

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

HOUSE ENROLLED ACT No. 1284

AN ACT to amend the Indiana Code concerning family law and juvenile law.

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

SECTION 1. IC 31-9-2-51 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 51. "Hard to place child" or "hard to place children", for purposes of ~~IC 31-19-2-3~~ and ~~IC 31-19-27~~ **IC 31-19**, means a child who is or children who are disadvantaged:

- (1) because of:
 - (A) ethnic background;
 - (B) race;
 - (C) color;
 - (D) language;
 - (E) physical, mental, or medical disability; or
 - (F) age; or
- (2) because the child or children are members of a sibling group that should be placed in the same home.

SECTION 2. IC 31-9-2-100 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 100. "Putative father", for purposes of ~~IC 31-19-4~~ and ~~IC 31-19-5~~ **IC 31-19** and **IC 31-35-1**, means a male of any age who is alleged to be or claims that he may be a child's father but who:

- (1) is not presumed to be the child's father under IC 31-14-7-1(1)

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or IC 31-14-7-1(2); and

(2) has not established paternity of the child:

(A) in a court proceeding; or

(B) by executing a paternity affidavit under IC 16-37-2-2.1; before the filing of an adoption petition.

SECTION 3. IC 31-14-21-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) If a court presiding over a paternity action under this article knows of:

(1) a pending adoption of a child who is the subject of the paternity action; and

(2) the court in which the adoption is pending;

the court having jurisdiction over the paternity action shall establish a child's paternity within a ~~reasonable~~ the period **prescribed by this chapter.**

(b) The court shall conduct an initial hearing not more than thirty (30) days after:

(1) the filing of the paternity petition; or

(2) the birth of the child;

whichever occurs later.

SECTION 4. IC 31-14-21-9.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 9.1. (a) At the initial hearing held under section 9 of this chapter, the court shall order all the parties to the paternity action to undergo blood or genetic testing.**

(b) If the alleged father is unable to pay for the initial costs of the testing, the court shall order that the tests be paid by the state department of health from putative father registry fees collected under IC 31-19-2-8(2). The state department of health may recover costs from an individual found to be the biological father of the child in the action.

SECTION 5. IC 31-14-21-9.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 9.2. Not later than ninety (90) days after the initial hearing held under section 9 of this chapter, the court shall conduct a final hearing to determine paternity. Not more than fourteen (14) days after the final hearing, the court shall issue its ruling in the paternity action.**

SECTION 6. IC 31-19-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. A petition for adoption must specify the following:

(1) The:

(A) name if known;

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(B) sex, race, and age if known, or if unknown, the approximate age; and

(C) place of birth;

of the child sought to be adopted.

(2) The new name to be given the child if a change of name is desired.

(3) Whether or not the child possesses real or personal property and, if so, the value and full description of the property.

(4) The:

(A) name, age, and place of residence of a petitioner for adoption; and

(B) if married, place and date of their marriage.

(5) The name and place of residence, if known to the petitioner for adoption, of:

(A) the parent or parents of the child;

(B) if the child is an orphan:

(i) the guardian; or

(ii) the nearest kin of the child if the child does not have a guardian;

(C) the court or agency of which the child is a ward if the child is a ward; or

(D) the agency sponsoring the adoption if there is a sponsor.

(6) The time, if any, during which the child lived in the home of the petitioner for adoption.

(7) Whether the petitioner for adoption has been convicted of:

(A) a felony; or

(B) a misdemeanor relating to the health and safety of children;

and, if so, the date and description of the conviction.

(7) (8) Additional information consistent with the purpose and provisions of this article that is considered relevant to the proceedings, including whether:

(A) a petitioner for adoption is seeking aid; and

(B) the willingness of the petitioner for adoption to proceed with the adoption is conditioned on obtaining aid.

SECTION 7. IC 31-19-2-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 7.5. Every petitioner for adoption shall submit the necessary information, forms, or consents for:**

(1) a licensed child placing agency; or

(2) the county office of family and children;

that conducts the inspection and investigation required for

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adoption of a child under IC 31-19-8-1 to conduct a criminal history check of the petitioner as part of its investigation.

