

## Various department of child services matters

[S.E.A. 365, P.L. 131](#)

Effective *May 12, 2009* (§ 5; 38; 78-79); *July 1, 2009* (§ 1-4; 6-37; 39-77)

### DCS

- Permits the Department of Child Services (DCS) additional use of emergency rulemaking authority for transitional services, foster care licensing, therapeutic foster homes, and special need foster family homes.
- Provides the DCS is responsible for the cost of treatment of a child in their custody placed in a state institution only if the cost is reimbursable under Medicaid.
- Defines “assessment” for purposes in IC 31-33 to mean investigation of safety issues that affect a child and parent and substitutes “assessment” for “investigation” in numerous sections of Title 31. Creates a definition of a drug or alcohol screen test. Broadens the definition of relative for purposes of Ind. Code 31-34-3, to include maternal or paternal grandparents, adult aunt or uncle or other adult relative suggested by either parent of a child.
- Changes reporting of DCS caseloads to the legislature from quarterly to annually.
- Changes references from “caseworkers” to “family case managers.”
- Requires DCS to negotiate in good faith with any Indian tribe to administer Title IV-E monies in compliance with new federal law.

### Probation and Courts

- Amends Ind. Code § 20-26-1-9 to require probation departments to notify the school corporations if they make a placement which changes the school district of the student.
- Adds Ind. Code § 29-3-7-7 to prohibit a court from appointing a guardian or permitting a guardian to continue to serve as guardian if they have been convicted of certain sex offenses.

### Child support

#### *Enforcement*

- Removes the language from Ind. Code § 31-25-4-32 that, “all previous enforcement actions have been unsuccessful...” when the Child Support Bureau issues notice that an obligor is delinquent. The Bureau would not have to demonstrate to a judge the broad array of support actions available to them were used and unsuccessful.

#### *Bench Warrants for Unpaid Child Support*

- Adds Ind. Code 31-16-12-6.5 to create a procedure to issue a bench warrant in a child support case for unpaid child support. The statute requires the court to set an amount the party is ordered to deposit with clerk before the hearing to show cause at the amount of the arrearage if it is less than \$500. If the arrearage is more than \$500, the court shall set the required escrow at not less than \$500 and not more than 100% of the amount owed.
- The statute requires a court, in a show cause order, to set forth the contempt allegation, the failure to pay child support allegation, when the court issued the order for support, the party’s history of support payments, the specific date, time, and place where the party is required to show cause in the court, and the party’s arrearage. If the party fails to respond to this show cause order by the specified date and time, the court may issue a bench warrant for the party’s arrest and appearance in court.
- The new law requires the circuit court clerk to account for all monies deposited in the escrow account created under this statute and provide a receipt form for deposits in this account. Requires a clerk or a law enforcement officer who receives monies for the escrow account to give a receipt to the respondent on a form proscribed in the statute. Requires a law enforcement officer who receives escrow monies to deposit the money with the clerk within two business days. Permits a party arrested outside of business hours to post the escrow amount indicated in the bench warrant. If the arrested party is unable to post the escrow amount in the bench warrant, the party is entitled to hearing within 48 hours after the arrest,

excluding weekends and holidays. If the hearing is not held in 48 hours, the court shall review the escrow amount, may modify the amount, and shall set a date for a hearing. The party shall explain at the hearing why the party cannot post the required escrow amount. The court shall determine the distribution of escrow amounts according to state and federal law. The contempt may be set aside if the party is found to be in compliance with the court orders. If the party fails to appear at a hearing on the order to show cause, the court shall order the escrow amount distributed under child support distribution laws. An additional bench warrant may be issued under certain circumstances. If the person is in contempt, the court may punish for the contempt under Ind. Code § 34-47.

## **Adoption**

- Amends Ind. Code § 31-19-2-6 to remove a requirement the adoption petition contain information concerning whether or not the petitioner is seeking aid for the adoption.
- Amends Ind. Code § 31-19-2-12 to require the adoption petition be forwarded to DCS whether or not there is a request for adoption subsidy.
- Amends Ind. Code § 31-19-8-1 to provide an adoption may be granted, in certain cases, after a period of supervision by a licensed child placing agency for a child who had not been adjudicated a CHINS or the county office of family and children if the child is subject to an open CHINS action.
- Requires a list of licensed adoption agencies that perform home studies be published, placed on the DCS website, each public library and be provided to each DCS county office of family and children for distribution to individuals who request a copy. Removes a requirement that the list be given to each clerk of a court with probate jurisdiction.
- Removes the requirement that DCS conduct home studies for private adoptions. If a court waives the home studies required from a licensed child placing agency, the court shall require the agency, for a child who is not adjudicated a CHINS or if the child is subject to an open CHINS action, the county office of family and children to ensure a criminal history check is conducted and reported to the court.
- Removes the statutory definition of “hard to place child” and requires DCS to define this phrase. Removes “of family and children” after “county office” in certain instances.
- Provides the home study prepared by the licensed child placing agency or county office is advisory to the court.
- Requires the petitioner to complete and submit an application to DCS for adoption assistance if such assistance is requested.

## **Appointment of Guardian** (effective upon passage)

- Amends Ind. Code § 31-30-1-2.5 to prohibit a court from appointing a guardian or custodian or permitting the guardian or custodian to continue to serve as a guardian or custodian if they have been convicted of certain sex offenses or were less than 18 years of age and tried and convicted as an adult and convicted of certain sex offenses.

