

Children's Law Center of Indiana



Statutory Changes to Child in Need of Services Law Effective January 1, 2009¹

By Derelle Watson-Duvall, J.D.
Kids' Voice of Indiana
The Derelle Watson-Duvall
Children's Law Center of Indiana
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Several statutory changes affecting Child in Need of Services (CHINS) proceedings become Indiana law on January 1, 2009. The following are some of the more significant changes:

1. IC 31-34-4-2 has been amended to state that the Department of Child Services (DCS) is responsible for the placement and care of a child alleged to be a CHINS who is taken into custody under a court order and the court orders out-of-home placement. DCS must consider placing the child with a suitable and willing blood or adoptive relative caretaker, defacto custodian, or stepparent before considering any other out-of-home placement. Before DCS places the child with a relative, defacto custodian, or stepparent, DCS shall complete an evaluation based on a home visit of the relative's home and conduct a criminal history check of each person who is currently residing in the home.
2. IC 31-34-4-7, a new statute, applies to services and programs provided to or on behalf of an alleged CHINS at any time before the entry of a dispositional decree or approval of a program of informal adjustment. Before the court orders or approves a program, service, or out-of-home placement for a child that has not

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been recommended by DCS, the court shall submit the proposed service, program, or placement to DCS. DCS shall then submit a report to the court stating whether DCS approves or disapproves the proposed service, program, or placement within three business days of receipt of the court's proposal. If DCS does not approve the proposed service, program, or placement, DCS may recommend alternatives. The court is required to accept the DCS recommendations for any predispositional services, programs, or placement for the child unless the court finds that a DCS recommendation is unreasonable, based on the facts and circumstances of the case or contrary to the welfare and best interests of the child. If the court does not accept the DCS recommendations the court may require DCS to provide a specified service, program or placement of the child until the dispositional decree is entered. The court order must state specifically why the DCS recommendations are not being accepted. DCS may initiate an expedited appeal of the court order which does not follow the DCS recommendations. If DCS prevails on appeal, DCS shall pay for any programs or services, other than the cost of out-of-home placement, implemented during the appeal. DCS shall pay the cost of any out-of-home placement ordered by the court if the court order includes written findings that the placement is an emergency required to protect the child's health and welfare. If the court has not made written findings that the placement is an emergency, the county in which the juvenile court is located is responsible for payment of all costs of the child's placement.

3. IC 31-34-5-3 has been amended to require the court to include all findings and conclusions required by the applicable provisions of Title IV-E of the Social Security Act and any applicable federal regulation, including 45 CFR 1356.21, in its detention order. The court can comply with this statute by including language approved and recommended by the Indiana judicial conference in its order.
4. IC 31-34-19-6.1 has been added to permit the juvenile court to continue the dispositional hearing for seven days if the court does not accept the recommendations of the DCS predispositional report. DCS can submit a supplemental predispositional report stating the DCS final recommendations after

DCS considers the recommendations of the parent, guardian, or custodian; GAL/CASA, foster parent/relative caretaker, other parties, or the court. The court is then required to accept each final recommendation in the DCS supplemental dispositional report unless the court finds that a recommendation is unreasonable, based on the facts and circumstances of the case or contrary to the child's welfare and best interests. The court's dispositional decree which does not accept one or more of the final DCS recommendations must also specifically state why the court is not accepting the final DCS recommendations. DCS may then initiate an expedited appeal. If DCS prevails on appeal, DCS shall pay the following costs incurred by or on behalf of the child before the date of the final decision: (1) any programs or services implemented during the appeal, other than the cost of out-of-home placement ordered by the juvenile court; (2) any out-of-home placement ordered by the juvenile court and implemented after entry of the dispositional decree or modification order, if the court has made written findings that the placement is an emergency required to protect the health and welfare of the child. If the court has not made the written findings that the placement is an emergency, the county in which the juvenile court is located is responsible for payment of all costs of placement.

5. IC 31-34-20-1 has been amended to allow the following dispositional decrees: (1) supervision of the child by DCS; (2) outpatient treatment for the child at a social service agency or a psychological, psychiatric, medical, or educational facility or from an individual practitioner; (3) remove the child from home and authorize DCS to place the child in another home or shelter care facility; (4) award wardship of the child to DCS for supervision, care, and placement; (5) partially or completely emancipate the child; (6) order the child's parent, guardian, or custodian to complete services recommended by DCS and approved by the court; (7) order a party to refrain from direct or indirect contact; (8) order a perpetrator of child abuse or neglect to refrain from returning to the child's residence. The juvenile court may not place a child in a home or facility which is located outside Indiana unless: (1) the placement is recommended or approved by

the DCS director or the director's designee; or (2) the juvenile court makes written findings based on clear and convincing evidence that either the out-of-state placement is appropriate because there is not a comparable facility with adequate services located in Indiana or the out-of-state home or facility is within 50 miles of the child's county of residence. The court must include in the dispositional decree the findings and conclusions described in IC 31-34-5-3, which are outlined at number 3 of this document.

6. IC 31-34-23-4 has been amended to add that provisions of IC 31-34-19 (discussed at number 4 of this document) apply to the preparation and use of a report to modify the dispositional decree.