SECTION 8. IC 31-19-2-7.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 7.6. If a petitioner for adoption is charged with:**

- (1) a felony; or**
- (2) a misdemeanor relating to the health and safety of children;**

during the pendency of the adoption, the petitioner shall notify the court of the criminal charge in writing.

SECTION 9. IC 31-19-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 8. Unless the petitioner for adoption seeks under section 1 of this chapter to adopt a person who is at least eighteen (18) years of age, the petitioner for adoption must attach to the petition for adoption:**

- (1) an adoption history fee of twenty dollars (\$20) payable to the state department of health; and**
- (2) a putative father registry fee of fifty dollars (\$50) payable to the state department of health for:**
 - (A) administering the putative father registry established by IC 31-19-5; and**
 - (B) paying for blood or genetic testing in a paternity action in which an adoption is pending in accordance with IC 31-14-21-9.1.**

SECTION 10. IC 31-19-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 1. Before the birth of a child:**

- (1) a licensed child placing agency; or**
- (2) an attorney representing prospective adoptive parents of the child; or**
- (3) an attorney representing the mother of the child;**

may serve the putative father of the child or cause the putative father to be served with actual notice that the mother of the child is considering an adoptive placement for the child.

SECTION 11. IC 31-19-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 3. (a) Upon the filing of a petition for adoption:**

- (1) the licensed child placing agency sponsoring the adoption; or**
- (2) the attorney representing the prospective adoptive parents;**

~~who gave actual notice or caused actual notice to be given to the putative father of the child~~ shall submit to the court an affidavit setting forth the circumstances surrounding the service of actual notice,

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including the time, **if known**, date, and manner in which the actual notice was provided.

(b) If notice is served upon the putative father under section 1(3) of this chapter:

(1) the licensed child placing agency sponsoring the adoption;
or

(2) the attorney representing the prospective adoptive parents;

shall submit to the court an affidavit prepared by the attorney representing the mother of the child. An affidavit filed under this subsection must contain the same information as an affidavit filed under subsection (a).

SECTION 12. IC 31-19-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. Notice of the potential adoption under this chapter must be provided to the putative father of the child in substantially the following form:

" _____ (putative father's name), who has been named as the father of the unborn child of _____ (birth mother's name), or who claims to be the father of the unborn child, is notified that _____ (birth mother's name) has expressed an intention to secure an adoptive placement for the child.

If _____ (putative father's name) seeks to contest the adoption of the unborn child, the putative father must file a paternity action to establish his paternity in relation to the unborn child not later than thirty (30) days after the receipt of this notice.

If _____ (putative father's name) does not file a paternity action not more than thirty (30) days after receiving this notice, or having filed a paternity action, is unable to establish paternity in relation to the child ~~within a reasonable period determined under IC 31-14-21-9 through IC 31-14-21-11~~ **under IC 31-14** or the laws applicable to a court of another state when the court obtains jurisdiction over the paternity action, the putative father's consent to the adoption **or the voluntary termination of the putative father's parent-child relationship under IC 31-35-1, or both**, shall be irrevocably implied and the putative father loses the right to contest ~~both~~ the adoption, ~~and~~ the validity of his implied consent to the adoption, **the termination of the parent-child relationship, and the validity of his implied consent to the termination of the parent-child relationship**. In addition, the putative father loses the right to establish paternity of the child under IC 31-14 or in a court of another state when the court would otherwise be competent to obtain jurisdiction over the paternity action, **except as provided in IC 31-19-9-17(b).**

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Nothing _____ (mother's name) or anyone else says to _____ (putative father's name) relieves _____ (putative father's name) of his obligations under this notice.

Under Indiana law, a putative father is a person who is named as or claims that he may be the father of a child born out of wedlock but who has not yet been legally proven to be the child's father.

For purposes of this notice, _____ (putative father's name) is a putative father under the laws in Indiana regarding adoption."

