

Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1310

AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-34-21-5, AS AMENDED BY P.L.156-2020, SECTION 118, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) **Subject to subsection (c)**, the court shall determine:

- (1) whether the child's case plan, services, and placement meet the special needs and best interests 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 section 7.5(c)(1)(D) of this chapter.

(b) The determination of the court under subsection (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

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- (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 section 5.6 of this chapter.
 - (15) **Subject to subsection (c)**, whether it is an appropriate time to prepare or implement a permanency plan for the child under section 7.5 of this chapter.
- (c) The permanency plan for a child who has, at the time of a periodic case review or permanency hearing, been removed from the child's parent for at least twelve (12) months of the most recent twenty-two (22) months, must include at least one (1) intended permanent or long term arrangement for care and custody of the child under section 7.5(c) of this chapter other than reunification of the child with the child's parent, guardian, or custodian.**

SECTION 2. IC 31-34-21-7, AS AMENDED BY P.L.104-2015,

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SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 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 section 5.6 of this chapter;

(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.

(b) The court shall:

(1) make the determination and findings required by section 5 of this chapter;

(2) consider the question of continued jurisdiction and whether the dispositional decree should be modified;

(3) consider recommendations of persons listed under section 4 of this chapter, before approving a permanency plan under subdivision (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:

(A) that complies with the requirements set forth in section 7.5 of this chapter; **and**

(B) if the child has, at the time of the permanency hearing, been removed from the child's parent for at least twelve (12) months of the most recent twenty-two (22) months, that includes at least one (1) intended permanent or long term arrangement for care and custody of the child under section 7.5(c) of this chapter other than reunification of the child with the child's parent, guardian, or custodian;

(6) determine whether an existing permanency plan must be modified; and



(7) examine procedural safeguards used by the department to protect parental rights.

(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 the following:

(1) Require the department to provide notice of the permanency hearing to the child, in accordance with section 4(a) of this chapter.

(2) Provide to the child an opportunity to be heard and to make recommendations to the court, in accordance with section 4(d) of this chapter.

(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 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.

(d) 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 occurs first. 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. 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.

The court may retain jurisdiction to the extent necessary to carry out any orders under subdivision (1).

SECTION 3. IC 31-35-2-4.5, AS AMENDED BY P.L.156-2020, SECTION 120, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.5. (a) This section applies if:

- (1) a court has made a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification with respect to a child in need of services are not required; or
- (2) a child in need of services or a delinquent child:

(A) has been placed in:

(i) a foster family home, child caring institution, or group home licensed under IC 31-27; or

(ii) the home of a relative (as defined in IC 31-9-2-107(c)); as directed by a court in a child in need of services proceeding under IC 31-34 or a delinquency action under IC 31-37; and

(B) has been removed from a parent and has been under the supervision of the department or county probation department for not less than fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child.

(b) A person described in section 4(a) of this chapter shall:

(1) file a petition to terminate the parent-child relationship under section 4 of this chapter; and

(2) request that the petition be set for hearing.

(c) If a petition under subsection (b) is filed by the child's court appointed special advocate or guardian ad litem, the department shall be joined as a party to the petition.

(d) A person described in section 4(a) of this chapter may file a

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motion to dismiss the petition to terminate the parent-child relationship if any of the following circumstances apply:

(1) That the current case plan prepared by or under the supervision of the department or the probation department under IC 31-34-15, IC 31-37-19-1.5, or IC 31-37-22-4.5 has documented a compelling reason, based on facts and circumstances stated in the petition or motion, for concluding that filing, or proceeding to a final determination of, a petition to terminate the parent-child relationship is not in the best interests of the child. A compelling reason may include the fact that the child is being cared for by a custodian who is a relative (as defined in IC 31-9-2-107(c)).

(2) That:

(A) IC 31-34-21-5.6 is not applicable to the child;

(B) the department or the probation department has not provided family services to the child, parent, or family of the child in accordance with a currently effective case plan prepared under IC 31-34-15 or IC 31-37-19-1.5 or a permanency plan or dispositional decree approved under IC 31-34 or IC 31-37, for the purpose of permitting and facilitating safe return of the child to the child's home; and

(C) the period for completion of the program of family services, as specified in the current case plan, permanency plan, or decree, has not expired.

(3) That:

(A) IC 31-34-21-5.6 is not applicable to the child;

(B) the department has not provided family services to the child, parent, or family of the child, in accordance with applicable provisions of a currently effective case plan prepared under IC 31-34-15 or IC 31-37-19-1.5, or a permanency plan or dispositional decree approved under IC 31-34 or IC 31-37; and

(C) the services that the department has not provided are substantial and material in relation to implementation of a plan to permit safe return of the child to the child's home.

(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.

The motion to dismiss shall specify which of the allegations described in subdivisions (1) through (4) apply to the motion. If the court finds that any of the allegations described in subdivisions (1) through (4) are true, as established by a preponderance of the evidence, the court shall dismiss the petition to terminate the parent-child relationship. In determining whether to dismiss a petition to terminate a parent-child relationship pursuant to a motion to dismiss that specifies allegations described in subdivision (4), the court may consider the length of time remaining in the incarcerated parent's sentence and any other factor the court considers relevant.

(e) If:

(1) a child in need of services or a delinquent child has been removed from a parent and has been under the supervision of the department or county probation department for not less than fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child; and

(2) a petition to terminate the parent-child relationship has not been filed by the department or another person described in section 4(a) of this chapter;

a foster parent, relative of the child, or de facto custodian with whom the child has been placed for at least six (6) months may file a notice with the court that the petition to terminate the parent-child relationship has not been filed as required under subsection (b). Upon the filing of the notice, if the petition to terminate the parent-child relationship has not been filed, the court shall schedule a hearing within thirty (30) days.

(f) Subsection (d)(4) does not apply if the person was incarcerated for any of the following:

(1) A crime described in IC 31-35-3-4.

(2) A crime of child abuse (as defined in IC 5-2-22-1).

(3) Neglect of a dependent (IC 35-46-1-4) if:

(A) the incarceration was for neglect of a dependent as a Level 5 or above felony; and

(B) the dependent would be the subject of the petition to terminate the parent-child relationship.

(g) The department may not:

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- (1) take adverse action against a foster parent's license under IC 31-27-4; or**
 - (2) remove a child from the home of a foster parent, relative of the child, or de facto custodian;**
- on the basis of the foster parent, relative, or de facto custodian filing a notice with the court under subsection (e).**

SECTION 4. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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