



## **Termination of the Parent-Child Relationship Primer<sup>1</sup>** (Updated August 2007)

### **I. Statutes**

IC 31-35-2-1

#### **Application of chapter**

This chapter applies to the termination of the parent-child relationship involving:

- (1) a delinquent child; or
- (2) a child in need of services.

IC 31-35-2-2

#### **Law governing proceedings**

Proceedings under this chapter are governed by the procedures prescribed by:

- (1) IC 31-32-1, IC 31-32-4 through IC 31-32-10, and IC 31-32-12 through IC 31-32-15;
- (2) IC 31-34; and
- (3) IC 31-37;

IC 31-35-2-3

#### **Jurisdiction**

The probate court has concurrent original jurisdiction with the juvenile court in proceedings on a petition to terminate the parent-child relationship involving a delinquent child or a child in need of services under this chapter.

IC 31-35-2-4

#### **Petition; contents**

(a) A petition to terminate the parent-child relationship involving a delinquent child or a child in need of services may be signed and filed with the juvenile or probate court by any of the following:

- (1) The attorney for the county office of family and children.
- (2) The prosecuting attorney.
- (3) The child's court appointed special advocate.
- (4) The child's guardian ad litem.

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- (b) The petition must:
- (1) be entitled "In the Matter of the Termination of the Parent-Child Relationship of \_\_\_\_\_, a child, and \_\_\_\_\_, the child's parent (or parents)"; and
  - (2) allege that:
    - (A) one (1) of the following exists:
      - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
      - (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
      - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
    - (B) there is a reasonable probability that:
      - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
      - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
    - (C) termination is in the best interests of the child; and
    - (D) there is a satisfactory plan for the care and treatment of the child.
  - (3) Indicate whether at least one (1) of the factors listed in section 4.5(d)(1) through 4.5(d)(3) of this chapter applies and specify each factor that would apply as the basis for filing a motion to dismiss the petition.

#### IC 31-35-2-4.5

#### **Petition; filing; motion to dismiss**

- (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:
    - (A) has been placed in:
      - (i) a foster family home, child caring institution, or group home licensed under IC 12-17.4; or
      - (ii) the home of a person related to the child (as defined in IC 12-7-2-162.5); as directed by a court in a child in need of services proceeding under IC 31-34; and
    - (B) has been removed from a parent and has been under the supervision of a county office of family and children for not less than fifteen (15) months of the most recent twenty-two (22) months, excluding any period not exceeding sixty (60) days before the court has entered a finding and judgment under IC 31-34 that the child is a child in need of services.
- (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 prosecuting attorney or the county office of family and children are entitled to be joined as a party to the petition upon application to the court.

(d) A party shall file a 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 county office of family and children under IC 31-34-15 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 parent, stepparent, grandparent, or responsible adult who is the child's sibling, aunt, or uncle or a relative who is caring for the child as a guardian.

(2) That:

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

(B) the county office of family and children 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 a permanency plan or dispositional decree approved under IC 31-34, 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 county office of family and children 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 a permanency plan or dispositional decree approved under IC 31-34; and

(C) the services that the county office of family and children 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.

The motion to dismiss shall specify which of the allegations described in subdivisions (1) through (3) apply to the motion. If the court finds that any of the allegations described in subdivisions (1) through (3) are true, as established by a preponderance of the evidence, the court shall dismiss the petition to terminate the parent-child relationship.

IC 31-35-2-5

### **Representation of state's interests**

Upon the filing of a petition under section 4 of this chapter:

(1) the attorney for the county office of family and children; or

(2) the prosecuting attorney;

shall represent the interests of the state in all subsequent proceedings on the petition.

IC 31-35-2-6

**Request for hearing; time**

Except when a hearing is required after June 30, 1999, under section 4.5 of this chapter, the person filing the petition may request the court to set the petition for a hearing.

Whenever a hearing is requested under this chapter, the court shall:

- (1) commence a hearing on the petition not more than ninety (90) days after a petition is filed under this chapter; and
- (2) complete a hearing on the petition not more than one hundred eighty (180) days after a petition is filed under this chapter.

IC 31-35-2-6.5

**Notice of hearing**

(a) This section applies to hearings under this chapter relating to a child in need of services.

(b) At least ten (10) days before a hearing on a petition or motion under this chapter:

- (1) the person or entity who filed the petition to terminate the parent-child relationship under section 4 of this chapter; or
- (2) the person or entity who filed a motion to dismiss the petition to terminate the parent-child relationship under section 4.5(d) of this chapter;

shall send notice of the review to the persons listed in subsections (c) and (d).

