

## **IC 31-35-2**

### **Chapter 2. Termination of Parent-Child Relationship Involving a Delinquent Child or a Child in Need of Services**

#### **IC 31-35-2-1**

##### **Application of chapter**

Sec. 1. This chapter applies to the termination of the parent-child relationship involving:

- (1) a delinquent child; or
- (2) a child in need of services.

*As added by P.L.1-1997, SEC.18.*

#### **IC 31-35-2-2**

##### **Law governing proceedings**

Sec. 2. Proceedings under this chapter are governed by the procedures prescribed by:

- (1) IC 31-32-1, IC 31-32-4 through IC 31-32-10, and IC 31-32-12 through IC 31-32-15;
- (2) IC 31-34; and
- (3) IC 31-37;

but are distinct from proceedings under IC 31-34 and IC 31-37.

*As added by P.L.1-1997, SEC.18.*

#### **IC 31-35-2-3**

##### **Jurisdiction**

Sec. 3. The probate court has concurrent original jurisdiction with the juvenile court in proceedings on a petition to terminate the parent-child relationship involving a delinquent child or a child in need of services under this chapter.

*As added by P.L.1-1997, SEC.18.*

#### **IC 31-35-2-4**

##### **Petition; contents**

Sec. 4. (a) A petition to terminate the parent-child relationship involving a delinquent child or a child in need of services may be signed and filed with the juvenile or probate court by any of the following:

- (1) The attorney for the department.
- (2) The child's court appointed special advocate.
- (3) The child's guardian ad litem.

(b) The petition must meet the following requirements:

- (1) The petition must be entitled "In the Matter of the Termination of the Parent-Child Relationship of \_\_\_\_\_, a child, and \_\_\_\_\_, the child's parent (or parents)".

(2) The petition must allege:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

(ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or

reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

(3) If the department intends to file a motion to dismiss under section 4.5 of this chapter, the petition must indicate whether at least one (1) of the factors listed in section 4.5(d)(1) through 4.5(d)(3) of this chapter applies and specify each factor that would apply as the basis for filing a motion to dismiss the petition.

*As added by P.L.1-1997, SEC.18. Amended by P.L.35-1998, SEC.19; P.L.200-1999, SEC.29; P.L.146-2008, SEC.615; P.L.131-2009, SEC.65; P.L.21-2010, SEC.8; P.L.48-2012, SEC.66.*

### **IC 31-35-2-4.5**

#### **Petition; filing; motion to dismiss**

Sec. 4.5. (a) This section applies if:

(1) a court has made a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification with respect to a child in need of services are not required; or

(2) a child in need of services or a delinquent child:

(A) has been placed in:

(i) a foster family home, child caring institution, or group home licensed under IC 31-27; or

(ii) the home of a person related (as defined in IC 31-9-2-106.5) to the child;

as directed by a court in a child in need of services proceeding under IC 31-34 or a delinquency action under IC 31-37; and

(B) has been removed from a parent and has been under the supervision of the department or county probation

department for not less than fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child.

(b) A person described in section 4(a) of this chapter shall:

(1) file a petition to terminate the parent-child relationship under section 4 of this chapter; and

(2) request that the petition be set for hearing.

(c) If a petition under subsection (b) is filed by the child's court appointed special advocate or guardian ad litem, the department shall be joined as a party to the petition.

(d) A person described in section 4(a) of this chapter may file a motion to dismiss the petition to terminate the parent-child relationship if any of the following circumstances apply:

(1) That the current case plan prepared by or under the supervision of the department or the probation department under IC 31-34-15, IC 31-37-19-1.5, or IC 31-37-22-4 has documented a compelling reason, based on facts and circumstances stated in the petition or motion, for concluding that filing, or proceeding to a final determination of, a petition to terminate the parent-child relationship is not in the best interests of the child. A compelling reason may include the fact that the child is being cared for by a custodian who is a parent, stepparent, grandparent, or responsible adult who is the child's sibling, aunt, or uncle or a person related (as defined in IC 31-9-2-106.5) to the child who is caring for the child as a legal guardian.

(2) That:

(A) IC 31-34-21-5.6 is not applicable to the child;

(B) the department or the probation department has not provided family services to the child, parent, or family of the child in accordance with a currently effective case plan prepared under IC 31-34-15 or IC 31-37-19-1.5 or a permanency plan or dispositional decree approved under IC 31-34 or IC 31-37, for the purpose of permitting and facilitating safe return of the child to the child's home; and

(C) the period for completion of the program of family services, as specified in the current case plan, permanency plan, or decree, has not expired.

(3) That:

(A) IC 31-34-21-5.6 is not applicable to the child;

(B) the department has not provided family services to the child, parent, or family of the child, in accordance with applicable provisions of a currently effective case plan prepared under IC 31-34-15 or IC 31-37-19-1.5, or a permanency plan or dispositional decree approved under IC 31-34 or IC 31-37; and

(C) the services that the department has not provided are substantial and material in relation to implementation of a

plan to permit safe return of the child to the child's home. The motion to dismiss shall specify which of the allegations described in subdivisions (1) through (3) apply to the motion. If the court finds that any of the allegations described in subdivisions (1) through (3) are true, as established by a preponderance of the evidence, the court shall dismiss the petition to terminate the parent-child relationship.

