Termination of the Parent-Child Relationship Primer

A Guide for Termination Court Proceedings

By:

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Kids' Voice of Indiana

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Derelle Watson-Duvall, J.D., received her undergraduate degree from DePauw University and her law degree from Indiana University – Indianapolis. She worked as a Child Welfare caseworker in Marion County for five years and as an attorney for Marion County Child Welfare for sixteen years. Working with Frances G. Hill, J.D., and Saundria Bordone, J.D., she co-authored numerous publications on CHINS and Termination of the Parent-Child Relationship, Adoption, and other family law issues. Derelle represented foster parents and adoptive parents in private practice from 1979 to 1986. She has represented the three Programs of Kids' Voice from 1994 to the present. She co-authored the Indiana CHINS and Family Law Deskbook with attorneys Katherine Meger Kelsey and Samantha Holmes in 2017.

Dedication

The Termination of the Parent-Child Relationship Primer is dedicated to the Honorable Frances G. Hill and the attorneys and staff of Kids' Voice of Indiana.

About the Agency

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Kids' Voice of Indiana is a 501(c)3 organization which has been committed for more than thirty-five years to promoting, protecting, and preserving the rights and best interest of children across the state of Indiana through three Programs, the Derelle Watson-Duvall Children's Law Center of Indiana, the Bette J. Dick GAL for Kids Program, and the Safe Child Parenting Time Program.

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II. Introduction

The purpose of the Termination of the Parent-Child Relationship Primer is to provide information on statutes and case law for Indiana Judges and attorneys who occasionally practice in termination cases or who practice in other areas of law that are impacted by termination law. The Termination of the Parent-Child Relationship Primer provides legal information, but is not a substitute for legal advice about a specific situation. The Termination Primer does not create an attorney-client relationship with the reader. Readers of the Termination Primer should not commence or fail to bring any legal proceedings based on the contents of the Termination of the Parent-Child Relationship Primer.

The Termination of the Parent-Child Relationship Primer includes information on 2017 legislation, which was effective as of July 1, 2017. Case law citations are current through Volume 83 of the North Eastern Reporter Third.

II. Voluntary Termination of the Parent-Child Relationship Statutes and Case Law

Voluntary termination of the parent-child relationship is a separate and distinct court proceeding that is governed by the juvenile court procedural statutes at **IC 31-32-1**, **IC 31-32-4** through **IC 31-32-10**, and **IC 31-32-12** through **IC 31-32-15**, and the CHINS statutes. **IC 31-35-1-2**. Probate court has concurrent original jurisdiction with juvenile court on proceedings to voluntarily terminate the parent-child relationship. **IC 31-30-1-5**. **IC 31-35-1-3**. The child need not be an adjudicated CHINS for a voluntary termination proceeding to take place.

The voluntary termination process begins with the parent's written consent to voluntary termination. A parent's written consent should be given in open court or given in writing before a person who is authorized by law to take acknowledgments. **IC 31-35-1-6.** The person who accepts the parent's consent must be careful not to say or do anything to coerce the parent to consent. If the parent is represented by an attorney, the parent's attorney should be notified before the parent signs the consent to voluntary termination. **See In Re A.M.H.**, 732 N.E.2d 1284 (Ind. Ct. App. 2000), in which the Court affirmed the trial court's dismissal of DCS's petition for voluntary termination of the parent-child relationship. The DCS case manager, knowing that Mother was represented by counsel, provided voluntary termination forms to Mother and obtained her signature on the forms without first notifying Mother's counsel. The Court could not say that the trial court erred in deciding that Mother was denied due process of law. Id. at 1286. When a parent is not represented by an attorney, it is recommended that an attorney be appointed by the court to represent the parent. **IC 31-**

32-4-3(a) states the court shall appoint counsel for a parent in proceedings to terminate the parent-child relationship and does not distinguish between voluntary and involuntary proceedings.

IC 31-35-1-12 provides that parents must be advised of the following rights before signing the consent to voluntary termination of the parent-child relationship:

(1) their consent is permanent and cannot be revoked or set aside unless it was obtained by fraud or duress, or unless the parent is incompetent;
(2) when the court terminates the parent-child relationship:
    A. all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, parenting time, or support pertaining to the relationship, are permanently terminated; and,
    B. their consent to the child's adoption is not required;
(3) the parents have a right to the:
    A. care;
    B. custody; and
    C. control;

of their child as long as the parents fulfill their parental obligations;

(4) the parents have a right to a judicial determination of any alleged failure to fulfill their parental obligations in a proceeding to adjudicate their child a delinquent child or a child in need of services;
(5) the parents have a right to assistance in fulfilling their parental obligations after a court has determined that they are not doing so;
(6) proceedings to terminate the parent-child relationship against the will of the parents can be initiated only after:
    A. the child has been adjudicated a delinquent child or a child in need of services and the child has been removed from their custody following the adjudication; or
    B. a parent has been convicted and imprisoned for an offense listed in **IC 31-35-3-4** (or has been convicted and imprisoned for an offense listed in **IC 31-6-5-4.2(a)** before its repeal), the child has been removed from the custody of parents under a dispositional decree, and the child has been removed from the custody of parents for six (6) months under a court order;
(7) the parents are entitled to representation by counsel, provided by the state if necessary, throughout any proceedings to terminate the parent-child relationship against the will of the parents; and
(8) the parents will receive notice of the hearing, unless notice is waived under **IC 31-35-1-5(b)**, at which the court will decide if their consent was voluntary, and the parents may appear at the hearing and allege their consent was not voluntary; and
(9) the parents' consent cannot be based upon a promise regarding the child's adoption or contact of any type with the child after the parents voluntarily relinquish their parental rights of the child after entry of an order under this chapter terminating the parent-child relationship.

Competent parents who are under the age of eighteen may consent to voluntary termination without the approval of the court or the parents' guardians. **IC 31-35-1-9(b)**. The child's mother may not consent to termination before the child's birth. **IC 31-35-1-6(d)**. The child's father may consent to termination in writing in the presence of a Notary Public before the child's birth. **IC 31-35-1-6(c)(4)**. The father's pre-birth consent must contain an acknowledgment that consent is irrevocable and that he will not receive notice of adoption or termination proceedings. **IC 31-35-1-6(c)(4)**. If the father consents to termination before the child's birth as described at **IC 31-35-1-6(c)(4)** or denies paternity before or after the child's birth in a notarized writing as described in **IC 31-35-1-6(c)(3)**, the father may not challenge or contest the child's adoption or termination of the parent-child relationship. **IC 31-35-1-6(c)(4)**. The notarized writing must contain an acknowledgment that the denial of paternity is irrevocable, and that he will not receive notice of adoption or termination proceedings. **IC 31-35-1-6(c)(3)(C)(i) and (ii)**.

After the parent signs the consent to voluntary termination, the second step is the filing of a petition to terminate the parent-child relationship. Only DCS or a licensed child placing agency can file a petition for the voluntary termination of the parent-child relationship. **IC 31-35-1-4(a)**. A parent cannot file his or her own petition for voluntary termination of the parent-child relationship.

IC 31-35-1-4(b) states 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;
        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(c) of this chapter;
    C. termination is in the child's best interest;
    D. the petitioner has developed a satisfactory plan of care and treatment for the child; and
    E. if the petitioner is a licensed child placing agency, that the termination is in furtherance of an adoption or other approved permanency plan.

At the time the petitioner files the verified petition, the petitioner shall also file a: (1) copy of the order approving the permanency plan under **IC 31-34-21-7** for the child [the order entered as a result of a Child in Need of Services permanency hearing]; or (2) permanency plan for the child as described by **IC 31-34-21-7.5** [which would apply if the child is not an adjudicated Child in Need of Services]. The permanency plan options described at **IC 31-34-21-7.5** may be summarized as: reunification with the custodial or noncustodial parent; placement for adoption; placement with a relative custodian; appointment of a legal guardian; or another planned, permanent living arrangement [if the child is sixteen years of age or older]. **See** the complete text of **IC 31-34-21-7.5** for additional details of the permanency options.

After the voluntary termination petition has been filed, the court will schedule a hearing date. The parents shall be notified of the hearing date by mail at least ten days before the hearing or by in person delivery at least three days before the hearing. **IC 31-35-1-5(a)**. **IC 31-32-9-1(b), (c).** A parent who has made a valid consent to termination of the parent-child relationship can waive the right to receive notice of the hearing on the voluntary termination petition by signing a notarized document which states that the waiver cannot be revoked and that the parent will not receive notice of the termination or adoption proceedings. **IC 31-35-1-5(b)**.

At the court hearing on the voluntary termination petition, the court must advise the parents of their constitutional and other legal rights and the consequences of voluntary termination, as listed in **IC 31-35-1-12**. **IC 31-35-1-8.** The court will hear evidence and determine whether the parents' consent to voluntary termination is knowing and voluntary. **IC 31-35-1-6(a)** states that, except as provided in **IC 31-35-1-6(c)**, parents must give their consents to termination in open court unless the court makes findings of fact upon the regard that:

(1) The parents gave their consent in writing before a person authorized by law to take acknowledgments; and
(2) The parents were:
    (A) advised in accordance with section 12 of this chapter; and
    (B) advised that if they choose to appear in open court, the only issue before the court is whether their consent was voluntary.

IC 31-35-1-6(b) provides that if:

(1) the court finds the conditions under subsection (a)(1) and (a)(2) have been met; and
(2) a parent appears in open court;

a court may consider only the issue of whether the parents' consent was voluntary.

In **Neal v. DeKalb Cty. Div. of Fam. & Children**, 796 N.E.2d 280, 283 (Ind. 2003), the Indiana Supreme Court concluded that **IC 31-35-1-6(a)** and **IC 31-35-1-12** could not be harmonized and were in irreconcilable conflict. Using "familiar tenets of statutory construction," the Court concluded that the legislature intended that **IC 31-35-1-6** should prevail over **IC 31-35-1-12**. Id. at 284-85. The Court held that a parent's written consent to voluntary termination is invalid unless the parent either (1) appears at the court hearing and acknowledges the consent to termination; or (2) consented to termination in writing before a person authorized by law to take acknowledgements and was advised if the legal rights listed at **IC 31-35-1-2** and was advised that if the parent chooses to appear in open court the court may consider only the issue of whether the parent's consent was voluntary. Id. at 285.

If the parent does not attend the court hearing on the voluntary termination petition, the court must inquire about the reasons why the parent did not attend. **IC 31-35-1-7(a)**. The court may require a probation officer to investigate to determine whether there is any evidence of fraud or duress and to establish that the parent was competent to consent to termination. **IC 31-35-1-7(a)**. The court ordered investigation must be entered on the record under oath by the person responsible for making the investigation. **IC 31-35-1-7(b)**. **IC 31-35-1-7(c)** states that if there is any competent evidence of probative value that: (1) fraud or duress was present when the written consent was given; or (2) a parent was incompetent, the court shall dismiss the petition or continue the proceeding. **IC 31-35-1-7(d)** states that the court may issue any appropriate order for the care of the child pending the outcome of the case.

At the voluntary termination hearing, **IC 31-35-1-10** requires the court to determine that:

1. termination of the parent-child relationship is in the child's best interest; and
2. the petitioner (DCS or licensed child placing agency) has developed a satisfactory plan of care and treatment for the child.

If the court determines that all the allegations in the termination petition are true, the court shall order the parent's rights legally terminated. **IC 31-35-1-10(a)**.

IC 31-35-1-11(a) allows the court to enter a default judgment against the unavailable parent and terminate rights as to both parents if one parent has made a valid consent to termination and the other parent:

A. is required to consent to termination;
B. cannot be located, after a good faith effort has been made to do so; and
C. has been served with notice of the hearing in the most effective means possible.

Case law on voluntary termination of the parent-child relationship includes **In Re M.N.**, 27 N.E.3d 1116, 1122 (Ind. Ct. App. 2015) (Court reversed trial court's order dismissing

adoption agency's petition to voluntarily terminate Father's parental rights to his child who received SSI payments due to a disability; Father's rare payment of his child support obligation reduced the amount of his child's SSI payments); **In Re K.L.**, 922 N.E.2d 102, 109 (Ind. Ct. App. 2010) (Court concluded that Father's voluntary termination was vitiated by misrepresentations made by DCS that the child would be adopted by Aunt and Uncle; therefore, Father's petition to set aside judgment terminating his parental rights should have been granted); **In Re M.B.**, 921 N.E.2d 494, 500 (Ind. 2009) (Court held that, unless all provisions of Indiana's open adoption statutes (**IC 31-19-16**) are satisfied, the voluntary termination of parental rights may not be conditioned upon post-adoption contact privileges); and **Youngblood v. Jefferson County DFC**, 838 N.E.2d 1164, 1172 (Ind. Ct. App. 2005) (Court found that trial court did not abuse its discretion by denying Mother's motion to set aside her voluntary termination in that Mother failed to show that her consent to terminate parental rights was executed under fraud or duress or while she was incompetent).

III. Involuntary Termination of the Parent-Child Relationship Statutes, Jurisdiction, Standing, Standard and Burden of Proof, Service and Notice, Timeline for Hearing, and Effect of Judgment

A. Statutes

The two most frequently used termination statutes are **IC 31-35-2** and **IC 31-35-3**, the first of which is general and the second of which addresses parents who have been convicted of specific criminal offenses against child victims. **IC 31-35-2-4** lists what the general termination petition must state and what must be proven:

(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 department [DCS].

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

(3) The child's guardian ad litem.

(b) The petition must meet the following requirements:

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

(2) The petition must allege:

(A) that one (1) of the following is true:

(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.

