

Children's Law Center of Indiana



Involuntary Termination of the Parent-Child Relationship Standard and Burden of Proof, Appointment of Counsel and Guardian ad Litem, and Hearing Timeline¹

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I. Standard and Burden of Proof

The standard of proof for involuntary termination of the parent-child relationship cases is clear and convincing. IC 31-34-12-2; In Re G.Y., 904 N.E.2d 1257 (Ind. 2009); Bester v. Lake County Office of Family, 839 N.E.2d 143 (Ind. 2005). Clear and convincing evidence need not reveal that “the continued custody of the parents is wholly inadequate for the child’s very survival.” It is sufficient to show by clear and convincing evidence that “the child’s emotional and physical development are threatened” by the respondent parent’s custody. Egly v. Blackford County Dep’t of Pub. Welfare, 592 N.E.2d 1232 (Ind. 1992). The Indiana Rules of Trial Procedure apply in termination of the parent-child relationship cases. IC 31-32-1-3. The burden of proving each and every element set forth in the involuntary termination statutes is on the Department of Child Services (DCS). In Re G.Y., 904 N.E.2d 1257 (Ind. 2009); A.J. v. Marion County Office of Family, 881 N.E.2d 706 (Ind. Ct. App. 2008). Termination cases are governed by the procedures prescribed for CHINS cases, but termination proceedings are distinct from CHINS cases. IC 31-35-2-2. Hite v. Vanderburgh Cty Office Fam. & Chil., 845 N.E.2d 175 (Ind. Ct. App. 2006).

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The involuntary termination statute which applies to parents convicted of specific crimes when the parent's child or stepchild was the victim of the offense and under 16 years of age at the time of the offense is IC 31-35-3-4. IC 31-35-3-8 provides that a showing that the parent has been convicted of one of the offenses listed at IC 31-35-3-4 is prima facie evidence of the following elements of the termination statute: (1) there is a reasonable probability that the conditions that resulted in the removal of the child from the parent under a court order will not be remedied; or (2) there is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the child.

II. Appointment of Counsel and Guardian ad Litem/Court Appointed Special Advocate

IC 31-32-2-5 and IC 31-32-4-1 provide that a parent in an involuntary termination proceeding is entitled to be represented by counsel. If the parent in a termination proceeding does not have an attorney who may represent the parent without a conflict of interest, and the parent has not lawfully waived the parent's right to counsel, the court shall appoint counsel for the parent at the initial hearing or at any earlier time. IC 31-32-4-3(a). A parent who is entitled to representation by counsel may waive that right if the parent does so knowingly and voluntarily. IC 31-32-5-5. In Keen v. Marion Cty. D. of Public Welfare, 523 N.E.2d 452 (Ind. Ct. App. 1988), the Court found that the Mother had voluntarily waived her right to court appointed counsel.

The United States Supreme Court opined in Lassiter v. Department of Social Services, 452 U.S. 18, 101 S.Ct. 2153 (1981) that the purpose of termination of parental rights is not to punish parents but to protect children. Parental rights are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. In Re Termination of Relationship of D.D., 804 N.E.2d 258 (Ind. Ct. App. 2004).

A Guardian ad Litem or Court Appointed Special Advocate must be appointed to represent the child on any petition for involuntary termination in which the parent objects to the termination. IC 31-35-2-7(a). If a Guardian ad Litem or Court Appointed Special Advocate has been appointed for the child in the CHINS case, the court may reappoint the Guardian ad Litem or Court

Appointed Special Advocate to represent the best interests of the child in the termination proceedings. IC 31-35-2-7(b). Appellate Courts have found failure to appoint a Guardian ad Litem or Court Appointed Special Advocate in an involuntary termination case to be reversible error. Jolley v. Posey County DPW, 624 N.E.2d 23 (Ind. Ct. App. 1993); Matter of S.L., 599 N.E.2d 227 (Ind. Ct. App. 1992).

III. Hearing Timeline

A person filing the termination petition (either the DCS attorney or the child's Guardian ad Litem or Court Appointed Special Advocate) may request the court to set the petition for hearing. Whenever a hearing is requested, the court shall commence a hearing on the petition not more than 90 days after the petition is filed and complete the hearing not more than 180 days after it is filed. IC 31-35-2-6.