(c) Except as provided in subsection (h), the following persons shall receive notice of a hearing on a petition or motion filed under this chapter:

- (1) The child's parent, guardian, or custodian.
- (2) An attorney who has entered an appearance on behalf of the child's parent, guardian, or custodian.
- (3) A prospective adoptive parent named in a petition for adoption of the child filed under IC 31-19-2 if:

(A) each consent to adoption of the child that is required under IC 31-19-9-1 has been executed in the form and manner required by IC 31-19-9 and filed with the county office or the department;

(B) the court having jurisdiction in the adoption case has determined under an applicable provision of IC 31-19-9 that consent to adoption is not required from a parent, guardian, or custodian; or

(C) a petition to terminate the parent-child relationship between the child and any parent who has not executed a written consent to adoption under IC 31-19-9-2, has been filed under IC 31-35 and is pending.

(4) Any other person who:

(A) the department has knowledge is currently providing care for the child; and

(B) is not required to be licensed under IC 12-17.2 or IC 31-27 to provide care for the child.

(5) Any other suitable relative or person who the department knows has had a significant or caretaking relationship to the child.

(6) Any other party to the child in need of services proceeding.

(d) At least ten (10) days before a hearing on a petition or motion under this chapter, the department shall provide notice of the hearing to the child's foster parent by:

- (1) certified mail; or

(2) face to face contact by the department caseworker.

(e) The court shall provide to a person described in subsection (c) or (d) an opportunity to be heard and make recommendations to the court at the hearing. The right to be heard and to make recommendations under this subsection includes the right of a person described in subsection (c) or (d) to submit a written statement to the court that, if served upon all parties to the child in need of services proceeding and the persons described in subsections (c) and (d), may be made a part of the court record.

(f) The court shall continue the hearing if, at the time of the hearing, the department has not provided the court with signed verification from the foster parent, as obtained through subsection (d), that the foster parent has been notified of the hearing at least five (5) business days before the hearing. However, the court is not required to continue the hearing if the child's foster parent appears for the hearing.

(g) A person described in subsection (c)(2) through (c)(4) or subsection (d) does not become a party to a proceeding under this chapter as the result of the person's right to notice and the opportunity to be heard under this section.

(h) If the parent of an abandoned child does not disclose the parent's name as allowed by IC 31-34-2.5-1(c), the parent is not required to be notified of a hearing described in subsection (c).

#### IC 31-35-2-7

##### **Guardian ad litem or court appointed special advocate**

(a) If a parent objects to the termination of the parent-child relationship, the court shall appoint:

- (1) a guardian ad litem;
- (2) a court appointed special advocate; or
- (3) both;

for the child.

(b) If a guardian ad litem or court appointed special advocate has been appointed for the child under IC 31-34-10, the court may reappoint the guardian ad litem or court appointed special advocate to represent and protect the best interests of the child in the termination proceedings.

#### IC 31-35-2-8

##### **Determination**

(a) Except as provided in section 4.5(d) of this chapter, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship.

(b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

## II. Involuntary Termination of Parent-Child Relationship Cases From April, 2001 to July 31, 2007

### A. Procedural Issues

#### 1. Continuance

- a. In Re E.E., 853 N.E.2d 1037, 1044 (Ind. Ct. App. 2006) (trial court's denial of continuance request and decision to proceed to termination trial in alleged father's absence did not deny alleged father due process).
- b. Rowlett v. Office of Family and Children, 841 N.E.2d 615, 620 (Ind. Ct. App. 2006) (trial court should have granted incarcerated father's motion to continue termination hearing and reset the hearing after father was given sufficient period following his release to demonstrate willingness and ability to assume parental duties), *trans. denied*.
- c. J.M. v. Marion County OFC, 802 N.E.2d 40, 44 (Ind. Ct. App. 2004) (trial court's refusal to grant joint motion for continuance by mother, OFC and guardian ad litem was not an abuse of discretion; mother failed to show she was prejudiced by continuance denial), *trans. denied*.
- d. In Re C.C., 788 N.E.2d 847, 853 (Ind. Ct. App. 2003) (trial court's denial of putative father's request for continuance and decision to proceed in father's absence did not deny him due process in that father testified at first hearing, father does not have constitutional right to be present at hearing and father's counsel continued to represent him and cross-examine witnesses in father's absence), *trans. denied*.

#### 2. Counsel

- a. Baker v. County Office of Family & Children, 810 N.E.2d 1035, 1039, 1042 (Ind. 2004), (right to performance by counsel measured by test applicable to indigent defense in criminal cases does not apply to termination proceedings; focus is whether parents received fundamentally fair trial whose facts demonstrate accurate determination. Joint representation of both parents by one attorney did not result in conflict of interest; parents did not have adverse interests and were not presenting evidence against one another).
- b. D.A. v. Monroe Count Depart. Of Child Services, 869 N.E.2d 501 (Ind. Ct. App. 2007) (Court reversed and remanded judgment of termination as to Father where trial court abused its discretion by granting motion of Father's attorney to withdraw her appearance inasmuch as Father was not notified of his attorney's intent to withdraw, date of hearing on that motion, or fact that motion was granted).
- c. Lang v. Starke Cty Office of Fam. Children, 861 N.E.2d 366, 375-376 (Ind. Ct. App. 2007) (Court held Father not deprived of effective assistance of counsel where focus of inquiry for termination cases is whether it appears that parents received a fundamentally fair trial whose facts demonstrated an accurate determination).
- d. Lawson v. Marion County OFC, 835 N.E.2d 577, 581 (Ind. Ct. App. 2005) (termination judgment reversed because father's attorney left during trial, thus denying father opportunity to cross-examine witnesses whose evidence supported termination).

