January 30, 1998

SENATE BILL No. 425

DIGEST OF SB0425 (Updated January 29, 1998 9:19 am - DI 44)

Citations Affected: IC 31-9; IC 31-34; IC 31-35; noncode.

Synopsis: Adoption and safe families act. Requires that whenever a hearing is requested on a petition to involuntarily terminate the parent-child relationship, a court must conduct the hearing not more than 90 days after the petition is filed. Applies this requirement to proceedings to involuntarily terminate the parent-child relationship involving: (1) a child in need of services or a delinquent child; or (2) a parent who has been convicted of a certain offense. (Under current law, the court is not required to conduct the involuntary termination hearing within a specified period after the petition is filed.) Extends the right to notice and the opportunity to be heard at a child's periodic case review, including a permanency hearing, in a child in need of services proceeding and at any hearings in an involuntary termination proceeding with respect to the child to the following persons: (1) The child's foster parent. (2) A prospective adoptive parent named in a

(Continued next page)

Effective: July 1, 1998; July 1, 1999.

Clark, Rogers, Miller, Lanane, Kenley, Merritt, Breaux, Randolph

January 13, 1998, read first time and referred to Committee on Judiciary.
January 22, 1998, amended, reported favorably — Do Pass.
January 26, 1998, reassigned to Committee on Finance.
January 29, 1998, reported favorably — Do Pass.

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petition for adoption under certain circumstances. (3) Any other person who the county office of family and children knows is currently providing care for the child. (4) Any other suitable relative or other guardian or custodian. Requires that whenever a petition to terminate the parent-child relationship has been filed or authorized concerning a child in need of services, the division of family and children shall post certain nonidentifying information about the child on the Internet in order to facilitate a potential adoptive placement of the child. Provides that, in an effort to facilitate a permanent placement for the child, the county office of family and children may contract with a licensed child placing agency to assume the county office's role in the child in need of services proceeding provided that the state has retained its jurisdiction over the child for more than 12 months after: (1) the child has been removed from the home; or (2) the court enters its original dispositional decree. Requires a petition to terminate the parent-child relationship to be filed and a hearing on the petition to be conducted if: (1) a child in need of services has been in a certain out-of-home placement for at least 15 months out of the most recent 22 months; or (2) a court has made a finding that reasonable efforts for family preservation or reunification with respect to a child in need of services are not required. Allows the county office of family and children to file a petition or motion requesting that the court not terminate the parent-child relationship in the above-named circumstances if: (1) the child is being cared for by a certain relative; (2) termination would not be in the child's best interests; (3) the county office of family and children has not provided adequate services to the child; or (4) the completion of the program for family services has not expired. Provides for certain standards and procedures to apply whenever it is mandatory to file a petition to terminate the parent-child relationship. Provides for certain phase-in deadlines applicable to when certain mandatory termination proceedings must begin to be conducted.

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January 30, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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SENATE BILL No. 425

A BILL FOR AN ACT to amend the Indiana Code concerning family law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-9-2-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 0.5. "Abandoned infant", for purposes of IC 31-34-21-5.6, means a child who is less than twelve (12) months of age and whose parent, guardian, or custodian:**

(1) has knowingly or intentionally left the child in:

(A) an environment that endangers the child's life or health; or

(B) a hospital or medical facility; and

(2) has no reasonable plan to assume the care, custody, and control of the child.

SECTION 2. IC 31-9-2-74.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 74.5. "Legal guardian", for purposes of IC 31-34-21, means a caretaker in a judicially created relationship between the**

child and caretaker that is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child:

(1) Care, custody, and control of the child.

(2) Decision making concerning the child's upbringing.

SECTION 3. IC 31-34-12-2, AS ADDED BY P.L.1-1997, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. **Except as provided in IC 31-35-2-4.7(c),** a finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence.

SECTION 4. IC 31-34-21-2, AS ADDED BY P.L.1-1997, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) In accordance with federal law, the case of each child in need of services under the supervision of the county office of family and children must be reviewed at least once every six (6) months, or more often, if ordered by the court.