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

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

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

(3) If the department intends to file a motion to dismiss under section 4.5 of this chapter, the petition must indicate whether at least one (1) of the factors listed in section 4.5(d)(1) through 4.5(d)(3) of this chapter applies and specify each factor that would apply as the basis for filing a motion to dismiss the petition.

The specific termination statutes for parents convicted of criminal offenses, **IC 31-35-3-4** and **IC 31-35-3-5**, list what the petition must state and what must be proven. **IC 31-35-3-4** states:

If:

(1) an individual is convicted of the offense of:

(A) murder (IC 35-42-1-1);

(B) causing suicide (IC 35-42-1-2);

(C) voluntary manslaughter (IC 35-42-1-3);

(D) involuntary manslaughter (IC 35-42-1-4);

(E) rape (IC 35-42-4-1);

(F) criminal deviate conduct (IC 35-42-4-2);

(G) child molesting (IC 35-42-4-3);

(H) child exploitation (IC 35-42-4-4);

(I) sexual misconduct with a minor (IC 35-42-4-9); or

(J) incest (IC 35-46-1-3); and

(2) the victim of the offense:

(A) was less than sixteen (16) years of age at the time of the offense; and
(B) is:
(i) the individual's biological or adoptive child; or
(ii) the child of a spouse of the individual who has
committed the offense; the attorney for the department, the child's guardian ad litem, or the court appointed special advocate may file a petition with the juvenile or probate court to terminate the parent-child relationship of the individual who has committed the offense with the victim of the offense, the victim's siblings, or any biological or adoptive child of that individual.

IC 31-35-3-5 states the verified petition filed under **IC 31-35-3-4** must:
(1) be entitled "In the Matter of the Termination of the Parent-Child Relationship of _____, a child, and _____, the parent (or parents)"; and
(2) allege:
(A) that the victim of an offense listed in section 4(1) of this chapter is:
(i) the subject of the petition;
(ii) the biological or adoptive sibling of the subject of the petition; or
(iii) the child of a spouse of the individual whose parent-child relationship is sought to be terminated under this article;
(B) that the individual whose parent-child relationship is sought to be terminated under this article was convicted;
(C) that the child has been removed:
(i) from the parent under a dispositional decree; and
(ii) from the parent's custody for at least six (6) months under a court order;
(D) that one (1) of the following is true:
(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the parent's home will not be remedied.
(ii) There is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the child.
(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;
(E) that termination is in the best interests of the child; and
(F) that there is a satisfactory plan for the care and treatment of the child.

IC 31-35-3-8 provides that a showing that an individual has been convicted of an offense described in **IC 31-35-3-4(1)** is prima facie evidence that there is a reasonable probability that: (1) the conditions that resulted in the removal of the child from the parent under a

court order will not be remedied; or (2) continuation of the parent-child relationship poses a threat to the well-being of the child.

A third statute, **IC 31-35-3.5**, allows termination of the parent-child relationship when the parent has been proven to have committed an "act of rape" [defined at **IC 31-9-2-0.9**] resulting in the child's conception. Unlike other termination of the parent-child relationship petitions, which must be filed by DCS or a licensed child placing agency for voluntary termination petitions or by DCS or the child's Guardian ad Litem/Court Appointed Special Advocate for involuntary termination petitions, **IC 31-35-3.5-3** provides that only the parent who is the victim of an "act of rape" may file the termination petition. "Act of rape", defined at **IC 31-9-2-0.9** includes **IC 35-42-4-1** [the criminal definition of rape] and **IC 35-42-2-3(a)** [the criminal definition of child molesting by sexual intercourse that is committed by using or threatening the use of deadly force or while armed with a deadly weapon; or results in serious bodily injury; or is facilitated by furnishing the victim with a drug or controlled substance without the victim's knowledge]. Notably, **IC 31-35-3.5** does not specifically require that the perpetrator parent has been criminally convicted of the "act of rape." In addition to proving the circumstances of the child's conception, the petitioning parent must also prove that termination of the parent-child relationship between the alleged perpetrator and the child is in the child's best interests. **IC 31-35-3.5-5** provides that the termination petition must be verified, be entitled "In the Matter of the Termination of the Parent-Child Relationship of ____, a child, and ____, the parent", and allege: (A) that the alleged perpetrator committed an act of rape against the parent who filed the petition to terminate the parent-child relationship; (b) that the child was conceived as a result of the act of rape described under clause (a); and (c) that the termination of the parent-child relationship between the alleged perpetrator and the child is in the best interests of the child. The victim parent who was at least eighteen years of age when the act of rape occurred may not file the termination petition more than 180 day after the child's birth. **IC 31-35-3.5-4(a)**. If the victim parent was less than eighteen years old when the act of rape occurred, the victim parent may not file the termination petition more than two years after the victim parent reaches the age of eighteen years. **IC 31-35-3.5-4(b)**.

IC 31-35-3.5-8 provides the court may appoint a Guardian ad Litem or a Court Appointed Special Advocate or both for the child as provided in **IC 31-17-6-1**. If the petitioner shows by clear and convincing evidence that the alleged perpetrator committed an "act of rape" resulting in the child's conception, this is prima facie evidence that termination of the parent-child relationship between the alleged perpetrator and the child is in the child's best interests. **IC 31-35-3.5-6**. **IC 31-35-3.5-7** provides that the court shall terminate the parent-child relationship if the court finds by clear and convincing evidence that the allegations in the petition are true and that termination of the parent-child relationship is in the child's best interests. **IC 31-35-3.5-9** authorizes the court to issue an emergency order removing the

child from the custody of the alleged perpetrator of the act of rape if the court finds it is in the child's best interests. **IC 31-35-3.5-10**, **-11** and **-12** provide guidance for situations when DCS has filed a CHINS petition, and a termination petition under **IC 31-35-3.5** has also been filed.

B. Jurisdiction

The juvenile court and the probate court have concurrent original jurisdiction in all cases involving termination of the parent-child relationship. **IC 31-30-1-5(2)**; **IC 31-35-2-3**; **IC 31-35-3-3; IC 31-35-3.5-2**. The provisions of the federal Indian Child Welfare Act (ICWA), 42 U.S.C.A. § 1901 et. seq., must be followed if the child meets the definition of an Indian child because the child is either: (1) a member of an Indian tribe or (2) is eligible for membership in an Indiana tribe and is the biological child of a member of an Indian tribe. The Indian tribe may elect to assume jurisdiction over the child. **See In Re S.L.H.S.**, 885 N.E.2d 603 (Ind. Ct. App. 2008) (despite efforts by Father and DCS to track down child's alleged Indian status, no tribal membership for child was identified; therefore, ICWA did not apply and termination judgment was affirmed); **Matter of D.S.**, 577 N.E.2d 572 (Ind. 1991) (termination order reversed and remanded due to failure to follow jurisdictional and evidentiary standards of ICWA).

C. Standing

An involuntary termination petition filed under **IC 31-35-2** or **IC 31-35-3** may be filed only by the DCS attorney, the child's Guardian ad Litem, or the child's Court Appointed Special Advocate. **IC 31-35-2-4(a)**; **IC 31-35-3-4**. Upon the filing of the petition, the DCS attorney shall represent the interests of the state in all subsequent proceedings. **IC 31-35-2-5**; **IC 31-35-3-6**. The victim parent is the only person who may file a termination petition pursuant to **IC 31-35-3.5**.

D. Standard and Burden of Proof

The standard of proof for involuntary termination of the parent-child relationship cases is clear and convincing evidence. **IC 31-34-12-2**; **In Re G.Y.**, 904 N.E.2d 1257, 1261 (Ind. 2009); **Bester v. Lake County Office of Family**, 839 N.E.2d 143, 148 (Ind. 2005). The burden of proving each and every element set forth in the involuntary termination statutes is on DCS. **See In Re D.K.**, 968 N.E.2d 792, 797-98 (Ind. Ct. App. 2012). **See also In Re C.M.**, 960 N.E.2d 169, 175 (Ind. Ct. App. 2011) in which the Court opined that Mother was not required to produce evidence in order to withstand the termination petition. Termination cases are governed by the procedures prescribed for CHINS cases, but termination proceedings are separate and distinct from CHINS cases. **IC 31-35-2-2**; **IC 31-35-3-2**. **See also Hite v. Vanderburg Cty Office Fam & Chil.**, 845 N.E.2d 175, 182 (Ind. Ct. App.

2006). In **State Ex Rel. Gosnell v. Cass Cir**., 577 N.E.2d 957, 958 (Ind. 1991), the Indiana Supreme Court opined that a termination petition is "of much greater magnitude" than the underlying CHINS action. The termination petition must be filed as a separate proceeding with new service on parents. Termination proceedings are civil proceedings, and the Indiana Rules of Trial Procedure apply. **IC 31-32-1-3**.

F. Service and Notice

IC 31-35-2-2 provides that the CHINS procedural statutes on service and notice at **IC 31-32-9-1** and **2** apply to termination cases. **IC 31-32-9-1** provides that parents shall be given personal service at least three days before the hearing, and ten days before the hearing if service is by mail. Due to the magnitude of the involuntary termination proceeding, it is preferable to comply with Ind. Trial Rule 6(C) on service. T.R. 6 (C) allows the party twenty days to respond after service of the prior pleading. Note that the juvenile code does not specifically require a responsive pleading.

Service of the involuntary termination petition on the parent should be accomplished by the best possible form of service since the consequences of these cases are so significant. The recommended means of service are personal delivery of the summons and petition to the parent or certified mail with a return receipt signed by the parent. If DCS is unable to obtain personal service on the parent, the next best form of service is to leave a copy of the petition and summons at the parent's last known address. If this form of service is used, Ind. Trial Rule 4.1(B) requires a follow-up mailing of a summons by regular mail to the same address. Case law indicates that service upon a defendant's "former residence" is insufficient to confer personal jurisdiction under T.R. 4.1(B). **See Norris v. Personal Finance**, 957 N.E.3d 1002, 1009 (Ind. Ct. App. 2011) (service by delivery to defendant's parents' address was not in compliance with T.R.4.1 and was ineffective). Parents who are institutionalized or incarcerated should receive service via the superintendent of the institution as outlined in Ind. Trial Rule 4.3. A written confirmation of service from the superintendent, including the superintendent's information regarding whether the person has been allowed an opportunity to retain counsel, should be requested along with a copy of the summons signed by the parent.

Publication service is the least desirable form of service, to be used only when the parent cannot be located despite diligent efforts. **See In Re Adoption of L.D.**, 938 N.E.2d 666, 671 (Ind. 2010) (Adoption decree vacated because adoptive parents and their attorney failed to perform diligent search for Mother required by Due Process Clause; notice and service by publication was insufficient to confer personal jurisdiction over Mother).

In addition to serving the parent with the termination petition and summons, DCS must also send notice of the date of the termination hearing(s) to the parent at least ten days before the hearing(s) pursuant to **IC 31-35-2-6.5**. **See In Re H.K.** 971 N.E.2d 100, 104 (Ind. Ct. App. 2012) (termination judgment was remanded with instructions that trial court conduct hearing to determine whether statutory notice requirements were met and, if requirements were not met, whether this procedural irregularity violated Mother's due process rights); **In Re E.E.**, 853 N.E.2d 1037, 1042-43 (Ind. Ct. App. 2006) (Court affirmed termination judgment despite alleged Father's argument that notice was ambiguous since it included two trial dates, a "first choice" setting and a "second choice" setting); and **D.A. v. Monroe County Dept. of Child Serv.**, 869 N.E.2d 501, 511 n.12, 512 (Ind. Ct. App. 2007) (Court reversed and remanded trial court's termination judgment, noting that case manager did not specifically testify she sent notice to Father at least ten days prior to the hearing as required by **IC 31-35-2-6.5** and finding it was entirely unclear whether Father had timely notice or any notice of the termination hearing).

G. Timeline for Hearing

IC 31-35-2-6(a) states that whenever a hearing is requested on a termination petition filed under this chapter, the court shall commence a hearing on the petition not more than 90 days after the petition is filed, and complete a hearing on the petition not more than 180 days after the petition is filed. **IC 31-35-2-6(b)** states that, if a hearing is not held within the time period set forth in subsection (a), upon filing a motion with the court by a party, the court shall dismiss the termination petition without prejudice. **IC 31-35-3-7(a)** and **(b)**, the statute on timeliness for hearing termination petitions when a parent has been convicted of a specific criminal offense, states that the person filing the petition shall request that the court set the petition for a hearing, and that whenever a hearing is requested, the court shall commence the hearing not more than 90 days after the petition is filed. **IC 31-35-3-7(c)** states that if a hearing is not held within the time set forth in **IC 31-35-7(b)**, upon filing a motion with the court by a party, the court shall dismiss the petition without prejudice. In **Matter of N.C.**, 83 N.E.3d 1265, 1267 (Ind. Ct. App. 2017), the Court affirmed the trial court's order terminating Father's parental rights, finding that Father had acquiesced to setting the termination trial on a date which was later than the statutory parameters, and Father had waived his challenge to the date of the termination hearing.

G. Effect of Judgment

If the termination petition is granted, **IC 31-35-6-4** provides:

(a) If the juvenile or probate court terminates the parent-child relationship:

(1) all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, parenting time, or support, pertaining to that relationship, are permanently terminated; and
(2) the parent's consent to the child's adoption is not required.

(b) Any support obligations that accrued before the termination are not affected. However, the support payments shall be made under the juvenile or probate court's order.

