

Children's Law Center of Indiana



Highlights of 2011 Legislative Changes to Paternity, Dissolution, Adoption, and CHINS Law¹

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Legislation effective July 1, 2011, makes changes in Paternity, Dissolution, Adoption, Child in Need of Services, and Guardianship law. The full text of this legislation, Senate Enrolled Act 465, may be found at www.in.gov/legislative. This article includes only highlights of changes to Paternity, Dissolution, Adoption, and CHINS law for family law attorneys and child service professionals. Changes to Guardianship law may be found in a separate article, Guardianship and Third Party Custody Law, on this website. Please consult the full text of SEA 465 for additional changes.

1. Paternity and Dissolution courts may require a noncustodial parent to complete a batterer's intervention program certified by the Indiana Coalition Against Domestic Violence as a condition of granting unsupervised parenting time. IC 31-14-14-15 (paternity) and IC 31-17-2-8.3 (dissolution) create a rebuttable presumption that the court shall order a noncustodial parent's parenting time supervised if the noncustodial parent has been convicted of a crime involving domestic or family violence that was witnessed or heard by the child. Subsection (c) was added to IC 31-14-14-5 (paternity) and to IC 31-17-2-8.3 (dissolution). The new subsection (c) states that as a condition of granting the noncustodial parent unsupervised parenting time, the court may require the noncustodial parent to complete a batterer's intervention program certified by Indiana Coalition Against Domestic Violence. The website for the Coalition is www.icadvinc.org and the telephone number is (317) 917-3685. The list of Batterer's

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Intervention Programs certified by the Coalition may be accessed by clicking on Programs & Services on the Coalition website.

2. Juvenile court CHINS or delinquency orders that modify dissolution orders on custody, parenting time, or child support survive termination of the child's CHINS or delinquency case until the orders are modified by the dissolution court. IC 31-30-1-12(a) states that a court having jurisdiction under IC 31-17-2 of a child custody, parenting time or child support proceeding has concurrent original jurisdiction with the juvenile court for the purpose of modifying custody of a child who is under juvenile court jurisdiction due to a CHINS or delinquency proceeding (new language effective July 1, 2011, underlined).

IC 31-30-1-12 was amended, adding subsections (c), (d), and (e). IC 31-30-1-12(c) states that if custody, parenting time, or child support is modified by juvenile court and the CHINS or delinquency case is terminated, the court having concurrent original jurisdiction shall assume or reassume primary jurisdiction of the case to address all issues. IC 31-30-1-12(d) states that a court that assumes or reassumes jurisdiction may modify custody, parenting time, or child support in accordance with the applicable modification statutes. IC 31-30-1-12(e) states that a juvenile court order modifying custody, child support, or parenting time survives the termination of the CHINS or delinquency proceeding until the court with concurrent original jurisdiction assumes primary jurisdiction and modifies the order.

3. Juvenile court CHINS or delinquency orders that establish or modify paternity of a child survive termination of the child's CHINS or delinquency case. IC 31-30-1-13(a) states that a court having jurisdiction of a child custody paternity proceeding under IC 31-14 has concurrent original jurisdiction with another juvenile court for the purpose of modifying custody of a child who is under juvenile court jurisdiction due to a CHINS or delinquency proceeding. IC 31-30-1-13 was amended, adding subsections (c) and (d). IC 31-30-1-13(c) states that if a juvenile court establishes or modifies paternity of a child and terminates the CHINS or delinquency proceeding, the court having concurrent original jurisdiction shall assume or reassume primary jurisdiction of the case to address all other issues. IC 31-30-1-13(d) states that a juvenile court order establishing or modifying paternity of a child survives the termination of a CHINS or delinquency proceeding.

