



INDIANA ADOPTION LAW

CONTENTS

This section presents Indiana PL 35 which defines current adoption law in the state and information about law, services and policies for Children in Need of Services (CHINS).. The section includes:

- 1) An overview of PL 35 as prepared by the Indiana Division of Family and Children;
- 2) Notes from a seminar on 1998 and 1999 Indiana law in regard to children in need of services, following the Adoption and Safe Families Act, presented by Indiana Advocates for Children (new name: Kids' Voice).
- 3) The Table of Contents for the CHINS Deskbook with information about how to order;
- 4) An explanation of legal standing in regard to foster parents according to current law and a proposal for automatic legal standing for long-term foster parents.

INDIANA PL 35 (1998) OVERVIEW

Section 1

Permanency planning responsibility. Section 1 adds that FSSA shall provide permanency planning services for children in need of services. (Effective 7/1/98)

Section 2

Definition: Section 2 defines an "abandoned infant" for the purposes of expedited placement and adoption as a child intentionally left either in danger or abandoned in a hospital. This may apply to an estimated 60 infants per year. Current law has no special provisions for expediting the adoption of abandoned infants. (Effective 7/1/98)

Section 3

Policy regarding adoption: Section 3 adds to State family and juvenile law the purpose of providing for adoption as a viable permanency plan for CHINS. (Effective 7/1/98)

Section 4

Child abuse/neglect reports: Section 4 requires substantiated child abuse and neglect investigation reports to be forwarded to the appropriate county prosecutor. (Effective 7/1/98)

Section 5

Duty to inform parent, custodian or guardian of legal rights: Section 5 expands the information concerning legal rights that must be conveyed in writing to the parent, custodian or guardian of a

child alleged to be a CHINS who has been taken into custody. These rights include:

(1) a court detention hearing held within 48 hours after the child's removal from home and the right to request the child's return.

(2) representation by a court-appointed attorney if the parent, custodian or guardian is financially unable to retain counsel.

(3) opportunity to request to have the case reviewed by the Child Protection Team.

(4) advisement that after 7/1/00, a petition to terminate parental rights must be filed if a child has been removed from the parent and under the supervision of the county office for 15 of the last 22 months.

This written information is given to the parent, custodian or guardian when the child is taken into custody or when the county office files a CHINS petition, whichever occurs first. (Effective 7/1/98)

Section 6

Time frame for holding detention hearing: Section 6 reduces the amount of time allowed to hold a detention hearing after a CHINS is taken into custody from 72 to 48 hours, excluding weekends and holidays. (Effective 7/1/98)

Section 7

Time frame for release of a CHINS from a juvenile detention facility pending entry of judgment: Section 7 reduces the amount of time an alleged CHINS may be detained in a juvenile detention facility pending judgment from 72 to 48 hours, excluding weekends and holidays. (Effective 7/1/98)

Section 8

Proceeding to terminate parental rights: Section 8 continues the requirement that parental rights may only be terminated based on clear and convincing evidence. It allows an exception in hearings in which a motion is made that termination of parental rights is not in the best interests of the child. These findings may be based on the preponderance of the evidence. (Effective 7/1/98)

Section 9

Elimination of panel reviews: Effective July 1, 1999, Section 9 will eliminate the current option to have an administrative panel rather than a court review a CHINS case at the 6-month point. Thirty-three of the 92 counties currently use some form of case review, affecting 3100 CHINS. Section 9 renames these review hearing as "periodic reviews." Section 28 repeals the opportunity to request a court hearing whenever a panel review has occurred effective July 1, 1999. Section 32 continues to allow the panel to determine matters under the case review until such expiration on July 1, 1999. (Effective 7/1/99)

Section 10

Notification/Opportunity to be heard: Section 10 adds to current law the requirement to provide notice of a case review and of a permanency hearing to the foster parents, prospective

adoptive parents (for children legally free for adoption), other persons caring for the child who are not required to be licensed (relatives), and any other person who is determined to have a significant or caretaking relationship to the child (e.g. grandparents who are not caring for the child on a daily basis, but have regular visitation.) The bill will provide the above persons an opportunity to be heard by the court. The participation of the above persons in the hearings is designed to give the court greater information regarding the care of the child and the options for permanency available to the child. Current law requires notice to the parent, guardian, or custodian as well as any other party to the proceeding. (Effective 7/1/98)

Section 11

Findings at the case review: Section 11 requires that the court will additionally consider reasonable efforts made to reunify or preserve a child's family, unless such efforts are not required under a subsequent new section of the law. The court will consider whether it is an appropriate time to prepare or implement a permanency plan. This section requires additional documentation regarding family services that are offered or provided to include not only a description of such services (current law) but also the dates during which services were provided and the outcome of the services. (Effective 7/1/98)