If a termination judgment is entered, the child continues as a CHINS, subject to the review hearing requirements. DCS and the Guardian ad Litem or Court Appointed Special Advocate will seek a permanent option for the child.

The court has the authority under **IC 31-35-6-1** to refer the case to the probate court for adoption proceedings or to order any dispositional alternatives available under **IC 31-34-20-1**. If the juvenile court refers a post-termination case to the probate court for adoption, the juvenile court shall review the child's case once every six months until a petition for adoption is filed. **IC 31-35-6-1(b)**. **IC 31-19-11-6** provides that a court may not grant a petition for adoption if the parent-child relationship has been terminated and an appeal is pending, the time for filing an appeal has not yet elapsed, or an appellate court is considering a request for transfer or certiorari. When the case is referred to the court with probate jurisdiction for adoption proceedings, the Guardian ad Litem or Court Appointed Special Advocate shall comply with the following requirements from **IC 31-35-6-2**:

(1) Provide DCS with information regarding the best interests of the child.
(2) Review the adoption plan as prepared by DCS as to the best interests of the child.
(3) Report to the court with juvenile jurisdiction and, if requested, to the court having probate jurisdiction, regarding the plan and the plan's appropriateness in relationship to the best interests of the child.

Indiana case law has clarified that when a parent's rights to the child have been terminated, the child's grandparents also lose their status as grandparents. **See In Re G.R.**, 863 N.E.2d 323 (Ind. Ct. App. 2007), in which the Court concluded that because Mother's rights were terminated prior to the filing of maternal grandmother's and step-grandfather's petition for placement under the CHINS case, the maternal grandmother was no longer the child's grandparent and the trial court was not required to consider her for placement of the child under **IC 31-34-4-2(a)** or any other CHINS statute. Id. at 328. **See also In Re Adoption of Z.D.,** 878 N.E.2d 495 (Ind. Ct. App. 2007), in which Father's parental rights had been terminated, and the child's paternal grandmother filed a petition to adopt the child. The foster parent's petition for adoption was granted, and the paternal grandmother's petition for

adoption was dismissed. The Court affirmed the order which granted the foster parent's petition for adoption, holding that "[b]ecause Father's parental rights had been terminated, any of the paternal grandmother's derivative due process rights with respect to visitation, custody, or adoption were effectively extinguished by the time paternal grandmother filed her adoption petition." Id. at 498.

IV. Involuntary Termination of the Parent-Child Relationship Procedural and Evidentiary Issues

A. Procedural Issues

IC 31-32-2-5 and **IC 31-32-4-1** provide that a parent in an involuntary termination proceeding is entitled to be represented by counsel. If the parent in a termination proceeding does not have an attorney who may represent the parent without a conflict of interest, and the parent has not lawfully waived the parent's right to counsel, the court shall appoint counsel for the parent at the initial hearing or at any earlier time. **IC 31-32-4-3(a)**. **IC 31-32-5-5**. In In **Re G.P.**, 4 N.E.3d 1158 (Ind. 2014), Mother requested court appointed counsel at a CHINS review hearing and the trial court found that Mother was indigent. The trial court did not actually appoint counsel to represent Mother, and proceeded with the CHINS review hearing. No counsel represented Mother at the subsequent CHINS hearings. The Indiana Supreme Court opined that **IC 31-34-4-6** gave Mother the right to be represented by court appointed counsel in the CHINS case. Id. at 1162. The Court vacated the trial court's subsequent termination judgment because Mother was denied her statutory right to counsel during the CHINS proceedings and the CHINS proceedings flowed directly into an action to terminate Mother's parental rights. Id. at 1169. In **In Re D.P.**, 27 N.E.3d 1162, 1167-68 (Ind. Ct. App. 2015), the Court reversed the trial court's order terminating Mother's parental rights because Mother did not have counsel present at the two termination hearings, nor was counsel appointed to represent her.

A parent who is entitled to representation by counsel may waive that right if the parent does so knowingly and voluntarily. In **Keen v. Marion Cty. D. of Public Welfare**, 523 N.E.2d 452 (Ind. Ct. App. 1988), the Court found that Mother had voluntarily waived her right to court appointed counsel.

In **Lawson v. Marion County OFC**, 835 N.E.2d 577 (Ind. Ct. App. 2005), the Court reversed and remanded the trial court's termination of Father's parental rights because Father's attorney was excused from the termination hearing before the conclusion of the hearing. Id. at 581. The attorney believed that OFC would be offering no additional evidence against Father. Id. The Court observed that the parenting assessment, presented

after Father's attorney had left the hearing, was "a significant portion of the evidence against Father", and "the only direct evidence showing that Father should not be reunified with [the child]." Id. The Court said that the risk of error created by entering judgment after conducting a hearing where evidence against a parent is presented without his attorney present is substantial. Id. at 580. Father had not appeared at the final hearing, despite having been notified of the date. Id. at 578. In **D.A. v. Monroe County Dept. of Child Serv.**, 869 N.E.2d 501 (Ind. Ct. App. 2007), the Court reversed the entry of judgment terminating Father's parental rights and remanded the case to the trial court with instructions to hold a proper final termination hearing. Id. at 512. Father had appeared at the initial termination hearing and requested pauper counsel, so the trial court appointed an attorney to represent Father. The attorney entered an appearance on Father's behalf, but Father did not meet with his attorney. The attorney then moved to withdraw her appearance, citing lack of cooperation by Father, but did not send a copy of the motion to withdraw to Father. The trial court set the hearing on the motion to withdraw appearance for the same date as the final termination hearing, but the record did not reflect that the trial court sent notice of the motion to withdraw appearance hearing to Father. The trial court allowed Father's attorney to withdraw her appearance the day before the termination hearing, at a hearing on DCS's motion for substance abuse treatment records release, which Father did not attend. Father also did not attend the termination hearing on the following day, but successfully argued on appeal that the trial court had abused its discretion by granting his attorney's motion to withdraw her appearance. Id. at 509. The Court opined that Father's rights had been prejudiced by the attorney's failure to comply with the Monroe County Local Rule on motions to withdraw appearances because the attorney had neither informed Father of the final hearing date nor of her motion to withdraw. Id. **See also K.S. v. Marion County Dept. Child Services**, 917 N.E.2d 158, 165 (Ind. Ct. App. 2009), in which the Court opined that the trial court had abused its discretion when it granted the oral motion made by Mother's attorney to withdraw her appearance for Mother at the commencement of the termination hearing. The motion violated the Marion County Local Rule on motions to withdraw appearances.

The Indiana Supreme Court addressed the issue of joint representation of two parents by a single lawyer in **Baker v. County Office of Family & Children**, 810 N.E.2d 1035 (Ind. 2004), an involuntary termination of parental rights case. In Baker, the parents, who were not married to each other, claimed that the trial court did not adequately inquire about their decision to go forward with representation by the same lawyer. The Court opined that the parents' joint representation did not result in a conflict of interest. Id. at 1042. The Court further said: (1) the parents preserved the same interests, namely maintaining parental rights over their child; (2) there was no solid evidence showing their interest were "adverse and hostile"; (3) the parents were not presenting evidence against one another; (4) neither parent

stood to gain significantly by separate representation; (5) nothing suggested that representation by a single lawyer led to a fundamentally unfair hearing. Id. The Baker Court opined that where parents whose rights were terminated at trial claim on appeal that their lawyer underperformed, the focus of the inquiry is whether it appears that the parents received a fundamentally fair trial whose facts demonstrate an accurate determination. The question is not whether the lawyer might have objected to this or that, but whether the lawyer's overall performance was so defective that the appellate court cannot say with confidence that the conditions leading to removal are unlikely to be remedied and that termination is in the child's best interest. Id. at 1041. In **In Re E.D.**, 902 N.E.2d 316 (Ind. Ct. App. 2009), Mother was incarcerated, and her counsel and Mother's Guardian ad Litem believed that Mother was also incapacitated due to mental illness. Mother's counsel believed that Mother was unable to effectively assist counsel in defending Mother's parental rights. The Court opined the trial court did not deny Mother's due process rights to assist counsel in her defense. Id. at 323. The Court observed the due process safeguards afforded to a defendant in a criminal trial are not applicable to a parent in a civil termination proceeding. Id. at 322.

A Guardian ad Litem or Court Appointed Special Advocate must be appointed to represent the child's best interests on any petition for involuntary termination in which the parent objects to the termination. **IC 31-35-2-7(a)**. The Guardian ad Litem or Court Appointed Special Advocate who was appointed for the child in the CHINS case may be reappointed to represent the best interests of the child in the termination proceedings. **IC 31-35-2-7(b)**. Appellate Courts have found that failure to appoint a Guardian ad Litem or Court Appointed Special Advocate for the child in an involuntary termination case is reversible error. **See Jolley v. Posey County DPW**, 624 N.E.2d 23 (Ind. Ct. App. 1993); **Matter of S.L.**, 599 N.E.2d 227 (Ind. Ct. App. 1992). The termination statute for parents who have been convicted of a specific criminal offense, **IC 31-35-3**, is silent on the appointment of a Guardian ad Litem or Court Appointed Special Advocate, but it is strongly recommended that a Guardian ad Litem or Court Appointed Special Advocate be appointed for termination petitions filed pursuant to **IC 31-35-3**.

In light of parents' constitutional rights to raise their children, as protected by the Fourteenth Amendment to the United States Constitution, due process considerations are very important in termination proceedings. In **Bester v. Lake County Office of Family & Children**, 839 N.E.2d 143, 147 (Ind. 2005), the Indiana Supreme Court observed that a parent's interest in the care, custody, and control of his child is arguably one of the oldest of our fundamental liberty interests. In **Hite v. Vanderburgh County Office of Family & Children**, 845 N.E.2d 175, 181 (Ind. Ct. App. 2006), the Court said that when the State seeks to terminate a parent-child relationship, it must do so in a manner that meets the constitutional

requirements of the due process clause. In **In Re J.S.O.**, 938 N.E.2d 271, 274 (Ind. Ct. App. 2010), the Court opined that the nature of process due in a termination proceeding turns on a balancing of the "three distinct factors" specified in Matthews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976): (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure. The Indiana Supreme and Appellate Courts have consistently applied the Matthews v. Eldridge standard in reviewing parents' due process claims in termination cases. Case law includes In **In Re S.S.**, 990 N.E.2d 978, 985-86 (Ind. Ct. App. 2013) (Court concluded the juvenile court did not deny Mother due process of law when it denied her motion for a continuance of the termination hearing); **In Re C.G.**, 954 N.E.2d 910, 922-23 (Ind. 2011) (whether or not an incarcerated parent is permitted to attend a termination hearing is within the sound discretion of the trial judge; a blanket order prohibiting transporting a prisoner to a termination hearing is fraught with danger); and **In Re A.B.**, 922 N.E.2d 740, 746 (Ind. Ct. App. 2010) (termination judgment was reversed where Mother, who arrived late to the termination hearing, was not permitted to enter the courtroom or to participate in hearing.

Indiana Appellate courts have also reviewed procedural safeguards for parents in the underlying CHINS cases, and, on occasion, have reversed termination judgments based on multiple procedural errors in the CHINS case. In **A.P. v. PCOFC**, 734 N.E.2d 1107, 1118 (Ind. Ct. App. 2000), *trans. denied*, the Court found the record was replete with procedural irregularities throughout the CHINS and termination proceedings and the irregularities were plain, numerous, and substantial; therefore, the Court was compelled to reverse the termination judgment on procedural due process grounds. Among the errors noted by the Court were: (1) the CHINS petition was unsigned and unverified; (2) no original or modified dispositional decree containing the requisite written findings was issued by the trial court; (3) Parents were not provided with copies of the case plan and its modifications; (4) a permanency hearing to examine whether Parents' procedural rights were being safeguarded was not held; (5) the court entered a no-contact order against Father without following the statutory prerequisites contained in **IC 31-34-17**; (6) Father was deprived of his right to be present at review hearings; and (7) the termination petition that did not contain the necessary allegations. Id. at 1118-19. In **In Re J.S.O.**, 938 N.E.2d 271, 277 (Ind. Ct. App. 2010), the Court concluded that the trial court's order terminating Father's parental rights violated Father's due process rights because of failure to name Father as a party to the CHINS case and failure to follow other CHINS statutory mandates as to Father. In **In Re C.G.**, 954 N.E.2d 910, 918-19 (Ind. 2011), the Court held that DCS's failure to locate incarcerated Mother and DCS's misrepresentation on the Affidavit of Diligent Inquiry in the CHINS case did not violate Mother's due process rights in the termination proceeding. The Court also found that the delay by DCS in advising Mother of her rights and serving her

with the CHINS petition after she was located was a very poor practice model, but reversal of the termination judgment was not warranted. Id. at 920.

IC 31-35-2-8(c) states:

(a) Except as provided in section 4.5(d) 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.
(c) The court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b).

IC 31-35-3-9, the corresponding statute for termination of the parental rights of parents convicted of specified crimes, does not require findings and conclusions. **IC 31-35-3-9** states:

(a) 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.

Although **IC 31-35-3-9** does not require findings and conclusions, it is recommended that the trial court should also enter findings of fact and conclusions of law in cases filed pursuant to **IC 31-35-3** to facilitate appellate review. **See In Re A.K.**, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010), in which the Court held that in termination of parental rights proceedings, trial courts must enter findings of fact that support the entry of the conclusions called for by Indiana statute and the common law. **See also Parks v. Delaware County Dep't of Child Servs.**, 862 N.E.2d 1275, 1278 (Ind. Ct. App. 2007), which states that termination of parental rights is such a serious matter that appellate courts must be convinced the trial court based its judgment on proper considerations. **But see A.F. v. MCOFC**, 762 N.E.2d 1244, 1249 (Ind. Ct. App. 2002), in which the Court affirmed the trial court's termination judgment despite Father's appellate argument that because the trial court adopted OFC's findings of fact in their entirety and without revision, the findings were not the product of a disinterested mind and were improperly used to support the termination decision. The Court opined that the verbatim adoption of OFC's findings of fact and conclusions of law was not, in and of itself, improper. Id.

