

# Senate Enrolled Act 286- DCS Child Welfare Legislation

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## **Require DCS Ombudsman to Employ At Least Two Full Time Staff**

### *Section 1*

Adds language to the DCS Ombudsman statute requiring the Ombudsman Bureau to employ at least two full time staff members to help resolve complaints.

## **Older Youth Foster Care Program (OYFC)**

### *Sections 2, 10, 13, 14, 17, 21, 24, 27, 28, 30, 31, 33, 34, 35, 36, and 37*

Amend the current OYFC program to create a new collaborative care program for older youth (youth over age 18). The new collaborative care program will cover more youth and will allow DCS to obtain IV-E reimbursement for those services provided; something not allowable under the current program. Statute must be amended to give juvenile court judges the authority to oversee collaborative care cases, as required by federal law. The proposed change would include non code provisions allowing current participants to choose whether or not to remain in the “old” OYFC program or change to the new collaborative care program, if eligible.

## **Extends the Time for Victims of Certain Crimes to Access the Victims Compensation Fund**

### *Sections 3- 6*

Allows victims of certain crimes (including child sex crimes and incest) and battery on a child to seek compensation from the victim compensation fund until the age of 31 for sex crimes and 5 years after commission of the offense for battery on a child.

## **Background Checks**

### *Sections 7 and 64*

Through the implementation of the “Safely Home, Families First” initiative DCS continues to increase the number of children that are kept both in-home and with relatives, when DCS can ensure their safety. With the increased reliance on these types of placements it is critical that DCS have the authority to complete the checks necessary to ensure the child’s safety. Amend statute to give DCS the authority, but not require, the Department to conduct a criminal history check of a child’s parent, guardian, or custodian or of household member of a parent, guardian or custodian prior to reunification of a child with the family. In addition, amend IC 10-13-3-27 to give DCS the authority to request a limited criminal history check on alleged perpetrator(s) during a child abuse and neglect assessment, and a household member of a parent, guardian or custodian with whom DCS is reunifying the child.

## **DCS Guardianship Assistance Program (GAP)**

### *Sections 8, 9, and 36*

DCS is currently working to implement several provisions of the federal Fostering Connections Act, including a guardianship assistance program that can be reimbursed under Title IV-E. Indiana plans on offering this program to youth until age 20, but current Indiana law only allows for a guardianship to continue past age 18 if the person is incapacitated. In order for youth over age of 18 to remain in the GAP, both DCS and the Juvenile Court must have continuing jurisdiction over the case. Amend statute to allow guardianships under GAP to continue to age 20 and amend statute to give the Juvenile Court the authority to oversee these cases. Amend statute to require that the court order establishing the guardianship include a provision that the guardian is responsible for financial support required to meet the child’s needs to the extent the GAP payments do not cover them.

### **Clarify Definition of Child Abuse and Neglect**

*Sections 11 and 22*

The definition of “child abuse and neglect” (CA/N) and “Child in Need of Services” (CHINS) are circular. Amend statute to align with practice and with the federal Adoption and Safe Families Act by clarifying that the definitions of “child abuse and neglect” and “victim of child abuse or neglect” are separate from the pleading in a CHINS case that the child needs services or the coercive intervention of the court. This only provides clarifying language; it makes no substantive changes to what is considered child abuse and neglect.

### **Clarify CASA/GAL Training for CAPTA Compliance**

*Section 12 and 15*

In order for Indiana to receive Child Abuse and Prevention Treatment Act (CAPTA) funding from the federal government the State must certify that it is in compliance with the CAPTA law. One requirement is that all Court Appointed Special Advocate (CASA) or Guardian Ad Litem’s (GAL) appointed to represent a victim of child abuse or neglect in a judicial proceeding receives training in early childhood, child, & adolescent development. Current statute requires all CASA’s and non- attorney GAL’s to receive this training, but it does not require attorney GAL’s to receive the training. Amend statute to require all CASA & GAL’s receive training in early childhood, child & adolescent development to comply with federal law.

### **Permanency Roundtables**

*Sections 16, 25, 65, 73, 74*

A Permanency Roundtable is a team of experts from DCS that come together in a very structured setting to review the permanency options for a child. The Roundtable will ask clarifying questions, set goals for the case and put in place an action plan. Amend statute to require that all JD and CHINS cases where a child is placed in a residential facility be presented to a Permanency Roundtable after 6 months in placement.

### **Placement Review Committee’s**

*Sections 18 and 25*

The Placement Review Committee is a regional or multi-regional committee responsible for reviewing residential placements to ensure that the placement is the best interest and is the least restrictive placement option for the child. Research shows that children have better outcomes when they are placed in the least restrictive environment. This team provides expert review of cases recommended for residential placement to ensure that all other options have been exhausted. Amend statute to require that all JD & CHINS children placed, or who will be placed, in a residential facility be presented to the DCS Placement Review Committee.