(b) The first of these periodic case reviews must occur:

(1) at least six (6) months after the date of the child's removal from the child's parent, guardian, or custodian; or

(2) at least six (6) months after the date of the dispositional decree;

whichever comes first.

(c) A case review ~~may~~ **must** be conducted ~~either~~ by

~~(1) an administrative panel appointed by the director of the county office of family and children; or~~

~~(2)~~ the juvenile court in a formal court hearing.

~~(d) If a panel is appointed under subsection (c), at least one (1) of the members must be free from responsibility for the case management or the delivery of services to the child or the child's parent, guardian, or custodian.~~

SECTION 5. IC 31-34-21-4, AS ADDED BY P.L.1-1997, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. **(a)** At least five (5) days before the **periodic** case review, **including a case review that is a permanency hearing under section 7 of this chapter,** the county office of family and children shall send notice of the review to ~~the parent, guardian, or custodian of the child. The county office of family and children may send notice of the review to any foster parent of the child.~~ **each of the following:**

(1) The child's parent, guardian, or custodian.

(2) The child's foster parent.

(3) A prospective adoptive parent named in a petition for

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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 county office of family and children;

(B) the court having jurisdiction in the adoption case has determined under any 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 county office of family and children has knowledge is currently providing care for the child; and

(B) is not required to be licensed under IC 12-17.2 or IC 12-17.4 to provide care for the child.

(5) Any other suitable relative or person who the county office knows has had a significant or caretaking relationship to the child.

(b) The court shall provide to a person described in subsection (a) an opportunity to be heard and to make any recommendations to the court in a periodic case review, including a permanency hearing under section 7 of this chapter.

(c) A person described in subsection (a)(2) through (a)(5) 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.

SECTION 6. IC 31-34-21-5, AS ADDED BY P.L.1-1997, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) The ~~panel or~~ court shall determine:

(1) whether the child's case plan, services, and placement meet the special needs and best interests of the child;

(2) whether the county office of family and children has made reasonable efforts to provide family services; and

(3) a projected date for the child's return home, the child's adoption placement, the child's emancipation, or the appointment of a legal guardian for the child.

(b) The determination of the ~~panel~~ **court** under subsection (a) must be based on findings written after consideration of the following:

(1) Whether the county office of family and children, the child, or

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the child's parent, guardian, or custodian has complied with the child's case plan.

(2) What family services have been provided and offered to the child or the child's parent, guardian, or custodian.

(3) The extent of the efforts made by the county office of family and children to offer and provide family services.

(4) The extent to which the parent, guardian, or custodian has enhanced the ability to fulfill parental obligations.

(5) The extent to which the parent, guardian, or custodian has visited the child, including the reasons for infrequent visitation.

(6) The extent to which the parent, guardian, or custodian has cooperated with the county office of family and children or probation department.

(7) The child's recovery from any injuries suffered before removal.

(8) Whether any additional services are required for the child or the child's parent, guardian, or custodian and, if so, the nature of those services.

(9) The extent to which the child has been rehabilitated.

(10) If the child is placed out-of-home, whether the child is in the least restrictive, most family-like setting, and whether the child is placed close to the home of the child's parent, guardian, or custodian.

(11) The extent to which the causes for the child's out-of-home placement or supervision have been alleviated.

(12) Whether current placement or supervision by the county office of family and children should be continued.

(13) The extent to which the child's parent, guardian, or custodian has participated or has been given the opportunity to participate in case planning, periodic case reviews, dispositional reviews, placement of the child, and visitation.

(14) Whether the county office of family and children has made reasonable efforts to reunify or preserve a child's family unless reasonable efforts are not required under section 5.6 of this chapter.

(15) Whether it is an appropriate time to prepare or implement a permanency plan for the child under section 7.5 of this chapter.

SECTION 7. IC 31-34-21-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 5.5. (a) In determining the extent to which reasonable efforts to reunify or preserve a family are**

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appropriate under this chapter, the child's health and safety are of paramount concern.

(b) Except as provided in section 5.6 of this chapter, a county office of family and children shall make reasonable efforts to preserve and reunify families as follows:

(1) If a child has not been removed from the child's home, to prevent or eliminate the need for removing the child from the child's home.

(2) If a child has been removed from the child's home, to make it possible for the child to return safely to the child's home.