B. Evidentiary Issues

Hearsay is not admissible in the termination hearing unless it fits within a recognized hearsay exception under the Ind. Evidence Rules or the Child Hearsay Exception at **IC 31-**

35-4. The Child Hearsay Exception at **IC 31-35-4** applies to termination petitions filed pursuant to **IC 31-35-2** and **IC 31-35-3**. It provides that a child's out-of-court statement may be admissible if a hearing is held and the court makes a finding that the statement is reliable and a finding that the child is unavailable to testify because (1) the child is incapable of understanding the nature and obligation of the oath (i.e. not competent to testify); (2) testifying would create a substantial likelihood of emotional or mental harm to the child; or (3) the child cannot be present for medical reasons.

No termination cases discuss the Child Hearsay Exception at **IC 31-35-4**, but two CHINS cases discuss the procedure for child hearsay in CHINS cases at **IC 31-34-13-1** through **4**. The language in the statutes regarding the child hearsay exception in termination cases is similar to the statute for CHINS cases. In **In Re J.Q.**, 836 N.E.2d 961, 965-66 (Ind. Ct. App. 2006), the Court reversed the CHINS adjudication due to lack of sufficient evidence. The Court held the child hearsay testimony was inadmissible because: (1) there was not adequate notice to Mother that a psychiatrist recommended the child not testify due to likely emotional harm; (2) the statute requires a separate hearing to determine the admissibility of child hearsay statements; and (3) the child hearsay hearing cannot be merged with the CHINS factfinding. In **Townsley v. Marion County Dept. of Child**, 848 N.E.2d 684, 689 (Ind. Ct. App. 2006), the CHINS adjudication was reversed due to the trial court's failure to comply with the requirements of IC 31-34-13-3 regarding child hearsay. The trial court: (1) did not hold a separate hearing to determine the admissibility of the child's hearsay statements; and (2) made a broad determination of the statements' reliability in spite of arguable inconsistencies, which undermined the Appellate Court's confidence in the CHINS determination.

IC 31-35-5 specifies the conditions under which a competent child (under fourteen years of age, but up to eighteen years of age if the child has impairment of intellectual functioning or adaptive behavior) can testify by court ordered videotape or by closed circuit television in a termination case under **IC 31-35-2** or **IC 31-35-3** instead of testifying in the courtroom. On the motion of the DCS attorney, **IC 31-35-5-2** states the court may order that: (1) the testimony of a child be taken in a room other than the courtroom and be transmitted to the court by closed circuit television; and (2) the questioning of the child by the parties be transmitted to the child by closed circuit television. **IC 31-35-5-3** provides that on the motion of the DCS attorney, the court may order that the testimony of a child be videotaped for use at proceedings to determine whether the parent-child relationship should be terminated. The court must find that the child should be permitted to testify outside the courtroom because a psychiatrist, physician, or psychologist has certified that the child's testifying in the courtroom creates a substantial likelihood of emotional or mental harm to the child; or a physician has certified that the child cannot be present in the courtroom for

medical reasons; or evidence has been introduced concerning the effect of the child's testifying in the courtroom, and the court finds that it is more likely than not that the child's testifying in the courtroom creates a substantial likelihood of emotional or mental harm to the child. **IC 31-35-5-4**. The prosecuting attorney or the DCs attorney must inform the parties and their attorneys by written notice at least seven days before the proceeding of the intent to have the child testify outside the courtroom. **IC 31-35-5-4(2)** and **(3)**. **IC 31-35-5-5** lists the persons who may be present during the child's closed circuit television testimony. **IC 31-35-5-6** lists the persons who may be present during the child's videotaped testimony. For either type of testimony, only the prosecuting attorney or the DCS attorney, the attorneys for the parties, and the judge may question the child. **IC 31-35-5-7**.

Although the prohibition against hearsay would generally prevent a Guardian ad Litem or Court Appointed Special Advocate from testifying to the exact statements of the child, the Court held in **Matter of Adoption of D.V.H.**, 604 N.E.2d 634 (Ind. Ct. App. 1991), a consolidated termination and adoption case, that the Guardian ad Litem may be allowed to summarize the desires and state of mind expressed by the child without restating the exact language of the child. Id. at 639. **See also Matter of A.F.**, 69 N.E.3d 932, 948 (Ind. Ct. App. 2017) (Court opined the trial court's admission of the Guardian ad Litem's testimony about statements the children made to her concerning their desires for future placement did not warrant reversal of termination judgment), *trans. denied*. **But see In Re O.G.**, 65 N.E.3d 1080, 1088 (Ind. Ct. App. 2016) (Court held that Guardian ad Litem's testimony on child's wishes was inadmissible hearsay, and the trial court erred by admitting it), *trans. denied*. Neither statutes nor case law allow for the admission into evidence of a Guardian ad Litem or Court Appointed Special Advocate for a termination hearing if the report contains inadmissible hearsay and a party objects.

Case law has clarified that the statutory abrogation of the physician-patient privilege at **IC 31-34-12-6** applies to termination cases. **Shaw v. Shelby County DPW**, 612 N.E.2d 557, 558 (Ind. 1993). Case law also provides that the following privileged relationships are not a bar to testimony in termination cases: clinical social worker-patient privilege, **Stone v. Daviess Co. Div. Child Serv.**, 656 N.E 2d 824, 831 (Ind. Ct. App. 1995); psychologist-patient privilege, **Ross v. Delaware County Dept. of Welfare**, 661 N.E.2d 1269, 1271 (Ind. Ct. App. 1996), *trans. denied*.

In **Carter v. KCOFC**, 761 N.E.2d 431, 437-39 (Ind. Ct. App. 2001), Mother appealed the trial court's termination judgment, alleging the court erred by admitting her mental health, drug and alcohol records into evidence despite her objection. Mother contended the trial court's admission of the records violated her federal privilege pursuant to 42 U.S.C.A. § 290dd-2 and 42 C.F.R. § 2.64. 42 U.S.C.A. § 290dd-2 provides that substance abuse

education and treatment records shall be confidential. However, the contents of the records may be disclosed, regardless of whether the patient consents, if authorized by an appropriate order of a court of competent jurisdiction after application showing good cause therefore, including the need to avert a substantial risk of death or serious bodily injury. In assessing good cause the court's duty is to apply a balancing test which weighs the public interest and the need for disclosure against the possible injury to the patient or the program. The Court noted the following procedures for ordering disclosure of privileged medical records, for noncriminal purposes, as codified at 42 C.F.R. § 2.64:

> First, any person having a "legally recognized interest" in the disclosure of patient records must apply for an order authorizing the disclosure. 42 C.F.R. § 2.64(a). The application must use a fictitious name to refer to the patient and may not contain any patient identifying information. Id. Next, the court must give the patient and the person or entity holding the records adequate notice and an opportunity to file a written response to the application. 42 C.F.R. § 2.64(b)(1)-(2). The court must further conduct a hearing in chambers or "in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record." 42 C.F.R. § 2.64(c)

Id. at 438.

Before addressing whether the trial court violated Mother's federal privilege, the Carter Court observed that the medical documents had been filed with the trial court by OFC during the CHINS proceeding and prior to the filing of the termination petition. Id. at 437. Because the medical records were generated as part of the child's dispositional plan, the Court questioned whether the federal privilege applied. Id. The Court held Mother had waived the federal privilege at the CHINS proceeding. Id. at 438. The Court opined that, even assuming that the federal privilege applied to the medical records, the OFC was entitled to offer into evidence "the CHINS petition, the predispositional report, the parental participation order, the modification report or any other document or order containing written findings, which was required to be created during the [CHINS] proceedings." Id. Waiver notwithstanding the Court concluded that the trial court had not followed the procedural requirements of 42 C.F.R. § 2.64 with respect to the medical records. Id. The Court opined the trial court's need to serve the interests of the child with regard to the child's relationship to the parents clearly outweighed any confidentiality to which Mother may have been entitled, particularly where the whole process was part of the effort to bring her to a place where she could retain her relationship to her child. Id. at 438-39. The Court found that any technical noncompliance with the federal regulations was harmless. Id. at 439. **See also In Re Invol. Termn. of Par. Child Rel. A.H.**, 832 N.E.2d 563 (Ind. Ct. App.

2005), in which the Court opined that even though the trial court may not have followed the precise procedures set forth in Title 42 regarding the admissibility of Father's medical records in the termination case, the interests of the children outweighed the confidentiality to which Father might have been entitled. Id. at 569. The Court concluded that the trial court's noncompliance with the federal regulations governing the disclosure of Father's records was harmless in this instance. Id

Records from child service providers frequently contain relevant information for termination cases. The Indiana Supreme Court discussed the admissibility of business records from child service providers in **In Re Relationship of E.T.**, 808 N.E.2d 639 (Ind. 2004). The Court addressed the admissibility of reports compiled by SCAN, Inc. regarding court-ordered services provided to Parents. SCAN, Inc. is a non-profit corporation whose mission is to "prevent child abuse and neglect through direct service, education, coordination and advocacy." Id. at 641. The trial court's original dispositional decree required Parents to enroll in SCAN, Inc.'s Parents and Partners Program, which included home visits and supervised visitation. Reports from SCAN were admitted into evidence at the termination trial over Parents' objection, and Parents' rights were terminated. On transfer, the Court held that the reports compiled by SCAN, which described home visits and supervised visitation, did not qualify as business records; therefore, they were not admissible as an exception to the hearsay rule. Id. at 641. The Court held the SCAN reports did not qualify as business records because: (1) not all of the information contained in the records was the result of first-hand observations; (2) the reports contained conclusory lay opinions; and (3) nothing in the record supported the view that the reports were prepared for the systematic conduct of SCAN, Inc. as a non-profit corporation. Id. at 643-45. An exhaustive list of Indiana cases which held that evidence was admissible under the business records exception to the hearsay rule is included in this opinion at page 654 n.4. The Court affirmed the Court of Appeals opinion at 787 N.E.2d 483 (Ind. Ct. App. 2003), which determined there was sufficient evidence to support the termination judgment even absent the questioned SCAN records. E.T., 808 N.E.2d at 646.

Termination proceedings are based on the underlying CHINS proceedings. At the termination hearing, DCS will offer into evidence certified copies of the CHINS detention orders, CHINS petition, CHINS admission or the court's judgment from the fact-finding hearing, predispositional and progress reports, dispositional and modification orders, review hearing findings and orders, and parental participation petitions and orders. **See Adams v. Office of Fam. & Children**, 659 N.E.2d 202, 205 (Ind. Ct. App. 1995) (office of family and children admitted CHINS petition, CHINS order, predispositional report, and dispositional order in termination case.) The trial court may also be asked to take judicial notice of the court records in the CHINS case. Ind. Evidence Rule 201, Judicial Notice, provides:

(b) Kinds of Laws That May Be Judicially Noticed. A court may judicially notice a law, which includes (1) the decisional, constitutional, and public statutory law; (2) rules of court; (3) published regulations of governmental agencies; (4) codified ordinances of municipalities; (5) records of a court of this state; and (6) laws of other governmental subdivisions of the United States or of any state, territory or other jurisdiction of the United States.

In **In Re D.K.**, 968 N.E.2d 792 (Ind. Ct. App. 2012), the Court discussed how the Ind. Evidence Rule 201 applies to termination cases. The Court stated that termination cases are similar to post-conviction relief cases, in that they both must refer to and rely heavily on records in different but related proceedings. Id. at 796. The Court held that if a trial court takes judicial notice of records of another court proceeding in deciding a case, there must be an effort made to include the other court's records in the record of the proceeding currently in front of the trial court. Id. at 796. The Court also determined that if a party to an appeal wishes to use the "other" records in making an argument before the Appellate Court, it must include those parts in an appendix submitted to the Appellate Court, as determined by Indiana Appellate Rule 50. Id. at 797.

V. Selected Cases on Required Elements

There are many published opinions of the Indiana Supreme and Appellate Courts on involuntary termination of the parent-child relationship cases. Most of these opinions address multiple issues. Following are selected termination cases on the statutorily required elements of the termination petition. The selected cases include Indiana Supreme Court opinions and more recent opinions of the Indiana Court of Appeals. An effort has been made to select cases that have a variety of opinions on each element.

6 Months Removal Under Dispo Decree; Removal for 15 Months; Reasonable Efforts Not Required

IC 31-35-2-4(b)(2)(A) states that the petition must allege:

(A) that one of the following is true:

(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.

(iii) The child has been removed from the parent and has been under the supervision of a local office [of DCS] or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child.

In **Matter of Bi.B.**, 69 N.E.3d 464, 469 (Ind. 2017), the Indiana Supreme Court reversed and remanded the trial court's order which terminated Father's parental rights because DCS failed to allege and prove that the children had been removed from Father's custody for six months under a dispositional decree. DCS also alleged but did not prove that the children had been removed from Father's custody for fifteen of the most recent twenty-two months. The termination petitions were filed five days short of the fifteen month removal requirement. The Court clarified that the fifteen month removal requirement must be completed before a termination petition is filed. Id. at 468.

