

# Children's Law Center of Indiana



## **Legislation on Notice of CHINS and Termination Hearings, and Opportunity To Be Heard and Make Recommendations for Foster Parents and Other Caretakers<sup>1</sup>**

By Derelle Watson-Duvall, J.D.  
Kids' Voice of Indiana  
The Derelle Watson-Duvall  
Children's Law Center of Indiana  
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The Indiana General Assembly added legislation in 2007 and 2008 which requires notice of detention, initial, factfinding, and dispositional hearings be given to foster parents and other temporary caretakers of Children in Need of Services. Foster parents and other caretakers are also given the opportunity to be heard at the detention, initial, factfinding, and dispositional hearings. In detention, initial and dispositional hearings, foster parents and other caretakers may also make recommendations to the court. The statute does not allow foster parents to make recommendations in factfinding hearings. The Department of Child Services (DCS) is usually responsible for given the notices.

Following are the specific statutes for the detention hearing regarding notice and opportunity to be heard and make recommendations for foster parents and other caretakers. IC 31-34-5-1(a)(3) requires notice of the 48 hour detention hearing to be given to foster parents or other temporary caretakers. IC 31-34-5-1(b) allows "a person who is required to be notified," which includes the child, the child's parent, guardian, foster parent, or other caretaker, to have an opportunity to be heard and to make recommendations to the court. The detention hearing statute for children who have been taken into custody by an emergency medical services provider, IC 31-34-5-1.5(d) requires the foster parent or other caretaker with

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whom the child is temporarily placed to be notified of the detention hearing and be provided an opportunity to be heard and to make recommendations to the court.

The initial hearing statute, IC 31-34-10-2(h), states that foster parents and other caretakers shall be given notice by the DCS of the “date, time, place, and purpose” of the initial hearing and any additional hearing. Foster parents and other caretakers are also given the opportunity to be heard and to make recommendations to the court at the initial hearing. (IC 31-34-10-2(h)(1)(2)).

IC 31-34-11-1(c), the factfinding statute, states that, if the factfinding hearing is not held immediately after the detention hearing, foster parents or other caretakers shall receive notice from the DCS of the factfinding hearing. Foster parents and other caretakers are provided an opportunity to be heard at the factfinding hearing, but the opportunity to make recommendations at the factfinding hearing is not included in this statute.

IC 31-34-19-1.3, a statute added in 2007, requires the DCS to notify foster parents and other caretakers of the “date, time, place, and purpose” of the dispositional hearing. Foster parents and other caretakers are provided an opportunity to be heard and to make recommendations to the court at the dispositional hearing. (IC 31-34-19-1.3(b)). IC 31-34-19-2(4) was added to the dispositional statute to allow a foster parent or other caretaker who is entitled to notice of the dispositional hearing to have a fair opportunity to controvert any part of the predispositional report admitted into evidence.

IC 31-32-1-4, the statute regarding the manner and time limit for notice to parties (parent, guardian, custodian) and individuals who are not parties (foster parents and other caretakers who have not formally intervened by court order in a specific case) was added in 2007. IC 31-32-1-4 provides that DCS is responsible for giving all notices of hearings in CHINS cases unless the court has given verbal notice of the date, time, place, and purpose of the hearing at an earlier hearing at which the individual to be notified is present. Notice for non-party foster parents and other caretakers may be given by personal delivery or deposited in United States mail five (5) calendar days (excluding Saturdays, Sundays, and national legal holidays) in advance of the hearing. Only verbal notice is required for a hearing scheduled to be held within forty-eight (48) hours after the court sets the time for the hearing. Verbal notice is usually given for detention and initial hearings.

Legislation in 2008 amended the notice period for a periodic case review or permanency hearing to seven (7) days before the hearing. (IC 31-34-21-4(a)). Foster parents,

unlicensed caretakers, and any other suitable relative or person whom the DCS knows has had a significant or caretaking relationship to the child shall be given notice. Prospective adoptive parents named in an adoption petition filed with the court having adoption jurisdiction also shall be given notice of the case review or permanency hearing if one of the following criteria is met: (1) each required consent to the child's adoption has been filed with the county office [of the DCS]; (2) the court with adoption jurisdiction has determined that the parent's, guardian's, or custodian's consent to adoption is not required; or (3) a petition to terminate the parent-child relationship has been filed and is pending. The court shall provide an opportunity to be heard and make recommendations at the periodic case review or permanency hearing to the persons who must be notified of the hearing. (IC 31-34-21-4(d)). The right to be heard and make recommendations includes the right to submit a written statement to the court, which, if served on all parties and other persons required to be notified, may be made a part of the court record. (IC 31-34-21-4(d)(1)). The right to be heard and make recommendations also includes the right to present oral testimony and cross examine any witnesses at the hearing. (IC 31-34-21-4(d)(2)).

For termination of the parent-child relationship cases, IC 31-35-2-6.5(c) and (d) require ten (10) days notice of termination hearings to foster parents and to prospective adoptive parents who meet the criteria to receive notice of periodic case review and permanency hearings discussed in the paragraph immediately above. The DCS must also notify any unlicensed person who is currently caring for the child and any other suitable relative or person whom the DCS knows has had a significant or caretaking relationship to the child. The court shall provide all of the persons who must be notified an opportunity to be heard and to make recommendations. (IC 31-35-2-6.5(e)). The right to be heard and to make recommendations includes the right to submit a written statement to the court, which, if served on all parties and other persons required to be notified, may be made a part of the court record. Unless the foster parent attends the hearing, the court is required to continue the termination hearing if the DCS does not provide signed verification from the foster parent that the foster parent was notified of the hearing at least five (5) business days before the hearing. (IC 31-35-2-6.5 (f)). A person who has a right to notice and the opportunity to be heard does not become a legal party to the termination case. (IC 31-35-2-6.5(g)).