SECTION 8. IC 31-34-21-5.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 5.6. (a) A court may make a finding described in this section at any phase of a child in need of services proceeding.**

(b) Reasonable efforts to reunify or preserve a child's family as described in section 5.5 of this chapter are not required if the court finds any of the following:

(1) A parent, guardian, or custodian of a child who is a child in need of services has been convicted of:

(A) an offense described in IC 31-35-3-4(1)(B) or IC 31-35-3-4(1)(D) through IC 31-35-3-4(J) against a victim who is a child described in IC 31-35-3-4(2); or

(B) a comparable offense as described in clause (A) in any other state, territory, or country by a court of competent jurisdiction.

(2) A parent, guardian, or custodian of a child who is a child in need of services:

(A) has committed:

(i) the murder (IC 35-42-1-1) or voluntary manslaughter (IC 35-42-1-3) of a victim who is a child described in IC 31-35-3-4(2)(B); or

(ii) a comparable offense described in item (i) in any other state, territory, or country; or

(B) has:

(i) aided, induced, or caused another person;

(ii) attempted; or

(iii) conspired with another person;

to commit an offense described in clause (A);

regardless of whether the child's parent, guardian, or custodian is convicted of the offense.

(3) A parent, guardian, or custodian of a child who is a child

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in need of services has committed:

(A) battery (IC 35-42-2-1 (a)(4)) as a Class B felony;

(B) battery (IC 35-42-2-1(a)(3)) as a Class C felony;

(C) aggravated battery (IC 35-42-2-1.5);

(D) criminal recklessness (IC 35-42-2-2(c)) as a Class C felony; or

(E) a comparable offense described in clauses (A) through (D) in another state, territory, or country;

against a child described in IC 31-35-3-4(2)(B), regardless of whether the child's parent, guardian, or custodian is convicted of the offense.

(4) The parental rights of a parent with respect to a biological or adoptive sibling of a child who is a child in need of services have been involuntarily terminated by a court under:

(A) IC 31-35-2 (involuntary termination involving a delinquent child or a child in need of services);

(B) IC 31-35-3 (involuntary termination involving an individual convicted of a criminal offense); or

(C) any comparable law described in clause (A) or (B) in any other state, territory, or country.

(5) The child is an abandoned infant, provided that the court:

(A) has appointed a guardian ad litem or court appointed special advocate for the child; and

(B) after receiving a written report and recommendation from the guardian ad litem or court appointed special advocate, and after a hearing, finds that reasonable efforts to locate the child's parents or reunify the child's family would not be in the best interests of the child.

SECTION 9. IC 31-34-21-5.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 5.7. (a) This section applies at any phase of a child in need of services proceeding whenever a court enters a finding that reasonable efforts to reunify or preserve a child's family are not required under section 5.6 of this chapter.**

(b) The county office of family and children shall do the following:

(1) Complete a permanency plan for the child that complies with the requirements of section 7.5 of this chapter.

(2) Seek court approval of the permanency plan under section 7 of this chapter.

(c) Notwithstanding any otherwise applicable requirements under IC 31-34, whenever the county office of family and children

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seeks approval of a permanency plan for the child under subsection (b), the following reports, orders, and hearings are not required:

(1) A predispositional report to consider participation of a child's parent, guardian, or custodian in any program of care, treatment, or rehabilitation of the child.

(2) A dispositional decree under IC 31-34-19-6 and findings and conclusions under IC 31-34-19-10 that concern:

(A) participation of the child's parent, guardian, or custodian in a program for future care or treatment of the child; or

(B) reasonable efforts to prevent the child's removal from the child's home or to reunite the child with the child's parent, guardian, or custodian.

SECTION 10. IC 31-34-21-5.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 5.8. (a) This section applies only if a court has approved a permanency plan for a child under section 7(b)(3).**

(b) If the continuation of reasonable efforts to preserve and reunify a child in need of services with the child's family is inconsistent with the child's permanency plan, the county office of family and children shall make reasonable efforts to:

(1) place the child in an out-of-home placement in accordance with the permanency plan; and

(2) complete whatever steps are necessary to finalize the permanent placement of the child in a timely manner.

