

IC 31-34-4

Chapter 4. Temporary Placement of Child Taken Into Custody

IC 31-34-4-0.2

Application of certain amendments to prior law

Sec. 0.2. The addition of IC 31-6-4-6.1 (before its repeal, now codified at section 6 of this chapter) by P.L.140-1994 applies to crimes committed after June 30, 1994.

As added by P.L.220-2011, SEC.514.

IC 31-34-4-1

Application of chapter

Sec. 1. This chapter applies only to a child alleged to be a child in need of services.

As added by P.L.1-1997, SEC.17.

IC 31-34-4-2

Placement of child with relative caretaker, de facto custodian, or stepparent; evaluation; criminal history check required; exceptions; out-of-home placement; considerations

Sec. 2. (a) If a child alleged to be a child in need of services is taken into custody under an order of the court under this chapter and the court orders out-of-home placement, the department is responsible for that placement and care and must consider placing the child with a:

- (1) suitable and willing blood or an adoptive relative caretaker, including a grandparent, an aunt, an uncle, or an adult sibling;
- (2) de facto custodian; or
- (3) stepparent;

before considering any other out-of-home placement.

(b) Before the department places a child in need of services with a blood relative or an adoptive relative caretaker, a de facto custodian, or a stepparent, the department shall complete an evaluation based on a home visit of the relative's home.

(c) Except as provided in subsection (e), before placing a child in need of services in an out-of-home placement, including placement with a blood or an adoptive relative caretaker, a de facto custodian, or a stepparent, the department shall conduct a criminal history check of each person who is currently residing in the location designated as the out-of-home placement.

(d) Except as provided in subsection (f), the department may not make an out-of-home placement if a person described in subsection (c) has:

- (1) committed an act resulting in a substantiated report of child abuse or neglect; or
- (2) been convicted of a felony listed in IC 31-27-4-13 or had a juvenile adjudication for an act that would be a felony listed in IC 31-27-4-13 if committed by an adult.

(e) The department is not required to conduct a criminal history check under subsection (c) if the department makes an out-of-home

placement to an entity or a facility that is not a residence (as defined in IC 3-5-2-42.5) or that is licensed by the state.

(f) A court may order or the department may approve an out-of-home placement if:

- (1) a person described in subsection (c) has:
 - (A) committed an act resulting in a substantiated report of child abuse or neglect;
 - (B) been convicted of:
 - (i) battery (IC 35-42-2-1) as a felony;
 - (ii) criminal confinement (IC 35-42-3-3) as a felony;
 - (iii) carjacking (IC 35-42-5-2) as a felony;
 - (iv) arson (IC 35-43-1-1) as a felony;
 - (v) a felony involving a weapon under IC 35-47 or IC 35-47.5;
 - (vi) a felony relating to controlled substances under IC 35-48-4; or
 - (vii) a felony that is substantially equivalent to a felony listed in items (i) through (vi) for which the conviction was entered in another state;

if the conviction did not occur within the past five (5) years;
or

(C) had a juvenile adjudication for an act listed in IC 31-27-4-13(a) that, if committed by an adult, would be a felony; and

- (2) the person's commission of the offense, delinquent act, or act of abuse or neglect described in subdivision (1) is not relevant to the person's present ability to care for a child, and the placement is in the best interest of the child.

However, a court or the department may not make an out-of-home placement if the person has been convicted of a felony listed in IC 31-27-4-13 that is not specifically excluded under subdivision (1)(B).

(g) In considering the placement under subsection (f), the court or the department shall consider the following:

- (1) The length of time since the person committed the offense, delinquent act, or abuse or neglect.
- (2) The severity of the offense, delinquent act, or abuse or neglect.
- (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

As added by P.L.1-1997, SEC.17. Amended by P.L.70-2004, SEC.18; P.L.234-2005, SEC.176; P.L.145-2006, SEC.290; P.L.1-2007, SEC.206; P.L.52-2007, SEC.9; P.L.146-2008, SEC.578; P.L.162-2011, SEC.49.

IC 31-34-4-3

Order to take child to designated place pending detention hearing

Sec. 3. If a child is taken into custody under an order of the court, the law enforcement officer shall take the child to a place designated in the order to await a detention hearing.

As added by P.L.1-1997, SEC.17.

IC 31-34-4-4

Release, delivery, or detention of child taken into custody without court order

Sec. 4. If a child is taken into custody without an order of the court, the person taking the child into custody:

- (1) may:
 - (A) release the child; or
 - (B) deliver the child to a place designated by the juvenile court; and
- (2) if the child is detained, shall promptly notify the child's parent, guardian, or custodian and an intake officer:
 - (A) that the child is being held; and
 - (B) of the reasons for the child's detention.

As added by P.L.1-1997, SEC.17.