3. Default Judgment/Summary Proceeding
  - a. Thompson v. Clark County Div. of Family and Children, 791 N.E.2d 792, 796 (Ind. Ct. App. 2003) (termination judgment reversed because trial court should have conducted hearing in mother's absence where witnesses testified, cross-examination was conducted and exhibits were properly admitted; summary proceeding denied mother due process), *trans. denied*.
4. Evidence
  - a. In Re Relationship of E.T., 808 N.E.2d 639, 643-45 (Ind. 2004) (reports of private social services agency were hearsay and inadmissible under Ind. Evidence Rule 803(6) because: (1) not all of the information in the reports was the result of first-hand observations; (2) reports contained conclusory lay opinions; (3) reports were not prepared for operation of agency's business).
5. Findings of Fact
  - a. Parks v. DCDCS, 862 N.E.2d 1275 (Ind. Ct. App. 2007) (case remanded for proper findings that supported judgment of termination where trial court adopted verbatim DCS' proposed findings of fact and conclusions of law in which most alleged findings were mere recitations of testimony and, thus, were not proper findings of fact).
  - b. A.F. v. M.C.O.F.C., 762 N.E.2d 1244, 1249 (Ind. Ct. App. 2002) (trial court's verbatim adoption of MCOFC's proposed findings of fact and conclusions of law was not, in and of itself, improper; termination judgment affirmed).
6. Incarcerated Parents
  - a. In Re Involuntary Termination of Parent-Child Relationship of Kay L., 867 N.E.2d 236 (Ind. Ct. App. 2007) (termination affirmed where, at time of termination hearing, Mother was incarcerated because of her drug use).
  - b. Hite v. Office of Family and Children, 845 N.E.2d 175, 184 (Ind. Ct. App. 2006) (termination affirmed when father had been incarcerated during pendency of CHINS case; father's release was not expected for an additional year after termination hearing).
  - c. Castro v. Office of Family and Children, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006) (termination judgment affirmed when father incarcerated for child's entire lifetime with projected release date of 2012 and at least seven serious felony convictions), *trans. denied*.
  - d. Rowlett v. Office of Family and Children, 841 N.E.2d 615, 621 (Ind. Ct. App. 2006) (termination judgment granted within six weeks of incarcerated father's release was reversed; father took steps to better himself while incarcerated), *trans. denied*.
  - e. Everhart v. Scott County Office of Family, 779 N.E.2d 1225, 1234 (Ind. Ct. App. 2002) (termination judgment of convicted aggravated batterer father's rights affirmed; two month old child victim suffered a number of separate acts of abuse and father lacked interest in children while incarcerated).
  - f. Tillotson v. Dept. of Family and Children, 777 N.E.2d 741, 745-46 (Ind. Ct. App. 2002) (termination judgment affirmed under narrow facts despite trial court's failure to implement alternate means for parents to testify who

had been convicted and incarcerated for neglect of dependent. Trial courts should consider alternative procedures by which incarcerated parent could meaningfully participate in termination hearing when parent cannot be physically present).

7. Judicial Bias
  - a. Carter v. KCOFC, 761 N.E.2d 431, 436 (Ind. Ct. App. 2001) (mother failed to prove trial judge biased in termination proceedings because judge approved CHINS permanency plan of termination; law presumes judge unbiased, judge conducted two day termination hearing, heard testimony from numerous witnesses, and took decision under advisement for two months).
8. Notice of Termination Proceedings
  - a. In Re E.E., 853 N.E.2d 1037, 1041-43 (Ind. Ct. App. 2006) (notice giving alleged father first and second choice trial dates was ambiguous, but not fundamental error because notice also referred alleged father to his counsel for questions and hearing was held on one of the two dates).
  - b. In Re T.W., 831 N.E.2d 1242, 1247 (Ind. Ct. App. 2005) (any procedural irregularity regarding proof of notice to mother of the termination hearing at least ten days prior to the hearing did not violate mother's due process rights; mother was present, represented by counsel, testified, and had shown no prejudice by lack of notice).
  - c. In Re C.C., 788 N.E.2d 847, 852 (Ind. Ct. App. 2003) (OFC complied with Ind. Trial Rule 5(B) by sending ten day notice to alleged father at homeless shelter which was his last known address), *trans. denied*.
  - d. In Re A.C., 770 N.E.2d 947, 949-50 (Ind. Ct. App. 2002) (OFC complied with notice requirements by serving notice on father's attorney and mailing notice to father's last known address; OFC had previously given publication service to father pursuant to Trial Rule 4.13).
9. Parties
  - a. In Re Parent-Child Relationship of S.M., 840 N.E.2d 865, 871 (Ind. Ct. App. 2006) (termination judgment affirmed but putative father has standing to appeal; none of the involuntary termination statutes require that a putative father take any steps to establish his paternity in order to contest termination action where adoption not pending).
10. Post Judgment
  - a. In Re Infant Girl W., 845 N.E.2d 229, 246 (Ind. Ct. App. 2006) (CHINS court required to dismiss CHINS case when adoption petition had been granted by court with probate jurisdiction), *trans. denied*.
  - b. K.E. v. MCOFC, 812 N.E.2d 177, 180 (Ind. Ct. App. 2004) (trial court's denial of mother's Trial Rule 60(B) motion to set aside two-year-old termination judgment affirmed; mother offered no evidence of meritorious claim or defense demonstrating different result if case retried on merits; mother's stated reasons for delay, drug use and incarceration, were within her ability to control), *trans. denied*.
  - c. In Re Invol. Term. of Parent-Child Rel., 755 N.E.2d 1090, 1098 (Ind. Ct. App. 2001) (trial court which granted termination petition did not abuse its discretion in denying mother's motion for stay pending appeal).