In **Matter of Robinson**, 538 N.E.2d 1385, 1387 (Ind. 1989), the Indiana Supreme Court found that the absence of a specific removal order was not error, if the record clearly reflected that the children had been removed from Father's care. The Court stated that the children had been removed from Father's custody for two years, so the use of the exact language was not necessary.

In **Matter of Miedl**, 425 N.E.2d 137, 140 (Ind. 1981), the Indiana Supreme Court held that the six months removal requirement had been met despite the children's three month trial placement with Mother one month prior to the filing of the termination petition. The children had resided in foster care under welfare department supervision and custody for a period of one year preceding the termination judgment. The Court emphasized that the "temporary, unofficial" placement with Mother, during which she was not given court-ordered custody of the children, did not break the chain of events such that a new six-month period must be completed to fulfill the requirements of the law. Id. at 140.

In **In Re L.R.**, 79 N.E.3d 985, 990 (Ind. Ct. App. 2017), *trans. denied*, the Court affirmed the judgment which terminated Mother's parental rights to her eight-year-old child. In the CHINS case, all parties had consented to the dismissal and refiling of the CHINS petition because the statutory deadline for holding the CHINS factfinding hearing had passed while the parties were pursuing a settlement agreement. The Court held the trial court did not err in concluding that the child had been removed from Mother and under DCS supervision for

at least fifteen months, counting the combined time periods of the child's removal under the two CHINS petitions. Id. at 990.

In **Matter of G.M.**, 71 N.E.3d 898, 904 (Ind. Ct. App. 2017), the Court reversed and remanded the trial court's order terminating incarcerated Father's parental rights because no dispositional hearing had ever been held for Father and no dispositional decree had been issued to toll the statutory waiting period before the termination petition could be filed.

In **Matter of S.G. v. IN Dept. of Child Services**, 67 N.E.3d 1138, 1147 (Ind. Ct. App. 2017), a CHINS case, the Court affirmed the trial court's determination that DCS need not undertake reasonable efforts to reunify Mother with four of her ten children. The four children had been adjudicated CHINS on multiple occasions. Mother's parental rights to two other children had been involuntarily terminated, and the two children had been adopted. The Court concluded that the No Reasonable Efforts Statute (**IC 31-34-21-5.6**) is not unconstitutionally vague and was not unconstitutional as applied to Mother. Id. at 1146-47.

In **In Re A.G.**, 45 N.E.3d 471, 480 (Ind. Ct. App. 2015), *trans. denied*, the Court affirmed the trial court's order which terminated the parental rights of incarcerated Father. The child was hospitalized in intensive care because of severe drug withdrawal for the first two weeks of his life and was adjudicated to be a CHINS during his hospitalization. Father's paternity was established when the child was fourteen months old. The Court interpreted the statute to refer to removal from the *child's* home in calculating the duration of the removal, not removal from the home of a particular parent (emphasis in opinion). Id. at 477.

In **In Re J.W., Jr.**, 27 N.E.3d 1185, 1191 (Ind. Ct. App. 2015), the Court held the trial court was correct in finding that the child had been removed from the parents for the requisite fifteen of the most recent twenty-two moths. The Court held that DCS is simply required to comply with the statutory waiting period; the statute does not condition the waiting period on whether DCS provided services to the parents. Id. at 1187.

In **In Re K.E.**, 963 N.E.2d 599, 601-02 (Ind. Ct. App. 2012), the Court reversed the trial court's termination judgment, concluding that the trial court committed reversible error in granting the termination petition because DCS failed to comply with the six month removal under a dispositional decree requirement. DCS had filed the termination petition five months and seventeen days after the child was removed from parents under a dispositional order.

In **In Re D.D.**, 962 N.E.2d 70, 75 (Ind. Ct. App. 2011), the Court opined that DCS had failed to satisfy the six month statutory mandate and the trial court had committed reversible

error in granting the termination petition. The three children had been removed from Mother's custody on an emergency basis, but the trial court did not enter its dispositional order formally removing the children from Mother's care and custody for over three years. The termination petitions were filed four days after the entry of the dispositional order.

In **In Re A.B.**, 924 N.E.2d 666, 672 (Ind. Ct. App. 2010), the Court found there was sufficient evidence to support the trial court's finding that the child was removed from Father's care for at least six months under a dispositional decree, stating, "we cannot permit Father to avoid the impact of the…default dispositional order, which resulted from Father's willful neglect of the CHINS proceeding." Father was aware of the CHINS proceeding, but declined to accept service of process, and failed to attend several CHINS hearings, including the dispositional hearing. Father was defaulted on the CHINS adjudication and first appeared at court for the permanency hearing.

In **In Re G.H.**, 906 N.E.2d 248, 254 (Ind. Ct. App. 2009), the Court affirmed the trial court's termination judgment. The Court found DCS succeeded in presenting clear and convincing evidence that the child had been removed from Mother's care for fifteen of the twenty-two months prior to the filing of the termination petition and for six months following the dispositional decree, although proof of only one of these two time periods would suffice. Id. at 252. The Court was not persuaded by Mother's argument that the time the child spent living with her grandmother and Father should not count in calculating the time of removal from Mother. Id.

In **In Re M.M.**, 733 N.E.2d 6, 12 (Ind. Ct. App. 2000), the Court addressed the unusual situation in which fourteen-year-old Mother (who was herself an adjudicated CHINS) had been placed in foster care with her infant who had been adjudicated a CHINS. The trial court had placed the child and Mother together in several different foster home placements, but in the six months prior to the filing of the termination petition, Mother had not been with the child because Mother ran away from her foster placement and had multiple placements in detention, residential care, and in the Indiana Girls School. The Court stated that the "removal" requirement of the termination statute applies to a dispositional decree "which authorizes an out-of-home" placement. Id. The Court noted that Mother had never provided the child with a home from which the child be removed, and the child had always been under the supervision of foster parents and the office of family and children. Id. The Court noted that the child had resided in court ordered foster care without Mother for more than six months, and the Court ruled that the statutory criteria for six months removal had been met. Id.

Reasonable Probability that Conditions that Resulted in Child's Removal or Reasons for Placement Outside Home of Parents will not be Remedied

IC 31-35-2-4(b)(2)(B) provides that the petition must allege:

(B) that one of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services.

In **In Re N.G.**, 51 N.E.3d 1167, 1174 (Ind. 2016), the Indiana Supreme Court affirmed the trial court's order which terminated Mother's parental rights to her three children. Among the trial court's findings which supported its conclusion that there was a reasonable probability that the conditions resulting in the children's removal would not be remedied were: (1) Mother's history of physical abuse of her son and failure to protect him from physical abuse by her boyfriend; (2) Mother's lack of compliance and progress in counselling; (3) Mother's history of not taking her medication as prescribed; (4) Mother's history of failing to regularly take her son to therapy and failing to follow advice from her son's psychiatrist; (5) Mother's inability to control and redirect her children's behavior during visitation; (6) the children's negative behavior immediately following visitation with Mother; (7) the children's emotional distress as a result of contact with Mother. Id. at 1172-73.

In **In Re V.A.**, 51 N.E.3d 1140, 1153 (Ind. 2016), the Indiana Supreme Court reversed the trial court's order which terminated Father's parental rights. Mother did not contest the termination judgment and was not a party to the appeal. Mother and Father were married and living together when their two-year-old child was removed and placed in foster care because of Mother's untreated mental illness. The Court opined that Father's unwillingness to live separately from Mother was an insufficient basis upon which to terminate *his* parental rights (emphasis in opinion). Id. at 1147. The Court found that Father's inability to induce Mother to take her prescribed mental health medication and his inability to supervise the child while she was in Mother's care were insufficient to demonstrate a reasonable

probability that the conditions leading to the child's removal would not be remedied. Id. at 1151. The Court found the evidence that Mother posed a threat of physical harm to the child was speculative, and the record lacked evidence that Father could not *physically* protect the child (emphasis in opinion). Id. at 1149-50.

In **In Re K.E.**, 39 N.E.3d 641, 652 (Ind. 2015), the Indiana Supreme Court reversed the trial court's order which terminated incarcerated Father's parental rights. The Court opined that, given the substantial efforts that Father was making to improve his life by learning to become a better parent, establishing a relationship with his child, and attending substance abuse classes, DCS did not prove by clear and convincing evidence that Father could not remedy the conditions for the child's removal. Id. at 649. The Court opined that incarceration and a distant release date are insufficient to show that the conditions leading to removal will not be remedied. Id. at 648.

In **Matter of G.M.**, 71 N.E.3d 898, 909 (Ind. Ct. App. 2017), the Court affirmed the termination of Mother's parental rights to her child, who experienced drug withdrawal after birth. Mother was incarcerated for violation of probation at the time of the termination hearing. The Court opined the juvenile court did not err when it concluded there was no reasonable probability that Mother would remedy the conditions which led to the child's removal from her care. Id. at 908. The Court noted the following evidence: (1) Mother did not complete the court ordered services offered by DCS; (2) Mother did not regularly visit the child or seek to understand his medical condition and how to treat it; (3) Mother had multiple drug screens which were positive for drugs, the last of which resulted in her incarceration. Id.

In **In Re O.G.**, 65 N.E.3d 1080, 1096 (Ind. Ct. App. 2016), *trans. denied*, the Court reversed and remanded the juvenile court's order which terminated the relationship between Parents and their child. The Court identified two reasons why the child was initially removed from Mother's custody; namely, Mother's drug use and the ongoing domestic violence between Mother and Father, but found no evidence that domestic violence and substance abuse would not be remedied. Id. at 1090-92. The Court noted evidence that Mother completed a domestic violence assessment and a twenty-six week domestic violence program; there was no evidence that Parents had been in a relationship for two and one-half years; and Mother made significant progress in therapy and completed a number of random drug screens with no evidence of any problematic screens. Id. at 1091-92. The Court identified two reasons for the child's continued placement outside of Mother's care; namely, concerns about Mother's mental health and concerns about Mother's stability, but found no clear and convincing evidence to support the conclusion that Mother's mental health and stability would not be remedied. Id. at 1092-93. The Court noted that Mother had completed a mental health assessment; was better able to manage her emotions due to changed medication; had stable

employment; had been living with the child's maternal grandmother, a DCS approved placement, for sixteen months; and had no pending criminal matters at the time of the termination hearing, except for a suspended driver's license. Id.

In **In Re A.W.**, 62 N.E.3d 1267, 1269 (Ind. Ct. App. 2016), the Court reversed the trial court's order which terminated Mother's parental rights to her two children, who are half-siblings. Mother's older child was born from a prior relationship. Mother and her younger child's Father were married, and they raised both children together. The trial court did not terminate Father's parental rights to his child. The Court concluded DCS did not prove there was a reasonable probability that the conditions that led to the removal of the two children from Mother would not be remedied. Id. at 1273. The Court opined the fact that the trial court terminated Mother's rights, but not Father's rights to his child undermined the trial court's finding that the conditions that led to the removal of the children would not be remedied. Id. The Court noted that Mother and Father remained married and both testified to their intent to stay together. Id. The DCS caseworkers testified that they had no concerns about Mother's abilities as a parent, but had serious reservations about Mother and Father reuniting after Mother's term of imprisonment for a drug offense would be completed in seven months. The Court noted the trial court did nothing to prevent Mother and Father from living together with the younger child. Id.

In Re A.G., 45 N.E.3d 471, 480 (Ind. Ct. App. 2015), the Court affirmed the trial court's order which terminated the parental rights of incarcerated Father. The child tested positive for cocaine and THC at birth and was in intensive care for the first two weeks of his life due to drug withdrawal. Father was incarcerated in a Florida prison when the child was born and was later transferred to a Georgia prison to serve a different sentence. Father had three other children born to different mothers for whom he was providing no financial support. The Court found that Father's history of incarceration, lack of support for his children, and lack of contact with the child throughout his life supported the trial court's conclusion that there was a reasonable probability that the circumstances leading to the child's removal would not be remedied. Id. at 479.

In **In Re B.H.**, 44 N.E.3d 745, 750 (Ind. Ct. App. 2015), *trans. denied*, the Court affirmed the juvenile court's finding that there was a reasonable probability that the conditions which resulted in the two children's initial and continued removal from Mother's custody would not be remedied. The children were removed from Mother's custody because of her admitted drug use and the older child's positive drug test for methamphetamine. Evidence showed that Mother repeatedly failed to take a substance abuse assessment, failed to complete the recommended Intensive Outpatient Program, repeatedly tested positive for opiates, failed to appear for random drug screens, and gave birth to a third child who tested positive for opiates and methamphetamine at birth. Id.