Section 12

Clarification of reasonable efforts: Section 12 clarifies current law to emphasize that, in all determinations of reasonable efforts to preserve and reunify families, the health and safety of the child are the paramount concern. Clarifies that if the child has not been removed from the child's home, reasonable efforts are required to prevent the need for the removal of the child from the home. If the child has been removed from the child's home, reasonable efforts shall be made to return the child safely to the child's home. (Effective 7/1/98)

Section 13

Determination that reasonable efforts are not required: Section 13 defines those instances when a court may find the reasonable efforts to preserve or reunify the child's family are not required. Those instances are defined to include conviction of a parent, guardian or custodian for (1) causing suicide, involuntary manslaughter, rape, criminal deviate conduct, child molesting, child exploitation, and sexual misconduct with a minor of a biological, adoptive or stepchild under 16 or the child's parent; (2) murder or voluntary manslaughter of a biological, adoptive or stepchild, age unspecified, or the parent of such a child; (3) felonies involving battery upon a related child; the finding by a court that the rights of the parent to a sibling of the child have been involuntarily terminated; or the child is found to be an abandoned infant. (Effective 7/1/98)

Section 14

Completion of permanency plan/court approval: Section 14 requires the county office of family and children to complete a permanency plan and seek court approval of such a plan for children for whom a court has found that reasonable efforts to preserve or reunify the child's family are not required. This section also eliminates the requirement for further reports, orders, or hearings in such cases regarding parental participation when the court has determined that such

reasonable efforts are not required. (Effective 7/1/98)

Section 15

Requirement for reasonable efforts to make a permanent placement in a timely manner: Section 15 applies only to cases in which a court has approved a permanency plan for a CHINS, with which plan continuation of reasonable efforts to preserve and reunify a child with the child's family is inconsistent. In such cases, the county office of family and children is required to make reasonable efforts to place a child in an out-of-home permanent placement according to the permanency plan and to move toward finalization of the permanent placement in a timely manner. This section eliminates the requirement for periodic progress reports, case reviews and predisposition hearings regarding family preservation and reunification efforts and placement of the child in close proximity to the home of the child's parent, guardian, or custodian. (Effective 7/1/98)

Section 16

Permanency hearing: Section 16 renames the current 12-month formal court hearing to a "permanency" hearing and requires that such a hearing be set not more than 30 days after the court finds that reasonable efforts to preserve or reunify the child's family are not required. For children for whom such reasonable efforts continue to apply, the court will hold the permanency hearing at 12 months. At such hearing, the court shall additionally consider the recommendations of the persons mentioned in Section 10 of this enrolled act and shall consider and approve a permanency plan for the child or determine whether an existing permanency plan shall be modified. The State must show continued jurisdiction is necessary and that it is in the child's best interest to maintain jurisdiction. If the State does not sustain its burden, the court shall direct the county office of family and children to establish a permanency plan for the child within 30 days or discharge the child and the child's parent, guardian, or custodian. The court is authorized to retain jurisdiction to the extent necessary for the county office of family and children to carry out any orders pertaining to establishment of a permanency plan. (Effective 7/1/98)

Section 17

Use of Internet: Section 17 requires the division to make use of the Internet to post non-identifying information regarding children for whom a proceeding to terminate parental rights has been initiated. The information will include a contact person so that a person interested in adopting the child may obtain further information. (Effective 7/1/98)

Section 18

Permanency plan elements: Section 18 defines the elements of a permanency plan to include the permanent or long-term care arrangements for the child, including options to return to/continue care by a parent; termination of parental rights and placement for adoption; placement with a relative; appointment of a legal guardian; or placement in another planned, permanent living arrangement (intended to include older teens for whom the goal is independent living.) The permanency plan must include a time table for implementation, provisions for any interim care of

the child, and other items required in the case plan under federal law. (Effective 7/1/98)

Section 19

Additional elements in the petition to terminate parental rights: Section 19 allows for termination of parental rights petitions to allege that the court has found that reasonable efforts for family preservation or reunification are not required, or that the child has been removed from the parent and under the supervision of the county office of family and children for at least 15 of the most recent 22 months. (Effective 7/1/98)

Section 20

Procedures for filing dismissing a petition to terminate parental rights under circumstances described in Section 19: Section 20 requires certain persons to file a petition to terminate parental rights and to request that the petition be set for hearing when the court has found that reasonable efforts for family preservation or reunification are not required, or when the child has been removed from the parent and placed in foster or relative care for a at least 15 of the last 22 months. It creates an exception if the child is in permanent relative care of if termination of parental rights is not in the child's best interest. The county office of family and children is entitled to be joined as a party to the petition if another authorized party files the petition. The county office of family and children is authorized to request that the court not terminate parental rights under the following conditions: the child is in the care of a relative; it is not in the child's best interests to terminate parental rights; family services have not been provided by the county office in a timely manner; or the time period for such services to be completed has not expired. (Effective 7/1/99)