(c) Unless consistent with or required by the child's permanency plan, periodic progress reports, case reviews, and postdispositional hearings to determine whether or the extent to which the following have occurred are not required:

(1) Whether the county office of family and children, or any other agency, has provided or offered to provide family services to the parent, guardian, or custodian.

(2) Whether reasonable efforts have been made to eliminate the need for removal of the child from the child's home or to make it possible for the child to safely return to the child's home.

(3) Whether the parent, guardian, or custodian from whom the child was removed has enhanced the ability to fulfill parental obligations.

(4) Whether the child is placed in close proximity to the home of the child's parent, guardian, or custodian.

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(5) Whether the causes of out-of-home placement or supervision have been alleviated.

(6) Whether any other action has been or may be taken or any service provided that is incompatible with the permanency plan for the child included in the dispositional decree entered under this chapter.

SECTION 11. IC 31-34-21-7, AS ADDED BY P.L.1-1997, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) The court shall hold a ~~formal~~ **permanency** hearing:

(1) not more than thirty (30) days after a court finds that reasonable efforts to reunify or preserve a child's family are not required as described in section 5.6 of this chapter;

~~(1)~~ **(2)** every twelve (12) months after:

(A) the date of the original dispositional decree; or

(B) a child in need of services was removed from the child's parent, guardian, or custodian;

whichever comes first; or

~~(2)~~ **(3)** more often if ordered by the juvenile court.

There is a rebuttable presumption that the court retains jurisdiction over a child in need of services for not longer than twelve (12) months after the date of the original dispositional decree or twelve (12) months after the child in need of services was removed from the child's parent, guardian, or custodian, whichever occurs first.

(b) The court shall:

(1) make the determination and findings required by section 5 of this chapter;

(2) consider the question of continued jurisdiction and whether the dispositional decree should be modified;

(3) consider recommendations of persons listed under section 4 of this chapter, before approving a permanency plan under subdivision (4);

~~(3) determine whether the child should:~~ **(4) consider and approve a permanency plan for the child that complies with the requirements set forth in section 7.5 of this chapter;**

~~(A) return home;~~

~~(B) continue in foster care;~~

~~(C) be placed for adoption; or~~

~~(D) be placed under another permanent plan; and~~

(5) determine whether an existing permanency plan must be modified; and

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~~(4)~~ **(6)** examine procedural safeguards used by the county office of family and children to protect parental rights.

(c) The state must show that jurisdiction should continue by proving that the objectives of the dispositional decree have not been accomplished, ~~and~~ that a continuation of the decree with or without any modifications ~~has a probability of success.~~ **is necessary, and that it is in the child's best interests for the state to maintain its jurisdiction over the child.** If the state does not sustain its burden for continued jurisdiction, the court ~~may:~~ **shall:**

(1) authorize **the county office of family and children to file** a petition for termination of the parent-child relationship **within thirty (30) days;** or

(2) discharge the child ~~or~~ **and** the child's parent, guardian, or custodian.

SECTION 12. IC 31-34-21-7.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 7.3. (a) This section applies after:**

(1) a court authorizes the filing of a petition to terminate the parent-child relationship; or

(2) a petition to terminate the parent-child relationship is filed;

in relation to a child in need of services.

(b) The division shall post the following nonidentifying information on the Internet to facilitate a potential adoptive placement of the child:

(1) The child's age, gender, and summary of the child's educational, social, and medical background, including known disabilities.

(2) The reason the child was removed from the child's home.

(3) Whether a person has expressed an interest in adopting the child.

(4) The name, address, and telephone number of a contact person from the appropriate:

(A) county office of family and children; or

(B) licensed child placing agency;

where a person who may be interested in adopting the child may obtain further information about adopting the child.

(5) Whether a petition to terminate the rights of the child's parents has been authorized or filed, and whether the rights of the child's parents have been terminated.

(6) An address and telephone number of the appropriate:

(A) county office of family and children; or

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(B) licensed child placing agency;

where a person who may be interested in adopting the child may obtain further information about adopting the child.

(c) The information posted under subsection (a) may not identify the name of any of the following persons:

(1) The child.

(2) The child's biological or adoptive parents.