SECTION 13. IC 31-19-3-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 8. The Indiana Rules of Trial Procedure do not apply to the giving of notice under this chapter.**

SECTION 14. IC 31-19-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 1. Except as provided by section 11 of this chapter, if:**

- (1) on or before the date the mother of a child executes a consent to the child's adoption, the mother has provided an attorney or agency arranging the adoption with the name and address of the putative father; and
- (2) the putative father of the child has:
 - (A) failed or refused to consent to the adoption of the child; or
 - (B) not had the parent-child relationship terminated under IC 31-35 (or IC 31-6-5 before its repeal);

the putative father shall be given notice of the adoption proceedings under Rule 4.1 of the Indiana Rules of Trial Procedure.

SECTION 15. IC 31-19-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 2. Except as provided by section 11 of this chapter, if:**

- (1) on or before the date the mother of a child executes a consent to the child's adoption, the mother has not provided an attorney or agency arranging the adoption with the name or address, or both, of the putative father of the child; and
- (2) the putative father of the child has:
 - (A) failed or refused to consent to the adoption of the child or has not had the parent-child relationship terminated under IC 31-35 (or IC 31-6-5 before its repeal); and
 - (B) registered with the putative father registry under IC 31-19-5 (or IC 31-6-5 before its repeal) within the period under IC 31-19-5-12;

the putative father shall be given notice of the adoption proceedings under Rule 4.1 of the Indiana Rules of Trial Procedure.

SECTION 16. IC 31-19-4-4 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. Notice of the adoption proceeding required under section 3 of this chapter shall be given to an unnamed putative father in substantially the following form:

"NOTICE TO UNNAMED FATHER

The unnamed putative father of the child born to _____ (mother's name) on _____ (date), or the person who claims to be the father of the child born to _____ (mother's name) on _____ (date), is notified that a petition for adoption of the child was filed in the office of the clerk of _____ court, _____ (address of court).

If the unnamed putative father seeks to contest the adoption of the child, the unnamed putative father must file a motion to contest the adoption in accordance with IC 31-19-10-1 in the above named court or a paternity action under IC 31-14 within thirty (30) days after the date of service of this notice. This notice may be served by publication.

If the unnamed putative father:

(1) does not file:

(A) a motion to contest the adoption; or

(B) a paternity action under IC 31-14;

within thirty (30) days after service of this notice; or

(2) after filing a paternity action under IC 31-14 fails to establish paternity; ~~within a reasonable period as determined by the paternity court under IC 31-14-21-9 through IC 31-14-21-11;~~

the above named court shall hear and determine the petition for adoption. The unnamed putative father's consent is irrevocably implied and the unnamed putative father loses the right to contest the adoption or the validity of the unnamed putative father's implied consent to the adoption. The unnamed putative father loses the right to establish paternity of the child under IC 31-14.

Nothing _____ (mother's name) or any one else says to the unnamed putative father of the child relieves the unnamed putative father of his obligations under this notice.

Under Indiana law, a putative father is a person who is named as or claims that he may be the father of a child born out of wedlock but who has not yet been legally proven to be the child's father."

SECTION 17. IC 31-19-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. Notice of the adoption proceeding shall be given to:

(1) the putative father who is entitled to notice under section 1 or 2 of this chapter; or

(2) a named putative father under section 3 of this chapter;

in substantially the following form:

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"NOTICE TO NAMED FATHER

_____ (putative father's name), who has been named the father of the child born to _____ (mother's name) on _____ (date), or who claims to be the father of the child born to _____ (mother's name) on _____ (date), is notified that a petition for adoption of the child was filed in the office of the clerk of _____ court, _____ (address of the court).

If _____ (putative father's name) seeks to contest the adoption of the child, he must file a motion to contest the adoption in accordance with IC 31-19-10-1 in the above named court, or a paternity action under IC 31-14 not later than thirty (30) days after the date of service of this notice.