4. The Department of Child Services (DCS) and parents of a child who is a ward of DCS may execute subsequent consents to adoption. IC 31-19-9-2(e) states that a person who executes a written consent to adoption may not execute a second or subsequent written consent to have another person adopt the child unless one or more of

the following apply: (1) each original adoption petitioner provides a written statement that the petitioner is not adopting the child; (2) the person consenting to adoption has been permitted to withdraw the first consent to adoption; (3) the court dismisses the adoption petition filed by the original petitioner(s) based upon a showing, by clear and convincing evidence, that it is not in the child's best interests that the adoption petition be granted; or (4) the court denies the adoption petition filed by the original petitioners. IC 31-19-9-2 was amended, adding subsections (f) and (g), which are exceptions to IC 31-19-9-2(e). The exceptions apply to children who are wards of DCS. IC 31-19-9-2(f) states that DCS may execute more than one written consent to a child's adoption if DCS determines that the execution of more than one consent is in the child's best interests. IC 31-19-9-2(g) states that the parents of a child who is a ward of DCS may execute a second or subsequent consent to adoption if the court with jurisdiction over the CHINS case determines that adoption by the persons to whom the consents were originally signed is not in the child's best interest; or the child's placement with the person who has petitioned or intends to petition to adopt the child is disrupted.

5. Criminal convictions by adoption petitioners which prevent the court from granting an adoption have been modified. IC 31-19-11-1(c) lists the felonies which prevent a court from granting an adoption. See item number 6 below for the list of felonies. This statute was amended removing criminal convictions for attempt or conspiracy to commit one of the listed felonies as reasons for denial of an adoption. The statute was also amended, clarifying that the court is not prohibited from granting an adoption based on felony convictions for battery, criminal confinement, carjacking, arson, and weapons felonies under IC 35-47 or IC 35-47.5 if the date of the conviction did not occur within the immediately preceding five years (new language underlined).

6. A juvenile delinquency adjudication for listed acts that would be a felony if committed by an adult or a criminal conviction for a felony not listed in IC 31-19-11-1 is a permissible basis for the court to deny a petition for adoption. IC 31-19-11-1(c) was also amended, adding a juvenile delinquency adjudication for one of the following acts as a permissible basis for a court to deny an adoption (new language underlined). These acts are:

- (1) Murder (IC 35-42-1-1)
- (2) Causing suicide (IC 35-42-1-2)
- (3) Assisting suicide (IC 35-42-1-2.5)
- (4) Voluntary manslaughter (IC 35-42-1-3)
- (5) Reckless homicide (IC 35-42-1-5)
- (6) Battery as a felony (IC 35-42-2-1)
- (7) Domestic battery (IC 35-42-2-1.3)

- (8) Aggravated battery (IC 35-42-2-1.5)
- (9) Kidnapping (IC 35-42-3-2)
- (10) Criminal confinement (IC 35-42-3-3)
- (11) A felony sex offense under IC 35-42-4
- (12) Carjacking (IC 35-42-5-2)
- (13) Arson (IC 35-43-1-1)
- (14) Incest (IC 35-46-1-3)
- (15) Neglect of a dependent (IC 35-46-1-4(a)(1) and IC 35-46-1-4(a)(2))
- (16) Child selling (IC 35-46-1-4(d))
- (17) A felony involving a weapon under IC 35-47 or IC 35-47-5
- (18) A felony relating to controlled substances under IC 35-48-4
- (19) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3
- (20) A felony under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in subdivisions (1) through (19).

7. Alleged fathers are defined as parents for purposes of CHINS and termination of the parent-child relationship cases. IC 31-9-2-88, which defines “parent,” was amended, adding subsection (b). IC 31-9-2-88(b) states that “parent” includes an alleged father for purposes of IC 31-34-1 [CHINS definitions], IC 31-34-8 [informal adjustment], IC 31-34-16 [parental participation petition], IC 31-34-19 [dispositional hearing], IC 31-34-20 [dispositional decrees], and IC 31-35-2 [involuntary termination of the parent-child relationship].

8. Juvenile court may order the custodial parent, guardian, or custodian to make the child available for an interview by a Department of Child Services caseworker who is conducting an assessment of a report of child abuse or neglect. IC 31-33-8-7, which outlines what must be included in the DCS assessment of a report of child abuse or neglect, was amended, adding subsections (d) and (e). IC 31-33-8-7(d) states that DCS may petition a court to order the custodial parent, guardian, or custodian to make the child available to be interviewed by the caseworker if a custodial parent, a guardian, or a custodian refuses to allow the child to be interviewed after the caseworker has attempted to obtain consent to interview the child. IC 31-33-8-7(e) states that if the court finds that: (1) a custodial parent, a guardian, or a custodian has been informed of the hearing on the petition; and (2) that DCS has made reasonable and unsuccessful efforts to obtain the consent to interview the child, the court may grant the DCS petition to interview the child, either with or without the custodial parent, guardian, or custodian being present.