## 11. Re-Opening Evidence

a. In Re D.Q., 745 N.E.2d 904, 908 (Ind. Ct. App. 2001) (trial court's decision to allow mother to re-open evidence was not an abuse of discretion when OFC and guardian ad litem were both allowed to cross-examine mother and offer additional testimony; order denying termination affirmed).

## 12. Validity of Termination Petition

a. In Re Involuntary Termination of Parent-Child Relationship of Kay L., 867 N.E.2d 236 (Ind. Ct. App. 2007) (even if DCS erroneously omitted a reference to I.C. 31-35-2-4.5 grounds for dismissal in termination petition, error was harmless inasmuch as petition could not have been dismissed pursuant to I.C. 31-35-2-4.5 because of remaining, independent ground for termination – that children had been removed from Mother's care for at least six months under CHINS dispositional decree).

## B. Due Process Issues

1. D.A. v. Monroe County Depart. Of Child Services, 869 N.E.2d 501 (Ind. Ct. App. 2007) (Father denied due process of law where, in balancing three factors relevant to nature of process due in termination proceeding, Court found that risk of error created by granting attorney's motion to withdraw representation of Father who had no knowledge of attorney's withdrawal motion or grant of motion, and then terminating Father's parental rights on following day after conducting hearing where evidence against Father was presented with neither him nor his attorney present, is substantial because Father was deprived of his statutory right to counsel and, more importantly, did not have opportunity to present witnesses in his favor or to cross-examine opposing witnesses).

2. Lang v. Starke Cty Office of Fam. Children, 861 N.E.2d 366, 376-377 (Ind. Ct. App. 2007) (Court analyzed issue of whether Father's due process rights were violated in termination proceeding using accepted framework which involves balancing three factors: (1) private interests affected by proceeding; (2) risk of error create by State's chosen procedure; and (3) the countervailing government interest supporting use of the challenged procedure, and concluded Father was deprived of neither procedural nor substantive due process).

3. See also A.P. v. PCOFC, 734 N.E.2d 1107 (Ind. Ct. App. 2000) (multiple procedural errors in CHINS case warranted reversal of termination judgment), *trans. denied*; In Re E.E., 853 N.E.2d 1037 (Ind. Ct. App. 2006) (Court concluded that denial of request for continuance and decision to proceed in Father's absence did not deny him due process of law); Hite v. Vanderburgh Cty Office Fam. & Chil., 845 N.E.2d 175 (Ind. Ct. App. 2006) (termination judgment affirmed despite Father's contention of due process violation); Castro v. Office of Family and Children, 842 N.E.2d 367, 375 (Ind. Ct. App. 2006) (Father argued that he had right to have necessary services provided to him, but Court agreed that OFC had done everything it could to best of its ability given resources it has and Father's incarceration; due process requirements were met and termination affirmed), *trans. denied*; Lawson v. Marion County OFC, 835 N.E.2d 577, 581 (Ind. Ct. App. 2005) (Court reversed termination judgment against Father, concluding that Father's due process rights were significantly compromised because his attorney was excused from hearing before its completion, leaving