(3) A sibling of the child.

(4) A caretaker of the child.

(d) The division shall update any relevant information under this section after either of the following:

(1) Each of the child's periodic reviews that occur after the information under this section is required to be posted.

(2) The rights of the child's parents have been terminated.

(e) The division shall remove the information required under subsections (b) and (c) from the Internet whenever the child is reunited with the child's family or an adoption of the child is filed under IC 31-19-2.

(f) Upon request, a county office of family and children shall inform the person making the request of the address of the Internet Web site containing the information described in this section.

SECTION 13. IC 31-34-21-7.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 7.4. (a) This section applies whenever a court retains its jurisdiction over a child in need of services for more than twelve (12) months after:**

(1) the child is removed from the child's parent, guardian, or custodian; or

(2) the court enters an original dispositional decree.

(b) The county office of family and children may contract with a licensed child placing agency:

(1) to assume the county office of family and children's role in the child in need of services proceeding; and

(2) in an effort to facilitate a permanent placement for the child.

SECTION 14. IC 31-34-21-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 7.5. A permanency plan under this chapter includes the following:**

(1) The intended permanent or long term arrangements for care and custody of the child that may include any of the following arrangements that the court considers most

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appropriate and consistent with the best interests of the child:

(A) Return to or continuation of existing custodial care within the home of the child's parent, guardian, or custodian.

(B) Initiation of a proceeding by the agency or appropriate person for termination of the parent-child relationship under IC 31-35.

(C) Placement of the child for adoption.

(D) Placement of the child with a responsible person, including:

(i) an adult sibling;

(ii) a grandparent;

(iii) an aunt;

(iv) an uncle; or

(v) other relative;

who is able and willing to act as the child's permanent custodian and carry out the responsibilities required by the permanency plan.

(E) Appointment of a legal guardian.

(F) Placement of the child in another planned, permanent living arrangement.

(2) A time schedule for implementing the applicable provisions of the permanency plan.

(3) Provisions for temporary or interim arrangements for care and custody of the child, pending completion of implementation of the permanency plan.

(4) Other items required to be included in a case plan under IC 31-34-15 or federal law, consistent with the permanent or long term arrangements described by the permanency plan.

SECTION 15. IC 31-35-2-4, AS ADDED BY P.L.1-1997, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) A verified 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 county office of family and children.

(2) The prosecuting attorney.

(3) The child's court appointed special advocate.

(4) The child's guardian ad litem.

(b) The petition must:

(1) be entitled "In the Matter of the Termination of the Parent-Child Relationship of _____, a child, and

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_____, the child's parent (or parents)"; and

(2) allege **that:**

(A) one (1) of the following exists:

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

(ii) in which 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; or

(iii) the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

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

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

SECTION 16. IC 31-35-2-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **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:

(A) has been placed in:

(i) a foster family home, child caring institution, or group home licensed under IC 12-17.4; or

(ii) the home of a person related to the child (as defined in IC 12-7-2-162.5);

as directed by an court of a court in a child in need of services proceeding under IC 31-34; and

(B) has been removed from a parent and has been under the supervision of a county office of family and children for not less than fifteen (15) months of the most recent twenty-two (22) months, excluding any period not

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exceeding sixty (60) days before the court has entered a finding and judgment under IC 31-34 that the child is a child in need of services.

(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 a hearing.

(c) If a petition under subsection (b) is filed by the child's court appointed special advocate or guardian ad litem, the prosecuting attorney or the county office of family and children are entitled to be joined as a party to the petition upon application to the court.

(d) The attorney for the county office of family and children may file a petition or motion requesting that the court not terminate the parent-child relationship regardless of whether a termination petition has already been filed under subsection (b). Whenever a petition or motion is filed under this subsection the county office of family and children shall request that the petition or motion be set for a hearing. A petition or motion filed under this subsection must allege at least one (1) of the following circumstances:

(1) 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.

(2) That the current case plan prepared by or under the supervision of the county office of family and children under IC 31-34-15 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.

(3) That:

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

(B) the county office of family and children 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 a permanency plan or dispositional decree approved under IC 31-34, 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.