### **Maximum Stay in a Shelter Care Facility**

*Sections 19, 26, and 32*

Shelter Care facilities are a temporary placement option for youth when a more permanent placement cannot be found immediately upon their removal from home. Children should not stay in this type of placement for more than 20 days. Amend statute to reduce the maximum stay for a child placed in a licensed shelter care facility from 60 days to 20 days with the ability to waive the limit if it is in the best interest of the child.

### **One Foster Care License Type with Different Levels of Care**

*Sections 20, 28, and 29*

Current statute allows for three different types of foster home licenses: regular, special needs, and therapeutic. Each type of license has requirements for capacity and training, and has a different per diem associated with placement. However, beginning January 1, 2012 payments will no longer be based on license type; they will be based on the needs of the child. As a result there is no longer a need for three different license types. Amend statute (IC 31-27-4) to have one foster home license, with two levels of care depending on the needs of the child. The highest level of care would require a certificate; this would allow DCS to have a pool of foster parents that are highly trained and skilled to care for with children with greater needs. It will also give foster parents more flexibility in caring for children in both traditional and therapeutic foster care. This new structure would be consistent with the recommendations from the DCS assessment tool and the new payment structure for foster parents effective January 1, 2012.

### **Repeal Annual Report on Notice of 21<sup>st</sup> Century Scholars Program**

*Section 23*

Statute requires DCS to submit an annual report to the General Assembly that provides data on the number of youth DCS notified of the 21st Century Scholarship program. DCS requires that all youth over the age of 14 be notified of the program and requires that the youth sign a document verifying notification. While all youth are notified there is no mechanism for DCS to track each child's receipt of information and as a result the report submitted to the general assembly remains the same each year. DCS will continue to notify youth of this program but proposes the repeal of the IC 31-25-2-4.5, the statute requiring DCS to submit the report.

### **Expungement of Child Abuse and Neglect Reports**

*Section 38, 55, and 56*

Current statute relating to the expungement of substantiated and unsubstantiated reports of child abuse and neglect conflicts with the new case management system that DCS is implementing (MaGik). The proposed change will amend statute to allow DCS to keep records of unsubstantiated reports for internal reference only when DCS is addressing later reports regarding the same family or alleged perpetrator.

### **DCS Authority to Share Child Abuse and Neglect Substantiations on Teachers with the DOE**

*Sections 39 and 53*

Currently, DCS only has the authority to share information on the outcome of a child abuse and neglect (CA/N) assessments involving a teacher with the local school corporation. DCS is not authorized to give this same information to the Department of Education (DOE), the licensing entity for teachers. Amend statute to give DCS the authority to notify DOE of the outcome of a CA/N assessment involving a teacher in order to ensure the safety of Indiana's youth.

### **Clarify Confidentiality of Child Abuse and Neglect Report Recordings**

*Section 40*

With the implementation of the new Indiana Child Abuse and Neglect Hotline all reports of Child Abuse and Neglect (CA/N) are made to a central location, recorded and stored on a database. Amend statute to clarify that all audio recordings of CA/N reports are confidential to protect the report sources right to remain anonymous.

### **Repeal Outdated Report to General Assembly**

*Section 41*

Current statute requires DCS to submit a report on the management of child abuse and neglect cases to the General Assembly. The information required for this report is either addressed in the current DCS budget committee report or is available on the DCS web page. As a result there is no longer a need for this report. Repeal IC 31-33-23.

## **Child Fatality Review Teams**

*Sections 42- 52*

Current statute gives each County the ability to establish a local fatality team, but that team must be voted on by the County governing body. Only 2 out of the 92 Counties currently have a local team set up. These teams are not required to produce any type of report, nor are they required to look at prevention or ways to get information out about prevention in their area. Amend statute to create regionally based fatality teams. These teams will be required to submit information to DCS Central Office and they will be the entity responsible for looking at prevention in their area and ways to get that information out. Change the age requirement for investigations by the local team, from 16 to 18, to match the statewide fatality review committee. Add language to codify current practice about the content of the Department's annual child fatality report.

## **DCS Authority to Stay a CAPTA Hearing During an Informal Adjustment (IA)**

*Section 54*

Currently, when an individual enters into an IA, or when the prosecutor is considering filing criminal charges involving child abuse or neglect, DCS stays the administrative hearing (CAPTA Hearing) until the IA concludes or the prosecutor decides whether or not to pursue the case. Amend statute to clarify that DCS can provide for such stay of legal due process.

## **Repeal County Pay**

*Sections 57, 63, 70, 71, 72, and 75*

In 2008 HEA 1001 changed the way the State funded its child welfare system from a County payor system to a State payor system. The statute includes language to ensure that the State was able to maximize federal funding by ensuring that courts included all IV-E required elements into the court order. If the court did not include the required elements the case would then be "county pay". DCS is proposing repeal of the "county pay" requirement and in its place language will be added to statute to require that the Department report to the Judicial Conference any orders not in compliance with statute.