If _____ (putative father's name):

(1) does not file:

(A) a motion to contest the adoption; or

(B) a paternity action under IC 31-14;

within thirty (30) days after service of this notice; or

(2) after filing a paternity action under IC 31-14 fails to establish paternity; ~~within a reasonable period as determined by the paternity court under IC 31-14-21-9 through IC 31-14-21-11;~~

the above named court will hear and determine the petition for adoption. His consent will be irrevocably implied and he will lose his right to contest either the adoption or the validity of his implied consent to the adoption. He will lose his right to establish his paternity of the child under IC 31-14.

Nothing _____ (mother's name) or anyone else says to _____ (putative father's name) relieves _____ (putative father's name) of his obligations under this notice.

Under Indiana law, a putative father is a person who is named as or claims that he may be the father of a child born out of wedlock but who has not yet been legally proven to be the child's father. For purposes of this notice, _____ (putative father's name) is a putative father under the laws in Indiana regarding adoption."

SECTION 18. IC 31-19-4-13 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 1999]: **Sec. 13. Only the rules of the Indiana Rules of Trial Procedure specified in this chapter apply to the giving of notice under this chapter.**

SECTION 19. IC 31-19-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) The agency's report must, to the extent possible, include the following:

(1) The former environment and antecedents of the child.

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- (2) The fitness of the child for adoption.
 - (3) Whether the child is classified as hard to place:
 - (A) because of the child's ethnic background, race, color, language, physical, mental, or medical disability, or age; or
 - (B) because the child is a member of a sibling group that should be placed in the same home.
 - (4) The suitability of the proposed home for the child.
- (b) The report may not contain any of the following:
- (1) Information concerning the financial condition of the parents.
 - (2) A recommendation that a request for a subsidy be denied in whole or in part due to the financial condition of the parents.
- (c) The criminal history information required under IC 31-19-2-7.5 must accompany the report.**

SECTION 20. IC 31-19-9-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12. A putative father's consent to adoption is irrevocably implied without further court action if the putative father:

- (1) fails to file:
 - (A) a motion to contest the adoption in accordance with IC 31-19-10; and
 - (B) a paternity action under IC 31-14; within thirty (30) days after service of notice under IC 31-19-4;
- (2) having filed a motion to contest the adoption in accordance with IC 31-19-10, fails to appear at the hearing set to contest the adoption;
- (3) having filed a paternity action under IC 31-14, fails to establish paternity in the action; ~~within a reasonable period determined under IC 31-14-21-9 through IC 31-14-21-11;~~ or
- (4) is required to but fails to register with the putative father registry established by IC 31-19-5 within the period under IC 31-19-5-12.

SECTION 21. IC 31-19-9-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. **(a)** The putative father's consent to adoption of the child is irrevocably implied without further court action if the father:

- (1) fails to file a paternity action:
 - (A) under IC 31-14; or
 - (B) in a court located in another state that is competent to obtain jurisdiction over the paternity action; not more than thirty (30) days after receiving actual notice under IC 31-19-3 of the mother's intent to proceed with an adoptive placement of the child, regardless of whether the child is born



before or after the expiration of the thirty (30) day period; or
 (2) files a paternity action:
 (A) under IC 31-14; or
 (B) in a court located in another state that is competent to obtain jurisdiction over the paternity action;
 during the thirty (30) day period prescribed by subdivision (1) and fails to establish paternity in the paternity proceeding ~~within a reasonable period determined under IC 31-14-21-9 through IC 31-14-21-11~~ **under IC 31-14** or the laws applicable to a court of another state when the court obtains jurisdiction over the paternity action.

(b) This section does not prohibit a putative father who meets the requirements of section 17(b) of this chapter from establishing paternity of the child.

SECTION 22. IC 31-19-9-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 17. (a) A putative father whose consent to an adoption is implied under section 15 of this chapter is not entitled to establish paternity of the child:

- (1) in a court proceeding under IC 31-14; or
- (2) by executing a paternity affidavit under IC 16-37-2-2.1.