Father unable to cross-examine witnesses regarding critical evidence against him); In Re T.W., 831 N.E.2d 1242, 1247 (Ind. Ct. App. 2005) (any procedural irregularity regarding proof of termination hearing notice to Mother at least ten days prior to the termination hearing did not violate Mother's due process rights; Mother was present, represented by counsel, testified, and had shown no prejudice by lack of notice); In Re A.I., 825 N.E.2d 798 (Ind. Ct. App. 2005) (termination judgment affirmed despite parents' contention that OFC failed to place them on notice as to what it considered a safe environment for child, thereby denying them due process of law), *trans. denied*; Stewart v. Randolph County OFC, 804 N.E.2d 1207 (Ind. Ct. App. 2004) (termination affirmed where Mother contended OFC did not negotiate case plans with her and therefore her right to due process was denied), *trans. denied*; McBride v. County Off. Of Family and Children, 798 N.E.2d 185 (Ind. Ct. App. 2003) (termination affirmed despite Mother's contention that her due process rights had been violated because OFC failed to meet statutory requirement of completion of a case plan in sixty days); Thompson v. Clark County Div. of Family, 791 N.E.2d 792, 796 (Ind. Ct. App. 2003) (Court reversed termination judgment because Mother was denied due process when trial court conducted hearing in summary proceeding despite objection of Mother's attorney), *trans. denied*; In Re C.C., 788 N.E.2d 847 (Ind. Ct. App. 2003), (termination judgment affirmed despite putative father's contention that trial court violated his procedural due process rights to confront and cross-examine witnesses, to present a defense, and to be present at the hearing when the court denied his counsel's motion for continuance during final date of termination hearing and proceeded in putative father's absence), *trans. denied*; Tillotson v. Dept. of Family and Children, 777 N.E.2d 741, 746 (Ind. Ct. App. 2002), (Court held that, under narrow facts of this case, trial court's failure to implement an alternative means for parents to testify did not deprive them of due process of law where parents were incarcerated for neglect of dependent and did not request hearing in their motions to transport and failed to specify any type of alternative means available to trial court for their testimony in the termination trial); In Re A.L.H., 774 N.E. 2d 896 (Ind. Ct. App. 2002) (termination affirmed despite Mother's contention that trial court's failure to appoint a guardian ad litem for child at beginning of CHINS case violated due process);

#### C. Decisions on Special Problem Areas

##### 1. Criminal Activity

- a. Bester v. Lake County Office of Family, 839 N.E.2d 143, 152 (Ind. 2005) (termination judgment reversed; despite father's criminal history of six drug related arrests and two convictions for possession of marijuana, father's random drug tests were all negative and court made no finding that father is, or has been, involved with illegal drugs for the past three years).
- b. In Re Involuntary Termination of Parent-Child Relationship of Kay L., 867 N.E.2d 236 (Ind. Ct. App. 2007) (at time of termination hearing, Mother was incarcerated because of her drug use).
- c. Prince v. Department of Child Services, 861 N.E.2d 1223, 1230 n.3 (Ind. Ct. App. 2007) (Court affirmed termination and noted that Mother's failures to begin drug treatment prior to filing of the termination petition and without

threat of imprisonment by criminal court were two facts that made her situation different from one in which the Court might find nine months of sobriety a “change in circumstances” making termination improper).

d. Lang v. Starke Cty Office of Fam. Children, 861 N.E.2d 366 (Ind. Ct. App. 2007) (fact that Father continued to defend his action of beating his oldest child with a belt leaving bruises and marks and affecting her ability to walk despite his having been convicted of battery resulting in bodily harm, a Class D felony for it, found to support trial court’s finding of a reasonable probability that condition that led to children’s removal from Father’s care would not be remedied).

e. In Re Involuntary Term. Paren. of S.P.H., 806 N.E.2d 874, 881 (Ind. Ct. App. 2004) (father was sentenced to eight years imprisonment, followed by two years of probation and home detention for drugs and possession of drug precursors; father admitted growing marijuana and having precursors in home with children, but denied having active meth lab at home. It was trial court’s prerogative to conclude that father might be drug free in prison, but there is a high probability that he will not continue to be drug free on release).

f. Everhart v. Scott County Office of Family, 779 N.E.2d 1225, 1234 (Ind. Ct. App. 2002), trans. denied (sufficient evidence to support termination judgment; father convicted of aggravated battery of child and sentenced to fourteen years of imprisonment; needs of children too substantial to force them to wait seven to fourteen years to determine father’s ability to provide).

g. In Re J.W., 779 N.E.2d 954, 961 (Ind. Ct. App. 2002) (mother’s criminal convictions for neglect of dependent and theft and pending forgery charge were relevant criminal history in determining whether conditions resulting in removal were likely to be remedied).

h. Tillotson v. Dept. of Family and Children, 777 N.E.2d 741, 746 (Ind. Ct. App. 2002) (parents pled guilty to neglect of dependent and agreed to four year prison sentence; conviction directly related to termination action and amounts to per se evidence of neglect).

i. In Re W.B., 772 N.E.2d 522, 530 (Ind. Ct. App. 2002) (parents both charged with five counts of neglect of dependent, and faced possible incarceration; trial court did not wrongly focus on parents’ past behavior; termination judgment affirmed).

j. M.H.C. v. Hill, 750 N.E.2d 872, 879 (Ind. Ct. App. 2001) (father’s extensive criminal history, including eight felony convictions, most of which were drug-related, as well as two probation revocations, supported trial court’s finding that termination was in child’s best interests).

