

# Children's Law Center of Indiana



## TPR

4/10/2019

In Matter of D.H., 122 N.E.3d 832 (Ind. Ct. App. 2019), a rehearing on Matter of D.H., 119 N.E.3d 578 (Ind. Ct. App. 2019), the Court granted the rehearing for limited purpose of correcting an error. The Court held that IC 31-35-2-4.5(d) was permissive rather than mandatory, and when filing a petition to terminate a parent's right to their child, DCS was permitted but not required to state whether there is a basis for filing a motion to dismiss the termination petition, and if there is such a basis to file the motion to dismiss. The Court further held that this did not change the Court's overall conclusion that DCS violated Mother's due process rights.

**IC 31-35-4.5(d) is permissive; DCS is permitted but not required to state whether there is a basis for filing a motion to dismiss the termination petition, and if there is such a basis, to file the motion to dismiss. Id. at 833.** DCS requested rehearing and the Court to reconsider its opinion in Matter of D.H., 119 N.E.3d 578 (Ind. Ct. App. 2019), where it had opined that DCS was required by IC 31-35-2-4.5(d) to state in the termination petition whether there was a basis for filing a motion to dismiss the petition and, if there was such a basis, to file a motion to dismiss. Id. The Court noted that DCS was correct; the statute in question was amended in 2012 to make the statement and the filing of a motion to dismiss permissive rather than mandatory. Id.

**The Court affirmed its opinion in all other aspects, including its determination that DCS had made significant procedural errors throughout the case which resulted in a violation of Mother's procedural due process rights. 833-34.**