(b) Notwithstanding subsection (a), a putative father who is barred from establishing paternity of the child under subsection (a) may establish paternity of the child in a court proceeding under IC 31-14 if:

- (1) the putative father submits, together with the petition to establish paternity, an affidavit prepared by the:**
 - (A) licensed child placing agency; or**
 - (B) attorney;****that served notice or caused notice to be served upon the putative father under IC 31-19-3-1 stating that neither a petition for adoption nor a placement of the child in a proposed adoptive home is pending; and**
- (2) the court finds on the record, based on all the information available to the court, including an affidavit described under subdivision (1), that neither a:**
 - (A) petition for adoption; nor**
 - (B) placement of the child in a prospective adoptive home; is pending.**

SECTION 23. IC 31-19-11-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) Whenever the court has heard the evidence and finds that:

- (1) the adoption requested is in the best interest of the child;



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(2) the petitioner or petitioners for adoption are of sufficient ability to rear the child and furnish suitable support and education;

(3) the report of the investigation and recommendation under IC 31-19-8-5 has been filed;

(4) the attorney or agency arranging an adoption has filed with the court an affidavit prepared by the state department of health under IC 31-19-5-16 indicating whether a man is entitled to notice of the adoption because the man has registered with the putative father registry in accordance with IC 31-19-5;

(5) proper notice arising under subdivision (4), if notice is necessary, of the adoption has been given;

(6) the attorney or agency has filed with the court an affidavit prepared by the state department of health under:

(A) IC 31-19-6 indicating whether a record of a paternity determination; or

(B) IC 16-37-2-2(g) indicating whether a paternity affidavit executed under IC 16-37-2-2.1;

has been filed in relation to the child; **and**

(7) proper consent, if consent is necessary, to the adoption has been given; **and**

(8) the petitioner for adoption is not prohibited from adopting the child as the result of an inappropriate criminal history described in subsection (c);

the court shall grant the petition for adoption and enter an adoption decree.

(b) A court may not grant an adoption unless the department's affidavit under IC 31-19-5-16 is filed with the court as provided under subsection (a)(4).

(c) A conviction of a felony or a misdemeanor related to the health and safety of a child by a petitioner for adoption is a permissible basis for the court to deny the petition for adoption. In addition, the court may not grant an adoption if a petitioner for adoption has been convicted of any of the felonies described as follows:

- (1) Murder (IC 35-42-1-1).**
- (2) Causing suicide (IC 35-42-1-2).**
- (3) Assisting suicide (IC 35-42-1-2.5).**
- (4) Voluntary manslaughter (IC 35-42-1-3).**
- (5) Reckless homicide (IC 35-42-1-5).**
- (6) Battery as a felony (IC 35-42-2-1).**
- (7) Aggravated battery (IC 35-42-2-1.5).**



- (8) Kidnapping (IC 35-42-3-2).
- (9) Criminal confinement (IC 35-42-3-3).
- (10) A felony sex offense under IC 35-42-4.
- (11) Carjacking (IC 35-42-5-2).
- (12) Arson (IC 35-43-1-1).
- (13) Incest (IC 35-46-1-3).
- (14) Neglect of a dependent (IC 35-46-1-4(a)(1) and IC 35-46-1-4(a)(2)).
- (15) Child selling (IC 35-46-1-4(b)).
- (16) A felony involving a weapon under IC 35-47.
- (17) A felony relating to controlled substances under IC 35-48-4.
- (18) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.
- (19) A felony that is substantially equivalent to a felony listed in subdivisions (1) through (18) for which the conviction was entered in another state.

However, the court is not prohibited from granting an adoption based upon a felony conviction under subdivision (6), (11), (12), (16), or (17), or its equivalent under subdivision (19), if the offense was not committed within the immediately preceding five (5) year period.

SECTION 24. IC 31-19-27-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 4. Money appropriated to the program does not revert to the state general fund at the end of the state fiscal year.**

SECTION 25. IC 31-35-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 4. (a)** If requested by the parents:

- (1) the county office of family and children; or
- (2) a licensed child placing agency;

may sign and file a verified petition with the juvenile or probate court for the voluntary termination of the parent-child relationship.

