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To: Regional Managers
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Supervisor, Department of Child Services

From: James W. Payne, Director
Angela Green, Deputy Director of Practice Support
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Subject: Legislative Changes: Legal Guardianships
DCS-11-07

The Indiana Department of Child Services (DCS) is committed to partnering with families and communities to provide safe, nurturing, and stable homes for children under DCS care and supervision. In fulfilling the value that “We believe that the most desirable place for children to grow up is with their own families, when these families are able to provide safe, nurturing, and stable homes,” recent changes in state legislation will enhance our achievement of this value.

This administrative letter provides further guidance on recent legislative changes reflecting the importance of enhancing the stability of a guardianship.

Below is a summary of the law that became effective July 1, 2011:

- The DCS Local Office Attorney will be notified if a guardianship petition is filed, modified, or terminated for all guardianships created during the course of an Informal Adjustment (IA) or for all guardianships filed after July 1, 2011 regarding any child who was the subject of an open or closed Child in Need of Services (CHINS) action;
- Courts may set terms and conditions a parent must meet prior to seeking termination of a guardianship; and
- The court may allow DCS to present evidence in the guardianship hearing in cases involving a CHINS.

Revisions to the existing law require any person seeking to file a petition for the appointment of a person to serve as a guardian for a minor to include in the petition whether a CHINS petition or an IA has been filed regarding the minor for whom a guardianship is being sought, and, if so, whether the case regarding the minor is open at the time the guardianship petition is filed. The

court will notify the DCS Local Office Attorney of a hearing regarding the guardianship of a minor if:

1. A CHINS petition has been filed regarding the minor; or
2. An IA involving the minor is pending. (See IC [29-3-5-1\(g\)](#));

DCS may participate in a hearing regarding this matter.

The court may include in its order creating a guardianship of a minor, the following:

1. The minor must reside with the guardian until the guardianship is terminated or modified. See (IC [29-3-8-9](#)); and
2. Any terms and conditions that the parent must meet in order to seek modification or termination of the guardianship.

The court may modify or terminate the guardianship if the parent:

1. Complies with the terms and conditions; and
2. Proves his or her current fitness to assume all parental obligations.

If a petition is filed for modification, resignation, or removal of the guardian or termination of the guardianship prior to the parent complying with the court ordered terms and conditions and the minor was the subject of a CHINS or is participating in an IA, the court will refer the petition to DCS to determine the placement of the child in accordance with the best interests of the child.

Additionally, the court will notify DCS if a petition is filed regarding a minor who was the subject of a CHINS or participating in an IA if:

1. A petition is filed to appoint a guardian;
2. A petition is filed to modify or terminate the guardianship; or
3. A petition is filed regarding the death, resignation, or removal of the guardian.

If DCS decides to participate in the hearing the court will consider the position of DCS and allow DCS to present evidence regarding:

1. Whether the guardianship should be modified or terminated;
2. The fitness of the parent to provide for the care and supervision of the minor at the time of the hearing;
3. The appropriate care and placement of the child; and
4. The best interests of the child.

The court where the action is being filed will send notice from the court to the DCS Local Office Attorney. The DCS Local Office Attorney will staff the case with the DCS Supervisor and/or FCM to determine if DCS should intervene. If the Supervisor and/or FCM are no longer employees of DCS, the DCS Local Office Attorney should consult with the DCS Local Office Director who will reassign the case to another FCM and/or Supervisor to staff the case with the DCS Local Office Attorney. Issues such as safety concerns, risk, permanency, and the well-being of the child should be addressed during the staffing.

As each case is unique, staffing must occur to evaluate previous history, new reports, and potential safety and risk factors. The staffing should assist in determining whether a new 310

should be filed. If it is determined that a new 310 should be filed, the FCM will file a report with the DCS Hotline. The DCS Local Office Attorney and FCM may go to court and present testimony which the court must consider.

If guardianship and CPS history are in different counties, the DCS Local Office Attorney from the county where guardianship is seeking to be dissolved or modified should contact the county where prior CPS history occurred to staff the case. The DCS Local Office Attorney where the guardianship was filed is responsible for presenting any testimony in the matter.

Documentation should be completed by placing a hardcopy of the notice in the file at the DCS local office in the county of the DCS Local Office Attorney representing DCS.

Updates will be made to the DCS Policy Manual to reflect these changes. If you have any questions regarding the information presented in this administrative letter, please address them to the DCS policy mailbox at DCSPolicy@dcs.in.gov.

Sincerely,

James W. Payne, Director
Department of Child Services