## **Initial Hearing Timeframe**

*Section 58*

When a child is removed from home the initial hearing is statutorily required to be held with the detention hearing, which must be within 48 hours. However, when a child is not removed from home but DCS still pursues a CHINS case there is no requirement as to when the initial hearing must be held. Amend statute to specify that the initial hearing must be held within 10 days in all CHINS cases whether or not DCS has removed the child from the home.

## **"Adverse Consequences" for Failure to Meet Time Limits on CHINS Cases**

*Sections 59, 62, 68, and 69*

Current statute sets out certain requirements for time limits in which a court must hear juvenile cases to ensure that children do not linger in the system. However, in a recent Supreme Court (SC) decision the Court found that the term "shall" in statute may be construed as directory when the statute fails to specify adverse consequences. As a result, the "shall" provision that sets the time limits for CHINS cases is directory and not mandatory. After the SC decision there is no way to enforce the time limits without attaching adverse consequences to the "shall" provisions. The proposed language would add adverse consequences to the time limits for disposition hearings, adjudication hearings and TPR cases. If the case is not heard or concluded within the statutory time limits the case would be dismissed without prejudice.

## **Clarify CHINS Presumption Statute**

### *Section 60*

Statute allows the court to presume a child is a CHINS if the State introduces competent evidence of probative value that the child has been injured; the injury would not have been ordinarily sustained except for the act or omission of the parent, guardian or custodian; and the child was in the care of the parent, guardian or custodian at the time of the injury. Amend statute to clarify that this statute can be utilized if there is a reasonable probability the injury was non-accidental.

## **Child Videotape Testimony in DCS Administrative Appeal Hearings**

### *Section 61*

Under the federal Child Abuse and Prevention Treatment Act (CAPTA) an individual has the right to appeal a decision made by DCS to substantiate child abuse or neglect against them through the administrative appeal process. In addition, if DCS revokes a foster home license the individuals have the right to seek administrative appeal of that decision. Both of these circumstances often require the child to testify, which can be a traumatic process. Amend statute to allow child testimony via videotape in CAPTA and licensing hearings.

## **Technical Correction to Conform to Federal Law**

### *Section 63*

The federal Adoption and Safe Families Act (ASFA) requires a court to consider certain elements before they enter or modify a dispositional decree. State statute only requires the court to address these elements before entering the decree; state statute fails to require the court to address those same elements prior to modification of the decree. Amend statute to specify that the court must address the same elements prior to modifying a decree as they do when entering a decree, aligning Indiana statute with Federal law.

## **Requirement to Dismiss a Termination of Parental Rights (TPR)**

### *Sections 66 and 67*

When DCS files a TPR petition current statute requires that DCS address certain elements in the petition, one of which is whether or not there is any evidence to support the dismissal of the TPR petition, even if DCS does not want the petition to be dismissed. This requirement basically requires DCS to lay out the opposing side's case. To align with the Federal Adoption and Safe Families Act and Case law this requirement should be changed to a "may" provision, and not a "shall" provision.

## **Contracted Payments**

### *Sections 75*

DCS is currently in the process of issuing an RFP to develop a limited amount of contracts with providers that meet high treatment standards necessary for those children placed in residential care. Add language to statute that DCS will only pay for placements in facilities (child caring institutions, group homes and private secure facilities) that have an executed contract with DCS.

## **Study Committee on Youth with Mental Health Issues and CHINS 6**

### *Section 76*

Establishes a two year interim study committee on Underserved Youth with Mental Health Issues. The committee will study the unmet mental health needs of children within the juvenile justice system, including CHINS and delinquent children, and whether prosecuting attorneys should be allowed to file a CHINS petition under IC 31-34-1-6 (CHINS 6). The committee will have representatives from the Department of Correction, Department of Education, Public Defender's Council, Prosecuting Attorneys Council, Department of Mental Health and Addiction (FSSA), Department of Child Services, Indiana Council of Juvenile and Family Court Judges, Juvenile Justice Improvement Committee, four members of the Senate and four members of the House.

## **Creates the Department of Child Services Interim Study Committee**

### *Section 77*

Creates a one year study committee to review and study:

1. the progress and improvements DCS has made since its creation in 2005,
2. best practices concerning child welfare, child mental health, and delinquent children,
3. receive and review status reports from the DCS ombudsman,
4. the DCS Hotline, including the process used to refer a report to a local office, and
5. Make legislative recommendations.

The committee is made up of the following members 4 members appointed by the president of the Senate, not more than 2 may be the same party, 4 members appointed by the speaker, not more than 2 may be the same party, the director of DCS or their designee, the director of the Division of Mental Health or their designee, the Executive Director of the Indiana Prosecuting Attorney's Council (non-voting member), the executive director of the public defenders council (non- voting member), A provider of foster care services, appointed by the President of the senate, A provider of residential or group home services appointed by the speaker, 1 juvenile family court judge appointed by the senate, and 1 juvenile family court judge appointed by the Speaker