(b) The petition must:

- (1) be entitled "In the Matter of the Termination of the Parent-Child Relationship of _____, a child, and _____, the child's parent (or parents)"; and

(2) allege that:

- (A) the parents are the child's natural or adoptive parents;
- (B) the parents, including the alleged or adjudicated father if the child was born out of wedlock:

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- (i) knowingly and voluntarily consent to the termination of the parent-child relationship; or
- (ii) are not required to consent to the termination of the parent-child relationship under section 6(b) of this chapter;**
- (C) termination is in the child's best interest; and
- (D) the petitioner has developed a satisfactory plan of care and treatment for the child.

SECTION 26. IC 31-35-1-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 4.5. The putative father's consent to the termination of the parent-child relationship is irrevocably implied without further court action if the father:**

- (1) fails to file a paternity action under IC 31-14 or in a court located in another state that is competent to obtain jurisdiction over the paternity action, not more than thirty (30) days after receiving actual notice under IC 31-19-3 of the mother's intent to proceed with an adoptive placement of the child, regardless of whether:**
 - (A) the child is born before or after the expiration of the thirty (30) day period; or**
 - (B) a petition for adoption or for the termination of the parent-child relationship is filed; or**
 - (2) files a paternity action:**
 - (A) under IC 31-14; or**
 - (B) in a court located in another state that is competent to obtain jurisdiction over the paternity action;**
- during the thirty (30) day period prescribed by subdivision (1) and fails to establish paternity in the paternity proceeding within a reasonable period determined under IC 31-14-21-9 through IC 31-14-21-11 or the laws applicable to a court of another state when the court obtains jurisdiction over the paternity action.**

SECTION 27. IC 31-35-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. **(a) Except as provided in subsection (b),** the parents must give their consent in open court unless the court makes findings of fact upon the record that:

- (1) the parents gave their consent in writing before a person authorized by law to take acknowledgments;
- (2) the parents were notified of their constitutional and other legal rights and of the consequences of their actions under section 12 of this chapter; and



(3) the parents failed to appear.

(b) The consent of a parent to the termination of the parent-child relationship under this chapter is not required if:

(1) consent to the termination of the parent-child relationship is implied under section 4.5 of this chapter, if the parent is the putative father; or

(2) the parent's consent to the adoption of the child would not be required under:

(A) IC 31-19-9-9; or

(B) IC 31-19-9-10.

SECTION 28. IC 31-35-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. If the court makes findings of fact upon the record that:

(1) one (1) parent has made a valid consent to the termination of the parent-child relationship;

(2) the other parent:

(A) is required under this chapter to consent to the termination of the parent-child relationship;

(B) cannot be located, after a good faith effort has been made to do so, or has been located but fails to appear at the termination hearing; and

~~(3) the other parent (C) has been served with notice of the proceedings hearing~~ in the most effective means under the circumstances; and

~~(4) (3)~~ the investigation that may be required by section 7 of this chapter has been completed and entered on the record;

the court may enter a default judgment against the unavailable parent and terminate as to both parents.

SECTION 29. IC 31-35-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: 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 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 _____, the child's parent (or parents)"; and

(2) allege that:

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- (A) one (1) of the following exists:
- (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; or
 - (iii) after July 1, 1999, 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.

(3) Indicate whether at least one (1) of the factors listed in section 4.5(d)(1) through ~~4.5(d)(4)~~ **4.5(d)(3) of this chapter** applies ~~that would require the court to dismiss the petition to terminate the parent-child relationship under this chapter~~ and specify each factor that would apply as the basis for ~~the dismissal of the petition~~: **filing a motion to dismiss the petition.**

SECTION 30. IC 31-35-2-4.5 IS AMENDED 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 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 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 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) A party shall file a motion to dismiss the petition to terminate the parent-child relationship if any of the following circumstances apply:

(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 or a relative who is caring for the child as guardian.~~

~~(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. **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 relative who is caring for the child as a guardian.**~~

~~(3) (2) 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)~~ (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 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.

The motion to dismiss shall specify which of the allegations described in subdivisions (1) through ~~(4)~~ (3) apply to the motion. If the court finds that any of the allegations described in subdivisions (1) through ~~(4)~~ (3) are true, as established by a preponderance of the evidence, the court shall dismiss the petition to terminate the parent-child relationship.