IC 31-34-4-5

Investigation, release, or detention by intake officer of child taken into custody without court order

Sec. 5. If the child was not taken into custody under an order of the court, the intake officer shall investigate the reasons for the child's detention. The intake officer shall release the child to the child's parent, guardian, or custodian upon the person's written promise to bring the child before the juvenile court at a time specified. However, the intake officer may place the child in detention if the intake officer reasonably believes that the child is a child in need of services and that:

- (1) detention is necessary to protect the child;
- (2) the child is unlikely to appear before the juvenile court for subsequent proceedings;
- (3) the child has a reasonable basis for requesting that the child not be released; or
- (4) the parent, guardian, or custodian:
 - (A) cannot be located; or
 - (B) is unable or unwilling to take custody of the child.

As added by P.L.1-1997, SEC.17.

IC 31-34-4-6

Duty to inform parent, custodian, or guardian of legal rights

Sec. 6. (a) The department shall submit written information to a parent, custodian, or guardian of a child who is alleged to be abused or neglected regarding the following legal rights of the parent, custodian, or guardian:

- (1) The right to have a detention hearing held by a court within forty-eight (48) hours after the child's removal from the home and to request return of the child at the hearing.
- (2) The right to:
 - (A) be represented by an attorney;
 - (B) cross examine witnesses; and

(C) present evidence on the parent's, custodian's, or guardian's own behalf;

at each court proceeding on a petition alleging that the child is a child in need of services. The parent, guardian, or custodian has the right to be represented by a court appointed attorney under clause (A) upon the request of the parent, guardian, or custodian if the court finds that the parent, guardian, or custodian does not have sufficient financial means for obtaining representation as described in IC 34-10-1.

(3) The right not to make statements that incriminate the parent, custodian, or guardian and that an incriminating statement may be used during a court proceeding on a petition alleging that the child is a child in need of services.

(4) The right to request to have the case reviewed by the child protection team under IC 31-33-3-6.

(5) The right to be advised that after July 1, 1999, a petition to terminate the parent-child relationship must be filed whenever a child has been removed from the child's parent and has been under the supervision of the department for at least fifteen (15) months of the most recent twenty-two (22) months.

(b) The department shall submit the written information under subsection (a) to the child's parent, guardian, or custodian at the time:

(1) the child is taken into custody; or

(2) the department files a petition alleging that the child is a child in need of services;

whichever occurs earlier.

As added by P.L.1-1997, SEC.17. Amended by P.L.35-1998, SEC.5; P.L.145-2006, SEC.291.

IC 31-34-4-7

Court submission of certain proposed services, programs, and out-of-home placement to department; approval or disapproval by department; court orders; appeal by department; payment of costs

Sec. 7. (a) This section applies to services and programs provided to or on behalf of a child alleged to be a child in need of services at any time before:

(1) entry of a dispositional decree under IC 31-34-20; or

(2) approval of a program of informal adjustment under IC 31-34-8.

(b) Before a juvenile court orders or approves a service, a program, or an out-of-home placement for a child that has not been recommended by the department, the court shall submit the proposed service, program, or placement to the department for consideration. The department shall, within three (3) business days after receipt of the court's proposal, submit to the court a report stating whether the department approves or disapproves the proposed service, program, or placement.

(c) If the department approves the service, program, or placement recommended by the juvenile court, the court may enter an appropriate order to implement the approved proposal. If the

department does not approve a service, program, or placement proposed by the juvenile court, the department may recommend an alternative service, program, or placement for the child.

(d) The juvenile court shall accept the recommendations of the department regarding any predispositional services, programs, or placement for the child, unless the juvenile court finds a recommendation is:

- (1) unreasonable, based on the facts and circumstances of the case; or
- (2) contrary to the welfare and best interests of the child.

(e) If the juvenile court does not accept the recommendations of the department in the report submitted under subsection (b), the court may enter an order that:

- (1) requires the department to provide a specified service, program, or placement until entry of a dispositional decree or until the order is otherwise modified or terminated; and
- (2) specifically states the reasons why the juvenile court is not accepting the recommendations of the department, including the court's findings under subsection (d).

(f) If the juvenile court enters its findings and order under subsection (e), the department may appeal the juvenile court's order under any available procedure provided by the Indiana Rules of Trial Procedure or the Indiana Rules of Appellate Procedure to allow any disputes arising under this section to be decided in an expeditious manner.

(g) If the department prevails on appeal, the department shall pay the following costs and expenses incurred by or on behalf of the child before the date of the final decision:

- (1) Any programs or services implemented during the appeal initiated under subsection (f), other than the cost of an out-of-home placement ordered by the juvenile court.
- (2) Any out-of-home placement ordered by the juvenile court and implemented after entry of the court order of placement, if the juvenile court order includes written findings that the placement is an emergency required to protect the health and welfare of the child.

If the court has not made written findings that the placement is an emergency, the county in which the juvenile court is located is responsible for payment of all costs of the placement, including the cost of services and programs provided by the home or facility where the child was placed.

As added by P.L.146-2008, SEC.579.