*As added by P.L.35-1998, SEC.20. Amended by P.L.200-1999, SEC.30; P.L.146-2008, SEC.616; P.L.131-2009, SEC.66; P.L.48-2012, SEC.67.*

### **IC 31-35-2-5**

#### **Representation of state's interests**

Sec. 5. Upon the filing of a petition under section 4 of this chapter, the attorney for the department shall represent the interests of the state in all subsequent proceedings on the petition.

*As added by P.L.1-1997, SEC.18. Amended by P.L.146-2008, SEC.617.*

### **IC 31-35-2-6**

#### **Request for hearing; timing of hearing; dismissal of petition**

Sec. 6. (a) Except when a hearing is required after June 30, 1999, under section 4.5 of this chapter, the person filing the petition shall request the court to set the petition for a hearing. Whenever a hearing is requested under this chapter, the court shall:

- (1) commence a hearing on the petition not more than ninety (90) days after a petition is filed under this chapter; and
- (2) complete a hearing on the petition not more than one hundred eighty (180) days after a petition is filed under this chapter.

(b) If a hearing is not held within the time set forth in subsection (a), upon filing a motion with the court by a party, the court shall dismiss the petition to terminate the parent-child relationship without prejudice.

*As added by P.L.1-1997, SEC.18. Amended by P.L.35-1998, SEC.21; P.L.146-2006, SEC.54; P.L.48-2012, SEC.68.*

### **IC 31-35-2-6.5**

#### **Notice of hearing**

Sec. 6.5. (a) This section applies to hearings under this chapter relating to a child in need of services.

(b) At least ten (10) days before a hearing on a petition or motion under this chapter:

- (1) the person or entity who filed the petition to terminate the parent-child relationship under section 4 of this chapter; or
- (2) the person or entity who filed a motion to dismiss the petition to terminate the parent-child relationship under section 4.5(d) of this chapter;

shall send notice of the review to the persons listed in subsections (c) and (d).

(c) Except as provided in subsection (h), the following persons shall receive notice of a hearing on a petition or motion filed under this chapter:

- (1) The child's parent, guardian, or custodian.
- (2) An attorney who has entered an appearance on behalf of the child's parent, guardian, or custodian.
- (3) A prospective adoptive parent named in a petition for adoption of the child filed under IC 31-19-2 if:
  - (A) each consent to adoption of the child that is required under IC 31-19-9-1 has been executed in the form and manner required by IC 31-19-9 and filed with the local office or the department;
  - (B) the court having jurisdiction in the adoption case has determined under an applicable provision of IC 31-19-9 that consent to adoption is not required from a parent, guardian, or custodian; or
  - (C) a petition to terminate the parent-child relationship between the child and any parent who has not executed a written consent to adoption under IC 31-19-9-2, has been filed under IC 31-35 and is pending.
- (4) Any other person who:
  - (A) the department has knowledge is currently providing care for the child; and
  - (B) is not required to be licensed under IC 12-17.2 or IC 31-27 to provide care for the child.
- (5) Any other suitable relative or person who the department knows has had a significant or caretaking relationship to the child.
- (6) Any other party to the child in need of services proceeding.

(d) At least ten (10) days before a hearing on a petition or motion under this chapter, the department shall provide notice of the hearing to the child's foster parent by:

- (1) certified mail; or
- (2) face to face contact by the department caseworker.

(e) The court shall provide to a person described in subsection (c) or (d) an opportunity to be heard and make recommendations to the court at the hearing. The right to be heard and to make recommendations under this subsection includes the right of a person described in subsection (c) or (d) to submit a written statement to the court that, if served upon all parties to the child in need of services proceeding and the persons described in subsections (c) and (d), may be made a part of the court record.

(f) The court shall continue the hearing if, at the time of the hearing, the department has not provided the court with signed verification from the foster parent, as obtained through subsection (d), that the foster parent has been notified of the hearing at least five (5) business days before the hearing. However, the court is not required to continue the hearing if the child's foster parent appears for the hearing.

(g) A person described in subsection (c)(2) through (c)(5) or

subsection (d) does not become a party to a proceeding under this chapter as the result of the person's right to notice and the opportunity to be heard under this section.

(h) If the parent of an abandoned child does not disclose the parent's name as allowed by IC 31-34-2.5-1(c) or indicates that the child is being abandoned under IC 31-34-2.5, the parent is not required to be notified of a hearing described in subsection (c).

*As added by P.L.35-1998, SEC.22. Amended by P.L.200-1999, SEC.31; P.L.133-2000, SEC.9; P.L.217-2001, SEC.12; P.L.145-2006, SEC.328; P.L.162-2011, SEC.53; P.L.128-2012, SEC.172.*

### **IC 31-35-2-7**

#### **Guardian ad litem or court appointed special advocate**

Sec. 7. (a) If a parent objects to the termination of the parent-child relationship, the court shall appoint:

- (1) a guardian ad litem;
- (2) a court appointed special advocate; or
- (3) both;

for the child.

(b) If a guardian ad litem or court appointed special advocate has been appointed for the child under IC 31-34-10, the court may reappoint the guardian ad litem or court appointed special advocate to represent and protect the best interests of the child in the termination proceedings.

*As added by P.L.1-1997, SEC.18.*

### **IC 31-35-2-8**

#### **Determination**

Sec. 8. (a) Except as provided in section 4.5(d) of this chapter, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship.

(b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

(c) The court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b).

*As added by P.L.1-1997, SEC.18. Amended by P.L.35-1998, SEC.23; P.L.128-2012, SEC.173.*