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(4) That:

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

(B) the county office of family and children 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 a permanency plan or dispositional decree approved under IC 31-34; and

(C) the services that the county office of family and children 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.

SECTION 17. IC 31-35-2-4.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 4.6. (a) The following provisions apply whenever a petition or motion requesting that a court not terminate the parent-child relationship is filed under section 4.5(d) of this chapter.**

(b) The prosecuting attorney and the child's guardian ad litem or court appointed special advocate must be:

(1) served with a copy of a petition or motion filed under this section 4.5(d) of this chapter; and

(2) provided an opportunity to be heard and present evidence relevant to disposition of the motion or petition.

(c) Unless ordered by the court, the prosecuting attorney, child's guardian ad litem, or court appointed special advocate who has not filed a petition to terminate the parent-child relationship under section 4.5(b) of this chapter is not a party in a case in which a petition or motion is filed under section 4.5(d) of this chapter.

SECTION 18. IC 31-35-2-4.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 4.7. (a) This section applies if a motion requesting that a court not terminate the parent-child relationship is filed under section 4.5(d) of this chapter.**

(b) After a hearing is conducted on a motion filed under section 4.5(d) of this chapter, the court may enter an order authorizing or directing that:

(1) a petition to terminate the parent-child relationship not be filed under this section;

(2) a pending petition filed under this section be dismissed; or

(3) a hearing or further proceedings on a petition filed under this section be continued for a period specified in the order,

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not exceeding one (1) year.

(c) The court may enter an order granting relief under this section, if the court finds that:

(1) the allegations contained in the motion under section 4.5(d) of this chapter are true, as established by a preponderance of the evidence; and

(2) the relief granted is in the best interests of the child, based on specific findings of fact related to the circumstances of the family and the child.

SECTION 19. IC 31-35-2-6, AS ADDED BY P.L.1-1997, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. **Except when a hearing is required under section 4.5,** the person filing the petition may request the court to set the petition for a hearing. **Whenever a hearing is requested under this chapter, the court shall conduct a hearing on the petition not more than ninety (90) days after a petition is filed under this chapter.**

SECTION 20. IC 31-35-2-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 6.5. (a) This section applies to hearings under this chapter relating to a child in need of services.**

(b) At least five (5) 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 county office of family and children, if a petition requesting that the court not terminate the parent-child relationship is filed under section 4.5(d) of this chapter, and a petition to terminate the parent-child relationship has not been filed;

shall send notice of the review to the persons listed in subsection (c).

(c) 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) The child's foster parent.

(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 county office of family and children;

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(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 county office of family and children has knowledge is currently providing care for the child; and

(B) is not required to be licensed under IC 12-17.2 or IC 12-17.4 to provide care for the child.

(5) Any other suitable relative or person who the county office of family and children knows has had a significant or caretaking relationship to the child.

(d) The court shall provide to a person described in subsection (c) an opportunity to be heard and make recommendations to the court at the hearing.

(e) A person described in subsection (c)(2) through (c)(5) 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.

SECTION 21. IC 31-35-2-8, AS ADDED BY P.L.1-1997, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) **Except as provided in section 4.7 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.

SECTION 22. IC 31-35-3-7, AS ADDED BY P.L.1-1997, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. **(a)** The person filing the petition may request that the court set the petition for a hearing.

(b) Whenever a hearing on the petition is requested under this chapter, the court shall conduct the hearing not more than ninety (90) days after a petition is filed under this chapter.

SECTION 23. IC 31-34-21-6 IS REPEALED [EFFECTIVE JULY 1, 1999].

SECTION 24. [EFFECTIVE JULY 1, 1999] **(a) This SECTION applies to a child in Indiana who:**

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(1) is in an out-of-home placement described in IC 31-35-2-4.5(a)(2)(A), as added by this act, on or before November 19, 1997; and

(2) has been removed from a parent and is under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months under IC 31-35-2-4.5(a)(2)(B), as added by this act.

(b) As used in this SECTION, "division" refers to the division of family and children.

(c) As used in this SECTION, "county office" refers to a county office of family and children.