## 2. Domestic Violence

a. In Re Involuntary Termination of Parent-Child Relationship of Kay L., 867 N.E.2d 236 (Ind. Ct. App. 2007) (factor considered in upholding termination was that she left her children under supervision of unauthorized adults, including her physically violent boyfriend).

b. In Re A.I., 825 N.E.2d 798, 806-08 (Ind. Ct. App. 2005) (court’s finding that reasons for removal or placement outside of home would not be remedied included presence of domestic violence; continuing relationship posed threat

to well-being of child because mother feared child would be hurt when she and father were fighting, mother refused to go to shelter, father blamed mother for domestic violence), *trans. denied*.

c. McBride v. County Off. Of Family & Children, 798 N.E.2d 185, 202 (Ind. Ct. App. 2003) (court's finding that conditions resulting in removal will not be remedied included mother's failure to follow OFC recommendation that she have no contact with abusive father and mother's failure to profit from shelter services and to develop safety plan for children).

3. Drug Abuse

a. In Re Involuntary Termination of Parent-Child Relationship of Kay L., 867 N.E.2d 236 (Ind. Ct. App. 2007) (Mother's drug and alcohol use led to revocation of her probation and, consequently, at time of termination hearing she was incarcerated).

b. Prince v. Department of Child Services, 861 N.E.2d 1223, 1231 (Ind. Ct. App. 2007) (Court held that in light of Mother's six-year history of involvement with DCS and her failure to demonstrate she would remain sober if not under compulsion from criminal court, it could not say trial court erred when it concluded termination was in children's best interests).

c. In Re A.I., 825 N.E.2d 798, 809-10 (Ind. Ct. App. 2005) (both parents abused alcohol and prescription and street drugs, including methadone, morphine, marijuana, Oxycontin, Lortab, Klonopin, crank and vodka and failed to complete treatment; this evidence supported finding that parents' environment was destructive at best and dangerous at worst for child), *trans. denied*.

d. Termination of Parent-Child Rel. of L.V.N., 799 N.E.2d 63, 70 (Ind. Ct. App. 2003) (evidence supported termination judgment; mother failed or refused to participate in numerous drug screens, failed to complete drug treatment and her addiction was chronic, progressive illness).

e. In Re Involuntary Term. of Parent-Child Rel., 755 N.E.2d 1090, 1096-97 (Ind. Ct. App. 2001) (both children were born cocaine positive; mother had used cocaine almost daily for three to four years and did not complete drug treatment programs; mother had been free from drug use for only three weeks at time of termination trial; trial court's determination that conditions which led to removal would not be remedied affirmed).

4. Housing, Hygiene and Supervision

a. In Re Involuntary Termination of Parent-Child Relationship of Kay L., 867 N.E.2d 236 (Ind. Ct. App. 2007) (children originally removed from Mother's care because of neglect which included abandonment and life and health endangering environment, lack of supervision and poor hygiene).

b. In Re R.J., 829 N.E.2d 1032, 1037 (Ind. Ct. App. 2005) (termination judgment reversed; OFC never suggested father would not be reunified with child because apartment building in which father resided was unsuitable).

c. Stewart v. Randolph County OFC, 804 N.E.2d 1207, 1214 (Ind. Ct. App. 2004) (termination judgment affirmed; children removed from very dirty home and had been left unattended both at home and wandering State Road;

despite homemaker assistance, mother failed to keep house clean), *trans. denied.*

d. In Re Termination of Relationship of D.D., 804 N.E.2d 258, 263, 267 (Ind. Ct. App. 2004) (despite assistance, mother lacked stable residence, living in several different shelters, motels and with various friends; mother was incapable of providing minimum requirements of safe, nurturing home environment; there was reasonable probability that reasons for continued out of home placement were likely to continue).

e. In Re C.C., 788 N.E.2d 847, 854-55 (Ind. Ct. App. 2003) (termination judgment affirmed; evidence of putative father's failure to secure and maintain suitable housing and father's stay in homeless shelter during termination proceedings supported finding that conditions resulting in child's removal were not likely to be remedied) *trans. denied.*

f. In Re R.S., 774 N.E.2d 927, 931 (Ind. Ct. App. 2002) (termination judgment affirmed; mother historically unable to provide adequate housing and supervision for children; ten-year-old child contracted gonorrhea after sexual involvement with another child; family members were repeatedly infested with lice and children were excessively absent from school).

g. In Re A.L.H., 774 N.E.2d 896, 900 (Ind. Ct. App. 2002) (mother unable to provide stable environment for child, who suffered from symptoms of shaken baby syndrome; mother lived in seven different residences in five years; this evidence supported trial court's determination that termination was in child's best interests).

h. In Re K.S., 750 N.E.2d 832, 839 (Ind. Ct. App. 2001) (termination appropriate due to abjectly filthy conditions in which mother repeatedly chose to raise children; mother not entitled to a fourth chance to improve).