SECTION 31. IC 31-35-2-6.5 IS AMENDED 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 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; ~~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.

(6) Any other party to the child in need of services proceeding.

(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 32. IC 35-46-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) Except as provided in subsection (b), a person who, with respect to an adoption, transfers or receives any property in connection with the waiver of parental rights, the termination of parental rights, the consent to adoption, or the petition for adoption commits profiting from an adoption, a Class D felony.

(b) This section does not apply to the transfer or receipt of:

(1) reasonable attorney's fees;

(2) hospital and medical expenses concerning childbirth and pregnancy incurred by the adopted person's birth mother;

(3) reasonable charges and fees levied by a child placing agency licensed under IC 12-17.4 or by a county office of family and children;

(4) reasonable expenses for psychological counseling relating to adoption incurred by the adopted person's birth parents;

(5) reasonable costs of housing, utilities, and phone service for the adopted person's birth mother during the **second or third**

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trimester of pregnancy and not more than six (6) weeks after childbirth;

(6) reasonable costs of maternity clothing for the adopted person's birth mother;

(7) reasonable travel expenses incurred by the adopted person's birth mother that relate to the pregnancy or adoption;

(8) any additional itemized necessary living expenses for the adopted person's birth mother during the **second or third trimester of pregnancy and not more than six (6) weeks after childbirth**, not listed in subdivisions (5) through (7) in an amount not to exceed one thousand dollars (\$1,000); ~~and that are disclosed to the court supervising the adoption;~~ or

(9) other charges and fees approved by the court supervising the adoption, including reimbursement of not more than actual wages lost as a result of the inability of the adopted person's birth mother to work at her regular, existing employment due to a medical condition, excluding a psychological condition, if:

(A) the attending physician of the adopted person's birth mother has ordered or recommended that the adopted person's birth mother discontinue her employment; and

(B) the medical condition and its direct relationship to the pregnancy of the adopted person's birth mother are documented by her attending physician.

In determining the amount of reimbursable lost wages, if any, that are reasonably payable to the adopted person's birth mother under subdivision (9), the court shall offset against the reimbursable lost wages any amounts paid to the adopted person's birth mother under subdivisions (5) and (8) and any unemployment compensation received by or owed to the adopted person's birth mother.

(c) Except as provided in this subsection, payments made under subsection (b)(5) through (b)(9) may not exceed three thousand dollars (\$3,000) and must be disclosed to the court supervising the adoption. The amounts paid under subsection (b)(5) through (b)(9) may exceed three thousand dollars (\$3,000) to the extent that a court in Indiana with jurisdiction over the child who is the subject of the adoption approves the expenses after determining that:

(1) the expenses are not being offered as an inducement to proceed with an adoption; and

(2) failure to make the payments may seriously jeopardize the health of either the child or the mother of the child and the direct relationship is documented by the attending physician.

(d) An attorney or licensed child placing agency shall inform a

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birth mother of the penalties for committing adoption deception under section 9.5 of this chapter before the attorney or agency transfers a payment for adoption related expenses under subsection (b) in relation to the birth mother.

(e) The limitations in this section apply regardless of the state or country in which the adoption is finalized.

SECTION 33. IC 35-46-1-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 9.5. A person who is a birth mother, or a woman who holds herself out to be a birth mother, and who knowingly or intentionally benefits from adoption related expenses paid:**

(1) when the person knows or should have known that the person is not pregnant; or

(2) by or on behalf of a prospective adoptive parent who is unaware that at the same time another prospective adoptive parent is also incurring adoption related expenses in an effort to adopt the same child;

commits adoption deception, a Class A misdemeanor. In addition to any other penalty imposed under this section, a court may order the person who commits adoption deception to make restitution to a prospective adoptive parent, attorney, or licensed child placing agency that incurs an expense as a result of the offense.

SECTION 34. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 1999]: IC 31-14-21-10; IC 31-14-21-11; IC 31-14-21-12.

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