In **In Re D.W.**, 969 N.E.2d 89, 97 (Ind. Ct. App. 2012), the Court concluded that the trial court properly terminated Father's parental rights to his four children. Father argued that the trial court erred in terminating his parental rights because the court found that the conditions that resulted in the children's removal from his custody would not be remedied, but did not find that the reasons for placement outside the home of the parents would not be remedied. Father claimed that he did not cause the conditions that resulted in the children's removal, arguing that the three oldest children were removed from Mother's custody while Father was incarcerated, and the youngest child was removed as a result of Mother's use of narcotics during pregnancy. Father asserted that the trial court erred in terminating his rights because he was not at fault for the children's removal from the home. Father argued that the requirements of **IC 31-35-2-4(b)(2)(B)(i)** are disjunctive; a trial court may find that either "[t]here [was] a reasonable probability that the conditions that resulted in the child's removal *or* the reasons for placement outside the home of the parents [would] not be remedied," and that a finding of one is independent of the other (emphasis in opinion). The Court stated Father's argument that **IC 31-35-2-4(b)(2)(B)(i)** could be read in the disjunctive was an issue of first impression, so the Court relied on case law concerning statutory interpretation. The Court noted that, if a statute is susceptible to multiple interpretations, the Court must try to ascertain the legislature's intent and interpret the statute so as to accomplish that intent. Id. at 94. The Court presumes that the legislature intended the statutory language to be applied in a logical manner consistent with the underlying goals and policy of the statute. Id. at 95. The Court concluded that a finding that one part of the subsection (i) has been fulfilled is equivalent to a finding that subsection (i) as a whole has been fulfilled. Id. The Court said that, in support of this interpretation, **IC 31-35-2-4(b)(2)(B)** states that DCS must show that *one* of the following is true: subsection (i), subsection (ii), or subsection (iii) (emphasis in opinion). Id. The Court noted that, although subsection (i) has two parts, the legislature does not refer to the two parts individually as being sufficient to fulfill **IC 31-35-2-4(b)(2)(B)**, but refers to subsection (i) as a complete entity. Id. The Court opined that, if the legislature had intended the contents of subsection (i) to constitute two separate elements, it would have separated **IC 31-35-2-4(b)(2)(B)** into four separate subsections rather than three. Id.

In **In Re D.K.**, 968 N.E.2d 792, 799 (Ind. Ct. App. 2012), the Court affirmed the termination judgment and opined that the trial court's finding that there was a reasonable probability that the conditions leading to the child's removal would not be remedied was not clearly erroneous. Id. at 799. The Court noted the child was initially removed from Mother's care because he had been left with an inappropriate caregiver without appropriate food and clothing. The Court noted the following evidence in support of the trial court's finding: (1) Mother never completed any of the CHINS dispositional order requirements; (2) Mother never completed a parenting class, despite being given multiple opportunities to do so; (3) Mother failed to maintain a stable residence, living in eight places during the two years of

the CHINS proceeding; (4) Mother squandered her opportunity to reunite with the child while living at the group home by violating the home rules related to alcohol possession and having boyfriends spend the night; (5) Mother demonstrated a lack of interest in the child by declining DCS's assistance in arranging for the child to live with her. Id. at 798-99.

In **In Re I.A.**, 934 N.E.2d 1127, 1129 (Ind. Ct. App. 2010), the Court reversed the trial court's judgment which terminated Father's parental rights. The child, along with his six siblings, had been removed from Mother's sole custody and care due to lack of supervision. The Court opined that the conditions which resulted in the child's removal, namely lack of supervision, could not be attributed to Father. Id. at 1134. In order to determine whether the conditions which led to the child's placement outside Father's home were not likely to be remedied, the Court said that the trial court must: (1) determine what conditions led to DCS placing and then retaining the child in foster care rather than placing him with Father; and (2) then determine whether there was a reasonable probability that those conditions will not be remedied. Id. The Court found nothing in the termination order or the record indicating the conditions that led DCS to place and continue the child in foster care rather than place him with Father. Id. The Court concluded DCS failed to demonstrate by clear and convincing evidence that there was a reasonable probability that the reasons for placement outside the Father's home would not be remedied. Id. at 1135.

In **In Re A.B.**, 924 N.E.2d 666, 672 (Ind. Ct. App. 2010), the Court found there was sufficient evidence to support the trial court's termination judgment, and affirmed the judgment. The Court stated that the sole condition that led to the child's removal was Mother's use of cocaine shortly before the child's birth, resulting in the child's positive cocaine test. Id. at 670. The Court said the evidence made it reasonable for the trial court to conclude that Mother's drug use would not be remedied, noting that: (1) Mother was twice referred to participate in a drug and alcohol abuse assessment, but she failed to follow through both times; (2) Mother twice began submitting to random drug screens but both times she quit participating in them shortly thereafter; (3) there was some indirect evidence that Mother did in fact test positive for cocaine usage after the child was born, when Mother attempted to give an implausible explanation for why there was cocaine in her system. Id. at 670-71.

In **C.T. v. Marion Cty. Dept. of Child Services,** 896 N.E.2d 571, 582, 585 (Ind. Ct. App. 2008), the Court concluded that clear and convincing evidence supported the trial court's findings and ultimate determination that there was a reasonable probability the conditions resulting in the child's removal and continued placement outside Mother's and Father's care would not be remedied. The Court noted: (1) contrary to Mother's contention, the caseworker testified that she had referred Mother to participate in a drug and alcohol assessment, but Mother had not participated; (2) each of Mother's claims of changed

conditions were either based on Mother's self-serving testimony or contradicted by other evidence, including her own testimony; and (3) Mother's support group leader from the mental health center testified that Mother continued to have "limited insight" into her mental illness despite her regular participation in the support group, the witness was not "therapeutically treating" Mother's mental health issues, the support group did not address Mother's "symptomology," Mother had not taken responsibility for what happened with her children, the witness was concerned with the way Mother had been using sleep as a coping skill, Mother was "at risk of relapse, using drugs[,]" and the witness had recommended Mother participate in a substance abuse program on several occasions, but Mother had failed to do so. Id. at 581-82. The Court observed that Father: (1) was incarcerated and therefore unavailable to parent the child when the child was initially removed from Mother's care; (2) had a significant criminal history including twenty-one convictions, which resulted in his being unavailable throughout the majority of the CHINS proceedings because of being in and out of prison; (3) failed in two prior CHINS proceedings to avail himself of court-ordered reunification services, and his failure to do so ultimately resulted in the termination of his parental rights to the child's siblings; (4) by the time of the termination hearing, had failed to complete any of the dispositional goals specified in the pre-dispositional report and was once again incarcerated; and consequently remained unavailable to parent the child. Id. at 584-85.

In **Moore v. Jasper County Dept.,** 894 N.E.2d 218, 229 (Ind. Ct. App. 2008), the Court found DCS had failed to carry its burden of establishing, by clear and convincing evidence, that there was a reasonable probability the conditions leading to the twins' removal from Mother's care would not be remedied or that continuation of the parent-child relationship posed a threat to the twins' well-being. The Court gave three reasons for its holding: (1) the majority of the trial court's findings indicated its decision to terminate Mother's parental rights was improperly based on her parental inadequacies as they existed at the time of the twins' removal, as opposed to Mother's abilities and circumstances as they existed at the time of the termination hearing, as is required by the termination statutes; (2) by all accounts, including the trial court's own termination order, Mother had made significant strides in accomplishing the majority of the dispositional goals put in place by DCS; and (3) the Guardian ad Litem strongly objected to the termination of Mother's parental rights. Id. at 228.

In **In Re A.P.**, 882 N.E.2d 799, 808 (Ind. Ct. App. 2008), the Court affirmed the trial court's determination that the conditions that resulted in the child's removal would not be remedied. The Court observed the CHINS petition explained that Father's whereabouts were unknown, that he had not come forward and demonstrated the ability or willingness to appropriately parent the child, and that conditions at the time of the hearing showed that he was unable or unwilling to appropriately parent the child. Id. at 807. The Court noted that between the time

of the filing of the CHINS petition and the termination hearing: (1) Father completed some services, but failed to complete others such as an outpatient program for his alcohol use; (2) Father visited the child only three times; (3) Father failed to keep his case manager updated about his address; (4) Father left the country nine months after the child's removal and had not demonstrated his willingness or ability to parent his daughter before that point; (5) there was no evidence that Father planned to return to the U.S.; (6) if Father did return, he might face jail time for pending battery charges; and (7) Father offered no plan for the child's care if his parental rights were not terminated. Id. at 807-08.

In **In Re R.J.**, 829 N.E.2d 1032, 1039 (Ind. Ct. App. 2005), the Court opined the trial court's conclusions that the conditions resulting in the child's placement outside the home would not be remedied were clearly erroneous. The Court held the trial court's findings that Father failed to provide safe and adequate housing or that he failed to provide a safe plan for the child's care while at work were not supported by clear and convincing evidence. Id. The Court was not persuaded by OFC's assertion that if Father had been serious about parenting the child, the case would not have lasted four years. Id. at 1038. The Court noted that Father had established paternity, obtained steady employment, completed parenting classes, substance abuse counseling, and psychological counseling, and maintained regular visitation with the child, and there was no indication of Father's unwillingness to cooperate with OFC or failure to promptly complete any of the OFC's programs. Id.

Reasonable Probability that Continuation of the Parent-Child Relationship Poses Threat to Well-Being of Child

In **In Re K.E.**, 39 N.E.3d 641, 644 (Ind. 2015), the Indiana Supreme Court reversed the trial court's order which terminated incarcerated Father's parental rights to the younger of his two children. The Court found there was insufficient evidence to demonstrate a reasonable probability that Father posed a threat to the child's well-being. Id. at 651. Father had been convicted of dealing in methamphetamine and maintaining a common nuisance, and expected to remain incarcerated for two more years when the trial court ordered termination of his parental rights. The Court was not persuaded that Father's criminal history and drug abuse provided clear and convincing evidence that he currently posed a threat to the child's well-being. Id. at 649. Evidence at the termination trial revealed Father had participated in twelve programs at the Department of Correction to improve his parenting and attitude and was attending Alcoholics Anonymous and Narcotics Anonymous meetings. Id. at 648-49.

In **Bester v. Lake County Office of Family**, 839 N.E.2d 143, 153 (Ind. 2005), the Indiana Supreme Court reversed the termination judgment. The Court found there was nothing in the

record that showed Father was currently involved in a gang, and Father proved that he had not used any illegal drugs since the birth of his son. Id. at 152. Since before the termination hearing, Father had been employed full-time, and all of Father's random drug tests were negative for drugs and alcohol. Id. For at least three years before the termination hearing, Father conducted himself in a manner consistent with assuring that his son would be exposed to a healthy drug free environment. Id. Father also visited his child on a regular basis and the evidence showed that Father's and child's relationship was loving, caring and happy. Id. at 150. The Court concluded that Father's criminal history did not demonstrate that the continuation of the parent-child relationship between Father and child posed a threat to the child's well-being. Id. at 152. The Court also found that refusal by the Illinois authorities to approve placement of the child with Father in Illinois was not relevant to the question of whether continuation of the parent-child relationship posed a threat to the child's well-being. Id. at 153. The Court found OFC had not demonstrated by clear and convincing evidence that, because of Father's criminal history, the child's emotional and physical development were threatened by Father's custody. Id. at 152-53.

In **In Re O.G.**, 65 N.E.3d 1080, 1096 (Ind. Ct. App. 2016), *trans. denied*, the Court reversed and remanded the juvenile court's order which terminated Parents' rights to their child. The Court noted the following evidence: (1) the case manager testified DCS was not concerned about Mother's parenting, Mother and the child had a "strong bond", and Mother is a "loving Mother" to the child; (2) the homebased therapist testified that visits between Mother and the child went well, Mother met all of the child's needs during visits, and Mother and the child were bonded; and (3) the Guardian ad Litem testified that Mother and the child had a "strong relationship." Id. at 1094. The Court opined the evidence was not clear and convincing that a continuation of the parent-child relationship between Mother and the child posed a threat to the child's well-being. Id.

In **In Re B.H.**, 44 N.E.3d 745, 750 (Ind. Ct. App. 2015), *trans. denied*, the Court found the evidence readily supported the juvenile court's conclusion that a continuation of the parent-child relationship with Mother posed a threat to the child's well-being. The Court opined that evidence of Mother's ongoing substance abuse issues which had never been remedied and her inability to maintain stable housing supported the trial court's conclusion. Id. at 750.

In **A.P. v. Indiana Department of Child Services**, 981 N.E.2d 75, 82 (Ind. Ct. App. 2012), the Court found the trial court did not abuse its discretion in concluding that continuation of the parent-child relationship between Mother and the children posed a threat to the children's well-being. Among the evidence which the Court noted was: (1) Mother submitted to fifty-three drug screens in a thirteen month period, of which six were positive for methamphetamine, one was positive for THC, and forty-nine were positive for prescription controlled substances; (2) Mother's counselor was not convinced that Mother

"was successful with his services"; (3) Mother had made no changes in other aspects of her life; (4) Mother's failure to take responsibility for her problems extended to the permanent suspension of her driver's license, and her inability to admit that her disregard for the law resulted in "serious felony charges and further incarceration"; (5) even with the permanent presence of Grandparents in Mother's home, she could not avoid drugs that impaired her ability to parent and put her children at risk. Id. at 81-82. The Court also noted the following trial court's findings in support of its conclusion that continuing the children's parent-child relationship with Father posed a threat to their well-being: (1) Father had been held in contempt for failure to maintain contact with DCS and for failure to visit the children; (2) Father had shown a pattern of failing to attend court proceedings in the CHINS and paternity cases and was one and one-half hours late to one of the termination hearings; (3) Father did nothing during the CHINS case. Id. at 83-84.

In **In Re D.B.**, 942 N.E.2d 867, 874 (Ind. Ct. App. 2011), the Court opined the juvenile court's conclusion that continuation of the parent-child relationship posed a threat to the child's well-being was not supported by the evidence. The Court noted the following testimony by the case manager: (1) Father had a "cooperative" attitude and "hadn't done anything to…harm [the child], in the sense of …physical, mental abuse, emotional abuse…"; (2) she thought that Father could properly parent the child; (3) she did not believe Father's relationship with the child posed a threat to the child or her well-being; (4) her recommendation for termination was based solely on Father's lack of a consistent source of income and housing and that he had not been consistent with services. Id. The therapist described Father as nice, patient, kind, open to learning and being told things, and never negative or aggressive. Id.