5. Mental Illness and Mental Disability

a. In Re Invol. Termn. Of Par. Child Rel. A.H., 832 N.E.2d 563, 566-67 (Ind. Ct. App. 2005) (termination judgment affirmed; father's mental health disorders were intermittent explosive disorder, anti-social personality disorder and avoidance personality disorder; psychologist opined that father's symptoms and disorders made it difficult to parent children with special needs).

b. In Re Termination of Relationship of D.D., 804 N.E.2d 258, 263 (Ind. Ct. App. 2004) (mother's symptoms of borderline personality disorder, inconsistency, instability of relationships, depression and significant anxiety and failure to follow through with treatment made it highly unlikely that she was capable of providing appropriate home for child) *trans. denied.*

c. McBride v. County Off. Of Family & Children, 798 N.E.2d 185, 192 (Ind. Ct. App. 2003) (termination judgment affirmed; mother suffered from severe post-traumatic stress disorder, depressive disorder, disassociative disorder and dependent personality disorder; therapy could take several years and relapse could have fatal consequences).

d. In Re J.W., 779 N.E.2d 954, 957 (Ind. Ct. App. 2002) (termination affirmed on evidence that mother was diagnosed with probable Munchausen's syndrome by proxy, antisocial personality disorder and histrionic personality

disorder; psychiatrist recommended that mother never have custody and have only supervised visitation with child).

6. Permanency Needs
  - a. Castro v. Office of Family and Children, 842 N.E.2d 367, 373-74 (Ind. Ct. App. 2006) (condition that resulted in child's removal or reason for out of home placement is father's incarceration for burglary and criminal deviate conduct, he is obviously helpless to remedy those conditions within a meaningful timeframe).
  - b. McBride v. County Off. Of Family & Children, 798 N.E.2d 185, 202 (Ind. Ct. App. 2003) (testimony of OFC caseworker and children's CASA regarding children's need for permanency supported court's finding that termination was in children's best interests).
  - c. Everhart v. Scott County Office of Family, 779 N.E.2d 1224, 1234 (Ind. Ct. App. 2002) (upon incarcerated physically abusive father's release from prison, there is no guarantee that he will be able to provide for or regain custody of the children; children's needs are too substantial to force them to wait from seven to fourteen years to determine if father would be able to provide for them) *trans. denied*).
  - d. In Re C.C., 788 N.E.2d 847, 855 (Ind. Ct. App. 2003) (GAL's testimony that giving alleged father more time to complete services was not in child's best interests because it delayed permanency in child's life supported trial court's finding that termination was in child's best interests) *trans. denied*).
  - e. In Re K.S., 750 N.E.2d 832, 838 (Ind. Ct. App. 2001) (children have immediate needs for permanency and stability which parents continue to be unable to provide for them and which have been and will continue to be provided in adoptive placement).
7. Reasons for Continued Out-of-Home Placement May Be Considered
  - a. In Re A.I., 825 N.E.2d 798, 806 (Ind. Ct. App. 2005) (statute clarifies that it is not just the basis for the initial removal of child that may be considered for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in continued placement outside the home) *trans. denied*).
8. Relative Placement as a Factor
  - a. In Re Involuntary Termination of Parent-Child Relationship of Kay L., 867 N.E.2d 236 (Ind. Ct. App. 2007) (children's placement with Mother's half-sister did not constitute compelling reason to forego terminating Mother's parental rights).
  - b. Rowlett v. Office of Family and Children, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006) (termination judgment reversed; Appellate Court saw little harm in extending CHINS wardship to give incarcerated father chance to prove himself fit when children had been in maternal grandmother's care for three years and plan was to continue children with maternal grandmother), *trans. denied*).
  - c. In Re Involuntary Term. Paren. of S.P.H., 806 N.E.2d 874, 882 (Ind. Ct. App. 2004) (termination affirmed despite father's proposed relative placement; placement with paternal aunt would expose children to drug

environment from which they needed to escape; no guarantee of safety and stability in aunt's home).

d. James v. Pike County, 759 N.E.2d 1140, 1144 (Ind. Ct. App. 2001) (dismissal of termination petition not mandatory because children placed with maternal grandmother).

e. M.H.C. v. Hill, 750 N.E.2d 872, 878 (Ind. Ct. App. 2001) (dismissal of termination petition not required merely because child has been placed with paternal aunt).

9. Removal at Birth

a. In Re W.B., 772 N.E.2d 522, 530 (Ind. Ct. App. 2002) (five older children had been previously removed from filthy, unstable home and had alleged sexual abuse by parents; termination judgment regarding twins removed at birth affirmed; where children have never resided with parents, Court focuses on conditions that led to Department's retention of custody).

