in a new subsection (E); the statute now provides, among things, that except as otherwise provided, an individual may consent to the individual's own health care if the individual is a minor and meets the requirements of IC 16-36-1-3.5. Conforming amendments were made to IC 16-36-6-7 to reflect the existence of the new statute discussed below.

—Does Not Apply to Abortion or POST Forms. IC 16-36-1-3.5 is a new statute, and it specifically does not apply to the consent to the provision of an abortion or completion of a POST form (a standardized form containing medical orders by a treating physician, advance practice nurse, or physician assistant based on a patient's preferences for end-of-life care). IC 16-36-1-3.5(a).

—*Minor’s Ability To Consent.* A minor who is at least sixteen years old and is pregnant, or in labor, or is sixty days postpartum is competent to give consent for their own medical or hospital care and treatment with respect to the pregnancy, delivery, and postpartum care of themselves. IC 16-36-1-3.5(b).

—*Required Attempts to Contact Parent or Guardian for Consent.* Before a health care provider can give care to a qualifying minor, the health care provider must, either before or at the initial appointment for treatment, make a reasonable effort to contact the minor’s parent or guardian for consent to provide the treatment, and document in writing those attempts and efforts. If, after these reasonable efforts, the health care provider is unable to make contact, or the parent or guardian refuses to provide consent for treatment, the health care provider shall act in the manner that is in the best interests of the minor and the fetus. IC 16-36-1-3.5(c).

If, after the initial appointment for care or treatment, the health care provider determines that additional care is in the best interests of the minor and the fetus, the health care provider shall make one additional attempt to contact the parent or guardian for consent, if applicable, before the provision of prenatal care, the delivery of the baby, and the provision of postpartum care. IC 16-36-1-3.5(d).

TPR and Parental Incarceration

IC 31-34-15-4 was amended and a new subsection was added. The statute now provides that if a child’s parent is incarcerated, the child’s case plan must include a description and discussion of, among other things, the services and treatment available to the parent at the facility where the parent is incarcerated, and how the parent and the child may be afforded visitation opportunities, unless visitation with the parent is not in the child’s best interests. IC 31-34-15-4(7).

IC 31-34-19-6 was amended and a new subsection was added. The statute now provides if it is consistent with the safety of the community and the best interests of the child, the juvenile court shall enter a dispositional decree that, among other things, provides a reasonable opportunity for the child’s incarcerated parent who has maintained a meaningful role in the child’s life to maintain a relationship with the child. IC 31-34-19-6(6).

Minor amendments were made to IC 31-35-2-4 to reflect the changes to the above statutes.

IC 31-35-2-4.5(d)(4) now provides that a person described in section 4(a) of this statute may file a motion to dismiss the petition to terminate the parent-child relationship if any of the following circumstances apply: ... (4) Subject to subsection (f), that: (A) the parent is incarcerated or the parent's prior incarceration is a significant factor in the child having been under the supervision of the department or a county probation department for at least fifteen (15) of the most recent twenty-two (22) months; (B) the parent maintains a meaningful role in the child's life; and (C) the department has not documented a reason to conclude that it would otherwise be in the child's best interests to terminate the parent-child relationship.

When a court is determining whether to dismiss a petition or terminate the parent-child relationship, the court may consider the length of time remaining in the incarcerated parent's sentence and any other factor the court considers relevant.

IC 31-35-2-4.5(f) is new and provides that IC 31-35-2-4.5(d)(4) does not apply if the parent was incarcerated for a crime of child abuse, neglect of a dependent as a level 5 felony or above and the dependent is the subject of the petition, or crimes such as murder, suicide, rape, incest, child sexual abuse, and manslaughter.

Child Support

IC 31-16-6-6 was amended and now provides that the duty to support a child ceases when the child becomes 19 years of age unless the child is a full-time student in a secondary school. If a child is age 19 or older, and is a full time student in a secondary school, child support may continue if a parent or guardian files a specific notice, and the contents of the notice are outlined in the statute. If no one files an objection or a request for a hearing, the court can issue an order continuing the child support without having a hearing.

IC 31-16-8-1(e) was added to further define what counts as an order of child support in the context of modification of child support.