Section 21

Expedited hearings on termination of parental rights: Section 21 requires that petitions to terminate parental rights in CHINS and delinquency cases be heard within 90 days after a petition is filed. Currently 43-69 per cent of such petitions exceed 90 days for a hearing. (Effective 7/1/98)

Section 22

Notice of hearings: Section 22 entitles the parent, foster parent, prospective adoptive parent (for children legally free for adoption), relatives providing care, any other relative or person who is determined to have a significant or caretaking relationship to the child, and any other party to the CHINS proceeding (i.e. a guardian ad litem or court appointed special advocate) to be notified of hearings regarding termination of parental rights and to be provided an opportunity to be heard. Such persons other than the parent are not made a party to the proceedings. (Effective 7/1/98)

Section 23

Exception to court determination to terminate parental rights: Section 23 provides an exception to granting the petition to terminate parental rights whenever Section 20 above applies. (Effective 7/1/99)

Section 24

Expedited hearings on termination of parental rights petitions: Section 24 requires that hearings to terminate parental rights in cases involving a person convicted of criminal offenses against the person's biological, adoptive or stepchild be heard within 90 days after a petition is filed.

(Effective 7/1/98)

Section 25

Continued juvenile court review of cases referred to probate court for adoption: Section 25 requires the juvenile court to continue to review the case of a child freed for adoption that has been referred to probate court at least once every 6 months until a petition for adoption is filed.

(Effective 7/1/98)

Section 26

Time frame for release of delinquent child from juvenile detention facility pending entry of judgment: Section 26 reduces the time frame for releasing a delinquent child from a juvenile detention facility from 72 to 48 hours, excluding weekends and holidays. (Effective 7/1/98)

Section 27

Adoption incentive payments: Section 27 provides that federal adoption incentive payments must be used to facilitate the adoption of CHINS and may be used for post-adoption services.

(Effective 7/1/98)

Section 28

Repeal of right to petition for formal hearing after an administrative panel review: Section 28 repeals the right of a parent, guardian or custodian to petition for a formal court hearing after an administrative panel review since administrative panel reviews have been eliminated. (Effective 7/1/99)

Section 29

Implementation of notification regarding requirement to file a petition to terminate parental rights: Section 29 requires the county office of family and children, beginning at a child's first periodic case review after June 30, 1998, to provide written advisement to a child's parent, guardian or custodian of the need to file a petition to terminate parental rights after June 30, 1999, if the child has been removed from the child's parent and has been under the supervision of a county office of family and children for at least 15 of the most recent 22 months. If the child's parent, guardian or custodian does not appear at the case review described above, the county office of family and children must make reasonable efforts to send such advisement to the last known address of the parent, guardian or custodian. (Effective 7/1/98)

Section 30

Phase-in of termination of parental rights proceedings for CHINS: Section 30 applies to those children in out-of-home care on or before the passage of the federal Adoption and Safe

Families Act (November 19, 1997), and who have been in care for at least 15 of the most recent 22 months. The division of family and children is required to prepare a record of such children and begin filing petitions to terminate parental rights, giving priority to those children who have been in care the longest and for whom the permanency plan is adoption. Effective July 1, 1999, the division will phase in such actions for one-third (estimate = 1405 children) by 10/29/99; a second third by 4/29/2000; and the final third by 10/29/2000. An estimated 4200 children will have a hearing on termination of parental rights, with an additional estimated 3000 children having motions filed to not require termination of parental rights. (Effective 7/1/99)

Section 31

Implementation of amended termination of parental rights procedures: Section 31 applies to children who are placed in out-of-home care after November 19, 1997, and who remain in care for at least 15 of the most recent 22 months. A petition to terminate parental rights must be filed for such children not later than July 29, 1999. (Effective 7/1/99)

Section 32

Continuation of administrative panel reviews for specified period: Section 32 permits administrative panels to conduct periodic case reviews until July 1, 1999. (Effective 7/1/99)

Prepared by: Division of Family & Children
Family and Social Services Administration;
4-1-98

Adoption in Child Time
ACT Inc.
P.O. Box 305
Rensselaer, IN 47978-0305

<http://www.adoptioninchildtime.org>
1-877-ACT-4KIDS (Toll-free in Indiana)
1-812-339-7403 (Outside Indiana)
act4adoption@hotmail.com