10. Satisfactory Plan for Care and Treatment

a. Lang v. Starke Cty Office of Fam. Children, 861 N.E.2d 366 (Ind. Ct. App. 2007) (to be satisfactory under statute, placement plan for children need not be detailed so long as it offers general sense of direction in which child would be going after termination of parent-child relationship).

b. Rowlett v. Office of Family and Children, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006) (termination judgment reversed; children have thrived for three years in care of maternal grandmother; continuation of CHINS wardship will have little, if any, impact on them), *trans. denied*.

c. In Re Invol. Termn. of Par. Child Rel. A.H., 832 N.E.2d 563, 571 (Ind. Ct. App. 2005) (termination judgment affirmed; children had thrived in foster care and OFC had developed plan of adoption).

d. In Re Termination of Relationship of D.D., 804 N.E.2d 258, 268 (Ind. Ct. App. 2004) (termination judgment affirmed; OFC's plan was for child to be adopted, either by current foster parents who were not ready to make a final decision, or by another family), *trans. denied*.

e. In Re C.C., 788 N.E.2d 847, 856 (Ind. Ct. App. 2003) (termination judgment affirmed; foster parents who had cared for child since birth intended to adopt him and this was satisfactory plan), *trans. denied*.

f. A.F. v. MCOFC, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002) (MCOFC identified adoption plan for children, which satisfied statutory requirement; termination judgment affirmed).

g. In Re Involuntary Term. of Parent-Child Rel., 755 N.E.2d 1090, 1098 (Ind. Ct. App. 2001) (OFC presented satisfactory plan, namely adoption by foster mother; termination judgment affirmed).

h. In Re D.J., 755 N.E.2d 679, 685 (Ind. Ct. App. 2001) (OFC's plan of adoption into a suitable and appropriate home was satisfactory; foster family home must be approved as an appropriate and suitable environment).

11. Special Needs of Children

a. Everhart v. Scott County Office of Family, 779 N.E.2d 1225, 1234-35 (Ind. Ct. App. 2002) (continuation of relationship posed threat to well being of children; father had physically abused child causing permanent injuries and

would be unavailable due to incarceration to provide for child's continuing medical needs).

b. In Re W.B., 772 N.E.2d 522, 532-4 (Ind. Ct. App. 2002) (continuation of relationship posed threat to children's well-being; four of the five older siblings were found to be severely developmentally delayed upon removal due to pervasive neglect; record left court firmly convinced that older children had been traumatized during the time they had lived with parents).

c. In Re Involuntary Term. of Parent-Child Rel., 755 N.E.2d 1090, 1094, 1098 (Ind. Ct. App. 2001) (both children had been born cocaine positive and had suffered from mother's drug use, including hypertonicity, developmental delay and behavior problems; termination was in children's best interests).

12. Termination as to One Parent But Not the Other Parent

a. In Re J.W., 779 N.E.2d 954, 962-63 (Ind. Ct. App. 2002) (mother's argument that termination inappropriate when child residing with one parent failed; termination assured mother could not regain custody and there would be no requirement for third party to overcome parental presumption if father were unable to care for child in future), *trans. denied*.

13. Termination as to Some But Not All Children

a. In Re D.L., 814 N.E.2d 1022, 1030 (Ind. Ct. App. 2004) (trial court's denial of termination petition regarding older child while granting petition regarding child's younger sibling was clearly erroneous; age difference and bonding to mother by older child inconsequential, mother could not live drug-free lifestyle, older child needed permanency, and separating siblings would be detrimental), *trans. denied*.

14. Visitation

a. Lang v. Starke Cty Office of Fam. Children, 861 N.E.2d 366 (Ind. Ct. App. 2007) (Court held, (1) under certain circumstances in which it has determined that children are at risk of abuse, DCS can deny visitation to parent who refuses to repudiate corporal punishment; and (2) regardless of legality of conditioning visitation on Father's agreeing not to discuss termination proceedings with children, inasmuch as it had no effect on result of termination hearing, any error was harmless).

b. In Re Termination of Relationship of D.D., 804 N.E.2d 258, 267 (Ind. Ct. App. 2004) (child has exhibited anxiety-related problems at home and school; mother placed child in adult role and made inappropriate comments in his presence; termination was in child's best interest), *trans. denied*.

c. In Re C.C., 788 N.E.2d 847, 855 (Ind. Ct. App. 2003) (alleged father was ordered to visit child consistently but visited only once in a two year period; this evidence supported trial court's finding that reasons for removal would not be remedied), *trans. denied*.

d. In Re E.S., 762 N.E.2d 1287, 1291-92 (Ind. Ct. App. 2002) (termination judgment reversed due to insufficient evidence; court's conclusion that child's behavior improved after visitation was terminated by court did not consider changes in foster homes, psychotropic medication, changed therapists and therapy methods; CASA questioned whether reunification had been fully explored absent visitation).

e. A.F. v. M.C.O.F.C., 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002)  
(termination judgment affirmed; father stopped complying with court ordered visitation and never requested that visitation resume; children refused to visit).