## **CHINS**

### *Abuse and Neglect*

- Amends Ind. Code § 31-33-8-1 to require DCS to initiate an appropriately thorough child protection assessment of child abuse and neglect or every report of known or suspected child abuse or neglect received by the department. If the department believes a child is in imminent danger of serious bodily harm, the department shall initiate an onsite assessment immediately, but not later than in one (1) hour, after receiving the report. If the report alleges the child lives with persons convicted of neglect of a dependent or battery, or is required to register as a sex offender, the DCS is required to initiate the assessment in a reasonably prompt time, but no later than five (5) days after DCS receives the report.
- Removes “indicated” as a way DCS can characterize a report of abuse and neglect.

### *Notice of removal to relatives*

- Adds Ind. Code § 31-34-3-4.5 requiring DCS to exercise due diligence to identify and provide notice of the child's removal to all adult relatives within thirty (30) days after the removal from the parents in compliance with new federal law. Defines relative for this purpose to mean a grandparent, adult aunt or uncle, or certain other adult relatives suggested by the child. Notice is not required if the relative is suspected of family or domestic violence.

### *Detention and Initial CHINS hearing combined*

- Amends Ind. Code § 31-34-5-1 and 1.5 to require a CHINS petition to be filed before a detention hearing is held for the child. Amends Ind. Code § 31-34-10-2 to require, if a CHINS detention hearing is held under IC 31-34-5, the initial hearing on the CHINS petition shall be held at the same time as the detention hearing. Permits the court to schedule an additional initial hearing in the CHINS case if necessary, in order to comply with the summons required under this chapter. The second initial hearing must be held within 30 calendar days after the first initial hearing.

### *DCS ability to screen for drugs or alcohol*

- Adds Ind. Code § 31-34-12-7 to permit DCS to administer a drug or alcohol screen test if law enforcement has probable cause to believe a parent, guardian, or custodian is impaired, intoxicated, or under the influence of drugs or alcohol immediately before or at the time of the child's death. This test is to be completed within three hours after the death of the child. The drug test results may be used to make a determination under IC 31-33-8-12, and are not admissible in a criminal proceeding.

### *Education stability for child in foster care*

- Amends Ind. Code § 31-34-15-4 to require DCS to coordinate with local education agencies to ensure the educational stability of a child in foster care.

## **Delinquents**

- Amends Ind. Code § 31-35-2-4 to provide termination proceedings must be filed if a delinquent child has been removed from the parent and under supervision of the probation department for at least 15 of the most recent 22 months. Clarifies that the time period in both CHINS and delinquency cases to file the termination begins the day the child is removed from the home. Amends Ind. Code § 31-35-2-4 & 4.5 to provide the requirements for a termination petition shall apply to CHINS and delinquents.
- Amends Ind. Code § 31-37-5-8 and Ind. Code § 31-37-18-9, in cases where juvenile court does not accept the recommendations of the DCS, all materials in the report submitted by the probation officer or to the court by the DCS is to be incorporated in the record for any appeal the DCS may pursue.
- Amends Ind. Code § 31-37-17-1 to provide if the Predispositional report contains a recommendation for an out-of-home placement other than a secure placement, not for services payable by DCS, information must be included: (1) the DCS needs to determine eligibility for assistance under Title IV-E and (2) a statement of the DCS concurrence with the placement or its alternative proposal.
- Adds Ind. Code § 31-37-17-8 to permit a probation department, Division of Family Resources, a county office, and DCS to exchange information for use in preparing reports.
- Amends Ind. Code § 31-37-19-1.5 to require case plans to be prepared by probation within 60 days of the child's first placement paid for by DCS, not the earlier of the first placement or the date of the dispositional decree.
- Requires the case plan for delinquent children to contain a plan for the educational stability of a child while in foster care that considers the appropriateness of the educational setting, coordination with the local education agency to ensure the child remains in the school where the child was enrolled at the time of removal, and the immediate appropriate enrollment of the child in a different school if remaining in the same school is not in the best interests of the child.
- Adds Ind. Code § 31-37-22-4.5 to require the completion of a case plan for a delinquent child placed in non-secure out-of-home placement at the time of modification within 60 days of the placement. A copy

of the case plan is to be sent to DCS, the child's parent, guardian, or custodian within 10 days after the plan's completion. The case plan shall be reviewed at least once every 180 days. Provides requirements for the contents of this case plan.

## **Other**

### *Battery on DCS employee*

- Amends Ind. Code § 35-42-2-1 to increase the penalty for battery on a DCS employee to a Class D Felony if it results in serious bodily injury to the employee, if the employee is engaged in the execution of his/her official duties at the time of the incident.

### *Child death or near fatality*

- Amends Ind. Code § 31-33-18-1.5 to require when information is disclosed in a child death or near fatality case to include a summary of the report of abuse and neglect, the date of birth and gender of the child, the cause of the fatality or near fatality if it has been determined, and whether the DCS or FSSA had any contact with the child or child's family before the fatality or near fatality and there was contact, the frequency of the contact and a summary of the status of the case, including whether the case was open or closed, when the fatality or near fatality occurred.

### *Notification by Coroner to DCS if child death*

- Amends Ind. Code § 36-2-14-6.3 to require a coroner to immediately notify the county office of the DCS by using the statewide hotline if a person less than 18 years of age died in an apparently suspicious, unexpected or unexplained manner.

### *Plan for education for children in foster care*

- Adds non-code provision to require the DCS, in cooperation with the Department of Education, to develop and coordinate a plan to address educational issues concerning children in foster care.

### *Commission on Childhood Poverty (effective upon passage)*

- Adds a non-code provision to create a Commission on Childhood Poverty in Indiana, staffed by the Indiana School of Social Work, to identify and analyze the occurrence and root causes of poverty in Indiana, the effects of poverty on the child, child's family and the child's community, and other areas. An interim report is required to be submitted by December 31, 2010 and a final report by December 31, 2011.

### *Local Coordinating Committee*

- Repeals the Local Coordinating Committee statutes.