In **In Re I.A.**, 934 N.E.2d 1127, 1336 (Ind. Ct. App. 2010), the Court concluded DCS failed to prove by clear and convincing evidence that there was a reasonable probability that by continuing the parent-child relationship, the emotional or physical well-being of the child was thereby threatened. The trial court had determined that continuation of the relationship posed a threat to the child's well-being because Father had "not bonded" with the child. Id. at 1135. The Court was not convinced that all reasonable efforts had been employed to unite Father and the child, noting: (1) a case plan for reunification was never developed for Father indicating what was expected of him; (2) other than a parent aide, no services were provided to assist Father in developing effective parenting skills; (3) nothing in the record demonstrated that the exercise of visitation twice a week for an hour and a half over a six month period with a two-year-old child was sufficient time under the circumstances to establish a bond; (4) Father never cancelled or missed a single visit; (5) the DCS case manager did not explain why continuing the parent-child relationship between Father and the child posed a threat to the child's well-being. Id. at 1135-36.

In **In Re A.K.**, 924 N.E.2d 212, 221 (Ind. Ct. App. 2010), the Court found sufficient evidence supported the conclusion that continuation of the parent-child relationship between the child and Mother posed a threat to the child's well-being. The Court noted the following evidence in support of this conclusion: (1) Mother was unable to remain drug free, manage her mental illness, and maintain stable housing; (2) Mother's lack of communication with DCS and inability to meet the case plan requirements which would have allowed her visitation with the child demonstrated Mother's lack of interest in maintaining a relationship with the child. Id. The Court also found DCS presented clear and convincing evidence that continuation of the parent-child relationship between the child and Father posed a threat to the child's well-being. Id. at 224. The Court noted the following evidence which supported the trial court's threat to well-being conclusion: (1) the DCS caseworker testified that Father did not complete a domestic violence class or an additional parenting class as ordered by the court; (2) both the Court Appointed Special Advocate and the family consultant stated the child had indicated she was afraid of Father; (3) the child's behavior problems escalated after visitation with Father, for example, the child acted aggressively, had nightmares, did not sleep well, and urinated in odd places; (5) the therapist testified that if reunification efforts continued between Father and child, it would be a "major interruption" in the child's cognitive and emotional progress; (6) the child's developmental delays and poor hygiene on the date she was taken into DCS custody suggested that Father did not know how to properly care for her and Father still had not demonstrated that he had the knowledge to properly care for the child. Id. at 223-24.

In **In Re Term. of Parent-Child Relat. of A.B.**, 888 N.E.2d 231, 239 (Ind. Ct. App. 2008), the Court opined the trial court's determination that continuation of the parent-child relationships between Mother, Father, and the child posed a threat to the child's well-being was not supported by clear and convincing evidence. The Court noted the record showed: (1) following the child's removal from their care [due to medical neglect], Parents immediately complied with all court orders; (2) the caseworker testified that Parents had regular visitations with the child, and, before relocating to Pennsylvania, Parents completed parenting classes, participated with counseling, and did basically whatever the trial court had asked of them; (3) all drug screens for Parents were negative; and (4) when the environment at the paternal grandparents' home became too chaotic and dangerous for the children, Parents moved to Pennsylvania where they had requested and obtained employment transfers and where arrangements had been made for the family to rent a four-bedroom home owned by Mother's uncle. Id. at 238. At the time of the termination hearing, Parents were continuing to improve their economic and residential circumstances while living in Pennsylvania: (1) Father who had an Associate Degree, was employed at Arby's and was being considered for promotion into a management position; (2) Mother had recently changed jobs in order to earn a higher salary; (3) Mother had received a certificate from the children's school thanking her for volunteering over one hundred hours in the

classroom; (4) the child's older siblings, who were living with Parents, were enrolled in and succeeding academically at school and participated in the Head Start program, had medical coverage through Medicaid, and voluntarily attended summer school classes; (5) Mother's uncle had recently agreed to sell Parents the house they were renting from him; and (6) the paternal grandfather, who was retired, was residing in the family home, and was helping to care for the children when Parents were at work. Id. The Court observed that, at the time of the termination hearing, (1) the family was living in a four-bedroom home in Pennsylvania which had passed city inspection; (2) the child's surgery had been postponed indefinitely until the child was older; (3) the "Child Care Abuse History" background checks performed by Pennsylvania indicated a "clean background" for Parents; (4) Parents testified that they would make sure the child received all the medical care she needed, including any surgery she might need in the future, and the child's medical expenses would be covered by Medicaid until she turned eighteen years old; and (5) when questioned whether he "believed that [the child] would be in some form of danger, if she were to live with her biological mother and father[,]", the Guardian ad Litem responded, "No." Id. at 238-39.

In **In Re A.B.**, 887 N.E.2d 158, 170 (Ind. Ct. App. 2008), the Court affirmed the termination judgment. The Court held the trial court's finding that continuation of the parent-child relationship posed a threat to the child's well-being was supported by clear and convincing evidence. Id. at 167. The child had been hospitalized at the age of six years by Mother because of the child's out-of-control and aggressive behavior. The Courted noted: (1) the psychologist's testimony on how Mother struggled to meet her own personal and emotional needs; (2) the child repeatedly experienced significant regression after spending unsupervised time at home with Mother; (3) testimony of the treatment facility's therapist as to Mother's difficulty managing her emotions so as not to affect the child; and (4) testimony of the Guardian ad Litem that there had been tension between Mother and the child not just based on the child's negative behavior and that she felt the child "would continue to struggle greatly if she [were] returned to" Mother's care. Id. at 165-67. The Court also opined that termination is proper where the child's emotional and physical development is threatened, and the trial court need not wait until the child is irreversibly harmed. Id. at 167.

In **In Re S.L.H.S.**, 885 N.E.2d 603, 617, 619 (Ind. Ct. App. 2008), the Court affirmed the trial court's termination of Father's parental rights and held the evidence supported the trial court's finding that Father's history with his other children indicated a threat to the well-being of the child in this case. The Court noted that: (1) Father had a history of substantiated sexual abuse with his former step-daughter; (2) his niece testified that he had repeatedly molested her as a child; (3) the case manager testified regarding a substantiated case of medical neglect involving two of Father's children who were living in Florida; (4) other evidence revealed that Father had serious psychological issues which, if left untreated, could interfere with his ability to provide a safe home environment for the child; (5) the testimony

of a clinical psychologist who performed two psychological evaluations of Father and the case manager's testimony that he felt reunification posed a continuing threat to the child's safety and well being because of Father's "unaddressed sexual molestation issues and those unaddressed psychological issues"; and (6) at the time of the termination hearing, Father had not been involved in counseling other than one or two sessions. Id. at 617. The Court also noted Father's refusal to admit he had a problem and his failure to complete any of the court-ordered counseling. Id.

Termination is in the Child's Best Interest

IC 31-35-2-4(b)(C) requires that the termination petition allege that termination is in the best interests of the child. Indiana Appellate Courts have often held that a recommendation by both the DCS case manager and the Guardian ad Litem/Court Appointed Special Advocate to terminate parental rights, in addition to evidence that the conditions resulting in the child's removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child(ren)'s best interests. **See In Re A.G.**, 45 N.E.3d 471, 479 (Ind. Ct. App. 2015), *trans. denied*; **In Re A.S.**, 17 N.E.3d 994, 1006 (Ind. Ct. App. 2014), *trans. denied*; and **A.D.S. v. Ind. Dep't of Child Servs.**, 978 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.

In **Termination of Parent-Child Relationship [of R.S.]**, 56 N.E.3d 625, 631 (Ind. 2016), the Indiana Supreme Court reversed the trial court's order which terminated Father's parental rights to his ten-year-old son. The Court held the trial court's findings did not clearly and convincingly support its conclusion that termination was in the child's best interests. Id. The Court noted Father exercised parenting time with the child two to three times per week, including overnights, and the trial court concluded that continued visitation with Father was in the child's best interests. Id. at 630. The Court also noted that, since his release from incarceration, Father had repeatedly demonstrated a desire to parent the child and Father had made progress by his successful completion of probation and maintaining clean drug screens. Id.

In **In Re V.A.**, 51 N.E.3d 1140, 1153 (Ind. 2016), the Indiana Supreme Court reversed the trial court's termination judgment, finding that the evidence did not meet the heightened clear and convincing burden. The Court did not believe the trial court's concerns that Father might not be able to simultaneously care for Mother (who suffered from mental illness) and the child in the same household was a sufficient basis to find DCS had proven that termination was in the child's best interests. Id. at 1152 n.8. The Court found it clear that, at the time of the termination hearing, DCS had not yet found an adoptive home for the child.

Id. at 1152. The Court reviewed statistics, including: (1) in 2012 there were about 2400 children in Indiana foster care awaiting adoption; and (2) there were declining numbers of adoptions from DCS care between 2012 and 2014. Id. at 1152 n.9. The Court opined that relegating the child as a permanent ward of the State for an undetermined period of time until a special needs adoptive placement was identified did not clearly and convincingly show that termination was in the child's best interests. Id. at 1152-53.

In **In Re N.G.**, 51 N.E.3d 1167, 1174 (Ind. 2016), the Indiana Supreme Court affirmed the trial court's order which terminated Mother's parental rights to her son and twin daughters. The children were removed from Mother due to substantiated physical abuse of her son and her untreated mental health diagnoses. The Court opined that a reasonable finder of fact could conclude that termination was in the children's best interests. Id. The Court noted the following trial court findings: (1) the Court Appointed Special Advocate and the Guardian ad Litem both opined that termination was in the children's best interests; and (2) the son's psychiatrist opined that termination of parental rights was in the son's best interests. Id.

In **In Re E.M.**, 4 N.E.3d 636, 649 (Ind. 2016), the Indiana Supreme Court affirmed the trial court's order which terminated Father's parental rights to his two children. The children were in early infancy and barely one year old when they were removed from home by DCS due to Father's domestic violence against Mother. By the time of the termination hearing, the children had been removed for three and one-half years. Father argued that termination was not in the children's best interests, and at oral argument before the Court, cited social science research which shows significant benefit to children whose non-custodial fathers remain involved in their lives. The Court noted the following evidence: (1) the children had lived and bonded with their grandmother for nearly a year and one-half; (2) the children had never bonded with and did not know Father; (3) Father was still not ready to parent the children; (4) Father would likely need additional services on parenting, domestic violence, and anger management. Id. at 648. The Court opined that children's vital interests in both family preservation and permanency are inherently at odds in termination cases. Id. at 649. The Court held that, after hearing extensive testimony and reviewing voluminous exhibits, the trial court was within its discretion to find the children's needs to be weightier than Father's belated efforts. Id.

In **K.T.K. v. Indiana Dept. of Child Services**, 989 N.E.2d 1225, 1236 (Ind. 2013), the Indiana Supreme court affirmed the trial court's judgement which terminated Mother's rights to her three children, ages ten, seven, and two years. The Court "could not say that the trial court erred in concluding that termination of Mother's parental rights was in the children's best interests." Id. Among the evidence the Court noted in support of the trial court's conclusion was: (1) the children had been placed in five different living environments over a period of sixteen months and at times were separated; (2) the Guardian

ad Litem and DCS case manager both supported termination; (3) the children's therapist testified the children were doing better since they had been placed in Foster Parents' home four months before the court began hearing evidence on the termination petition; (4) the therapist testified the children's uncertainty of where they were going to be had been troublesome to them; (5) the case manager testified that the children's permanency needs would be satisfied by termination and adoption by Foster Parents. Id. at 1235. The Court opined that, not only did Mother's choice of conduct result in a substantial period of incarceration during the children's young lives, but she deprived them of their youth and innocence by exposing them to her drug usage and jeopardized their physical safety by neglecting to properly supervise them while she pursued her desire to continue using drugs. Id. at 1236.

In **In Re C.G.**, 954 N.E.2d 910, 925 (Ind. 2011), the Indiana Supreme Court found the evidence supported the trial court's findings that termination was in the child's best interests. The Court stated there was sufficient evidence to support the trial court's findings that: (1) a diligent inquiry to find and serve Mother was made to no avail; (2) to the best of Mother's knowledge she would be serving ten years of incarceration; (3) the child's therapeutic needs were being served; and (4) the child was bonded to her foster family and the goal was for the child to be granted a permanent home in a loving and stable environment. Id. at 924-95.

In **In Re G.Y.**, 904 N.E.2d 1257, 1258 (Ind. 2009), the Indiana Supreme Court reversed the termination judgment and held that the State did not present clear and convincing evidence to demonstrate that Mother's parental rights should be terminated. The Court found that none of the trial court's reasons was sufficiently strong to warrant a conclusion by clear and convincing evidence that termination of Mother's parental rights was in the child's best interests. Id. at 1263-66. The Court noted that (1) all of Mother's criminal history consisted of offenses committed before the child's conception, and for the first twenty months of the child's life, the record gave no indication that Mother was anything but a fit parent; (2) after her incarceration, Mother agreed her son was a CHINS; (3) the trial court ordered her to participate in treatment services and, despite the physical impossibility of completing some of the requirements, the record showed Mother took positive steps and made a good-faith effort to better herself as a person and parent; (4) at the time of the termination hearing, Mother had completed an eight-week drug rehabilitation program and was on a waiting list for phase II of the program; (5) Mother testified that participants in the drug rehabilitation program had their own individual counselors and also attended large group classes and that even though she had a history of drug use, she had not used cocaine since the year before the child's birth; (5) Mother also completed a 15-week parenting class and actively participated in "an inmate to work mate program through Arrowmarks" which results in an apprenticeship certification and job placement after release from prison; (6) Mother was also

in the midst of her second semester working towards an associate's degree, which when completed, would result in her release date being moved up; and (7) Mother had started a culinary arts certification program. Id. at 1262-64.