(d) Except as provided in IC 31-35-2-4.5(d), as added by this act, a petition to terminate the parent-child relationship must be filed under IC 31-35-2-4 with respect to all children in Indiana to whom this section applies as follows:

(1) Not later than October 29, 1999, for at least one-third (1/3) of the children described in this SECTION.

(2) Not later than April 29, 2000, for at least two-thirds (2/3) of the children described in this SECTION.

(3) Not later than October 29, 2000, for all children described in this SECTION.

(e) The division shall prepare and maintain a record of children described in subsection (a). Each county office shall transmit to the division information, in a form and at the time prescribed by the division, sufficient to enable the division to prepare and maintain the record required by this SECTION.

(f) The division shall select, from the record described in subsection (e), the children for whom a petition must be filed not later than the dates specified in subsection (d). The division shall notify the following of the name of each child selected and the deadline for filing each petition:

(1) The director of a county office of family and children that has responsibility for the child.

(2) The prosecuting attorney for the county that has jurisdiction over the placement of the child.

(3) The child's guardian ad litem or court appointed special advocate, if any.

(g) In selecting the children from the record maintained under this SECTION, for the purposes of subsections (d)(1) and (d)(2), the division shall give priority to children:

(1) for whom a permanency plan approved under IC 31-34-21-7 provides for placement of the child for

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adoption; and

(2) who have been placed in an out-of-home placement as described in IC 31-35-2-4.5(a)(2), as added by this act, for the greatest length of time.

(h) This SECTION does not require the filing of a petition to terminate the parent-child relationship with respect to a child described in this SECTION if the child is not a child who is in an out-of-home placement as described in IC 31-35-2-4.5(a)(2), as added by this act, on the date the petition is or would be ready for filing.

(i) This SECTION expires December 31, 2000.

SECTION 25. [EFFECTIVE JULY 1, 1999] **(a) This SECTION applies to a child in Indiana who:**

(1) is first placed in an out-of-home placement described in IC 31-35-2-4.5(a)(2), as added by this act, after November 17, 1997 and before July 1, 1999; and

(2) on July 1, 1999, has been removed from a parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months.

(b) Except as provided in IC 31-35-2-4.5(d), as added by this act, a petition to terminate the parent-child relationship must be filed under IC 31-35-2-4 with respect to all children in Indiana to whom this section applies, not later than July 29, 1999.

(c) This SECTION does not require the filing of a petition to terminate the parent-child relationship with respect to a child described in this SECTION if the child is not a child who is in an out-of-home placement as described in IC 31-35-2-4.5(a)(2), as added by this act, on the date the petition is or would be ready for filing.

(d) This SECTION expires December 31, 1999.

SECTION 26. [EFFECTIVE JULY 1, 1998] **(a) Notwithstanding IC 31-34-21-5, the panel or court shall determine the matters under IC 31-34-21-5(a).**

(b) This SECTION expires July 1, 1999.

C o p y

SENATE MOTION

Mr. President: I move that Senator Miller be added as second author and Senator Rogers be added as coauthors of Senate Bill 425.

CLARK

SENATE MOTION

Mr. President: I move that Senator Lanane be added as coauthor of Senate Bill 425.

CLARK

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill 425, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 5, line 19, delete "or is".
Page 5, line 20, delete "alleged to be".
Page 5, line 27, delete "or is".
Page 5, line 28, delete "alleged to be".
Page 5, line 42, delete "or is".
Page 6, line 1, delete "alleged to be".

and when so amended that said bill do pass.

(Reference is to Senate Bill 425 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Mr. President: I move that Senator Miller be removed as second author and Senator Rogers be added as second author and Senator Rogers be removed as coauthor and Senator Miller be added as coauthor of Senate Bill 425.

CLARK

SENATE MOTION

Mr. President: I move that Senators Kenley, Merritt, Breaux and Randolph be added as coauthors of Senate Bill 425.

CLARK

SENATE MOTION

Mr. President: I move that Senate Bill 425, which is eligible for second reading, be reassigned to the Committee on Finance.

GARTON

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COMMITTEE REPORT

Mr. President: The Senate Committee on Finance, to which was referred Senate Bill 425, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 425 as printed January 23, 1998.)

BORST, Chairperson

Committee Vote: Yeas 11, Nays 0.

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