In **Matter of G.M.**, 71 N.E.3d 898, 909 (Ind. Ct. App. 2017), the Court affirmed the juvenile court's termination of Mother's parental rights. The CHINS petition was filed for the child when he was six days old based on Mother's use of unprescribed painkillers and heroin during pregnancy and the child's drug withdrawal at birth. The child also had a heart condition and required heart surgery. The Court held the juvenile court did not err when it concluded that termination of Mother's rights was in the child's best interests because there was sufficient evidence to support the conclusion. Id. The Court noted the following evidence in support of the trial court's conclusion: (1) the DCS case manager testified termination was in the child's best interests because he was established in a home where he had been provided with appropriate care, he had no bond with Parents, and Parents had not cared for or bonded with him; and (2) the Guardian ad Litem testified that termination was in the child's best interests because Mother had not made strides to address her substance abuse, had not attended the child's medical appointments or visited him, and had not learned about his medical condition. Id.

In **In Re A.W.**, 62 N.E.3d 1267, 1269 (Ind. Ct. App. 2016), the Court reversed the trial court's order which terminated Mother's parental rights to her two children, who are half-siblings. Mother and the Father of her younger child were married. The trial court did not terminate the parent-child relationship between Father and the younger child, and DCS did not appeal the trial court's denial of DCS's petition to terminate Father's parental rights. Mother and Father wished to reunite with the children after Mother's release from prison. The Court concluded that DCS had failed to prove by clear and convincing evidence that terminating Mother's parental rights to both children, thus separating the children, was in the children's best interests. Id. at 1275. The Court said that, while the Indiana Code does not prohibit terminating only one parent's rights to a child, terminating only one parent's rights in the case was "incongruous." Id. at 1273.

In **In Re S.E.**, 15 N.E.3d 37, 46 (Ind. Ct. App. 2014), the Court affirmed termination of Mother's parental rights, noting that multiple service providers, including the case manager and the Guardian ad Litem, testified that termination was in the child's best interests. The Court also noted that any last-minute attempt by Mother to correct her behavior was not necessarily sufficient to overcome a long record of more than two years of failure to comply with services. Id.

In **H.G. v. Indiana Dept. of Child Services**, 959 N.E.2d 272, 289 (Ind. Ct. App. 2011), the Court stated the evidence did not support the trial court's conclusion that termination was in

the children's best interest. The Court noted that Mother and Father of one of the children were incarcerated but had been cooperative and involved in the children's cases, had taken advantage of opportunities for improvement while in prison, had made every effort to obtain an early release, had a bond with the children, and their abilities to parent could be quickly assessed upon release. Id. at 291-92. The Court also noted that neither DCS nor the trial court took into account the obstacles which the Father of the other two children faced in finding a full-time job such as health problems, lack of reliable transportation, and a sluggish economy. Id. at 292. The Father of the other two children was employed full-time at the time of the termination hearing, and the Court observed that he had better prospects for finding appropriate housing. Id.

In **In Re H.L.**, 915 N.E.2d 145, 150 (Ind. Ct. App. 2009), the Court opined that DCS presented clear and convincing evidence from which the juvenile court could conclude that termination of Father's parental rights was in the best interests of the child. The Court noted the following: (1) Father, who was incarcerated, had not asserted that he would be able to provide a home for the child at any time within the next several years; (2) there was no evidence that Father was taking steps to further his education, acquire job skills, or secure employment after his release; (3) there was no indication that Father had family members able or willing to assist him by providing care for the child. Id. at 150. The Court also observed there was no evidence that Father had requested assistance with understanding or meeting the child's extraordinary medical needs, which were due to her diagnosis of cystic fibrosis. Id.

In **In Re A.D.W.**, 907 N.E.2d 533, 540 (Ind. Ct. App. 2008), the Court opined the evidence was sufficient to support the trial court's finding that termination of parental rights was in the children's best interest. The Court noted: (1) the trial court concluded termination was in the children's best interest because "[t]he child[ren] need [ ] stability, permanency, and a safe environment, none of which can be provided by the mother;" (2) the DCS family case manager testified that both children were comfortable and relaxed living with their aunt and uncle and that she believed that termination of Mother's parental rights was in the best interest of the children because the children's grades had improved since being placed with their aunt and uncle and the children had stability for the first time in their lives; and (3) the children's therapist testified that she believed it would be harmful to the children to continue the parent-child relationship and that the children had been doing better since having more stability in their lives and they would continue to improve with stability. Id. The Court concluded that the recommendations by the DCS case manager and the children's therapist, coupled with the evidence of Mother's extensive drug use, her failure to complete court-ordered services, and testimony that the children were thriving in their current home was sufficient to support a finding that termination of parental rights was in the children's best interest. Id.

In **In Re J.S.**, 906 N.E.2d 226, 237 (Ind. Ct. App. 2009), the Court concluded there was sufficient evidence to support the trial court's findings and ultimate determination that termination was in the child's best interests. The Court noted: (1) the severity of the child's initial injuries [multiple fractures, including fractures to the 6th and 7th ribs, the left tibia, and a hairline skull fracture]; (2) Parents' failure to offer an explanation as to how the child sustained these injuries; (3) Parents' failure to complete or to benefit from the many services available to them; and (4) the testimony of the family case manager and the Court Appointed Special Advocate recommending termination of parental rights. Id. at 237.

In **In Re I.A.**, 903 N.E.2d 146, 155-56 (Ind. Ct. App. 2009), the Court concluded the evidence was sufficient to support the trial court's determination that termination of Mother's parental rights was in the best interests of Mother's youngest child. The trial court had not terminated Mother's parental rights to four of her older children. The Court distinguished the youngest child's circumstances, noting that he had numerous medical problems and had never been in Mother's care. The Court observed that, at the time of the termination hearing: (1) the child was approximately four months shy of his second birthday and had never been in Mother's care or with his siblings on a day-to-day basis; (2) the child had formed a strong bond with Foster Parents who were responsible for taking him to his doctor and therapy appointments; (3) both the DCS family case manager and the Guardian ad Litem testified that termination was in the child's best interests. Id. at 156.

In **In Re M.S.**, 898 N.E.2d 307, 314 (Ind. Ct. App. 2008), the Court reversed and remanded the trial court's order terminating Mother's parent-child relationship with her oldest child because there was insufficient evidence that termination was in the child's best interests. The Court concluded that termination of Mother's parental rights was premature, in that everyone agreed that, for now, the child should continue to reside in a facility so that he could receive full-time medical and behavioral care, and no one could predict when, or even whether, the child would become stabilized, or what would be best for him when and if he did become stabilized. Id. at 313-14. The Court opined that, to say that Mother's parental rights must be terminated merely because her child had special needs and she needed help to manage his behavior would send a sobering message to all of the parents in Indiana with children who need ongoing medical or psychological assistance - in effect saying that if you have a child that is difficult and you do seek help for that child, your reward is the child is removed, never to return. Id. at 314.

In **C.T. v. Marion Cty. Dept. of Child Services**, 896 N.E.2d 571, 586 (Ind. Ct. App. 2008), the Court could not conclude that the trial court erred in its determination that termination of both Mother's and Father's parental rights was in the child's best interests. The Court noted the following evidence: (1) the caseworker's testimony that termination was in the child's best interest, and the child was placed with his two siblings in a pre-adoptive foster home

where he was bonded and doing well; (2) the Court Appointed Special Advocate's testimony that the child's foster mother was very attentive to the child and that his needs were being met; and (3) the Court Appointed Special Advocate was in agreement with the MCDCS's permanency plan that the child be adopted by his current foster parents. Id. at 586. The Court based its opinion on the totality of the evidence, including: (1) Mother's failure to remedy the conditions resulting in the child's removal; (2) Father's chronic and current incarceration; and (3) Parents' history with MCDCS, coupled with the caseworker's and Court Appointed Special Advocate's recommendations for termination and adoption. Id.

In **In Re L.B.**, 889 N.E.2d 326, 340-41 (Ind. Ct. App. 2008), the Court opined that the evidence was sufficient to support the juvenile court's determination that termination of Father's parental rights was in the best interests of his two children. The Court noted the following evidence: (1) the Guardian ad Litem testified she believed it was in the children's best interests to proceed with termination given the time that had elapsed and lack of participation in services by Parents; (2) the Guardian ad Litem testified she had visited with all the children in their current placements and agreed with DCS's permanency plan for the children to be adopted by their current foster parents; (3) the current case manager testified that termination was in the children's best interests, the children were doing very well in their placements and were bonded with their foster parents, and he could not recommend returning the children to Father because of Father's lack of participation in services and continued drug use. Id. at 340.

In **In Re Term. of Parent-Child Relat. of A.B.**, 888 N.E.2d 231, 232 (Ind. Ct. App. 2008), the Court reversed the trial court's judgment terminating Mother's and Father's parental rights, concluding that the judgment was clearly erroneous. The Court said that, although the Guardian ad Litem and the DCS caseworker both recommended termination of parental rights because they believed it was in the child's best interests to be adopted by her foster mother, this alone may not serve as a basis for termination of parental rights. Id. at 239. Citing In Re Miedl, 425 N.E.2d 137, 141 (Ind. 1981), the Court opined that a parent's rights to his or her children may not be terminated solely because a better place to live exists elsewhere. A.B. at 239.

In **Rowlett v. Vanderburgh County OFC**, 841 N.E.2d 615, 622 (Ind. Ct. App. 2006), the Court reversed the termination judgment, concluding the record did not support a finding that termination of Father's parental rights was in the best interests of the children. The Court noted that Father had maintained a relationship with his children while he was incarcerated: (1) Father sent the children letters; (2) the children sent him pictures they had drawn; and (3) Father telephoned the children and they were happy to talk to him, told him they loved him and asked when he was coming home. Id. To OFC's argument that termination of Father's rights was in the best interests of the children so they could be

adopted by the maternal grandmother and step-grandfather and be given a permanent home, the Court responded that, despite the importance of a stable environment in the matter of raising children, this in and of itself was not a valid basis for terminating the relationship between the natural parent and the children. Id. at 623. The Court held that under the circumstances where the children had been in the maternal grandmother's care for nearly three years and where the plans were that, upon termination of Father's rights, they would continue under her care, there was little harm in extending the CHINS wardship until such time as Father had a chance to prove himself a fit parent for the children. Id.

There is a Satisfactory Plan for the Care and Treatment of the Child

IC 31-35-2-4(b)(2)(D) requires that the termination petition allege:

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

IC 31-35-2-4(c) states that at the time the petitioner files the verified termination petition, the petitioner shall also file: (1) a copy of the order approving the permanency plan under **IC 31-34-21-7** for the child; or (2) a permanency plan for the child as described by **IC 31-34-21-7.5**. The permanency plan options described at **IC 31-34-21-7.5** may be summarized as: reunification with the custodial or noncustodial parent; placement for adoption; placement with a relative custodian; appointment of a legal guardian; or another planned, permanent living arrangement [if the child is sixteen years of age or older]. **See** the complete text of **IC 31-34-21-7.5** for additional details of the permanency options.

In **In Re Miedl**, 425 N.E.2d 137, 141 (Ind. 1981), the Indiana Supreme Court affirmed the trial court's judgment which terminated Mother's parental rights. The Court opined that it was certainly not the intent of the Legislature that the future plans for the children would be detailed in the evidence so that the court could choose the "best" alternative for the children. Id. at 140-41. The Court said it was obvious the Legislature intended that the Welfare Department would point out in a general sense to the trial court the direction of its plan. Id. at 141. The Court observed that the Welfare Department indicated its future plan was to place the children for permanent adoption and the trial court gave the order for that to be done. Id. The Court said that it would be impossible for the Welfare Department to find and select a proposed adoptive home prior to the termination judgment. Id.

In **In Re A.S.**, 17 N.E.3d 994, 1007 (Ind. Ct. App. 2014), *trans. denied*, the Court found the trial court did not err in determining that DCS's plan for the children's care and treatment was satisfactory. Id. DCS's plan was for the children's Aunt and Uncle to adopt them. Mother argued that DCS's plan was unsatisfactory because: (1) Aunt did not want anything to do with the children unless parental rights were terminated; and (2) DCS had terminated Aunt's visitation with the children because she had violated a condition of her visitation by discussing the case, the parents, and their half-sister's death with the children. The Court clarified that it need not address whether Aunt was a suitable parent, because that decision is within the jurisdiction of the adoption court. Id. The Court explained that it is within the authority of the adoption court, not the termination court, to determine whether an adoptive placement is appropriate. Id. The Court concluded it was satisfactory in this case that DCS's plan for the children was adoption. Id.

In **In Re J.C.**, 994 N.E.2d 278, 291 (Ind. Ct. App. 2013), the Court affirmed the trial court's termination of Mother's parental rights to her three children. On appeal, Mother argued that DCS's plan for the care and treatment of the children, namely adoption by Paternal Grandmother, was not satisfactory because Grandmother had taken the children to visit Father in prison on numerous occasions, but had not allowed similar visitation for the children with Mother while Mother was incarcerated. The Court responded that its standard of review and the controlling law compelled the Court to hold that the evidence supported the trial court's finding of an adequate plan for the children's care as a necessary element for termination of Mother's parental rights. Id. at 290. The Court noted that the finding was not tantamount to affirmation that adoption of the children by Grandmother would be in their best interests. Id.

In **H.G. v. Indiana Dept. of Child Services**, 959 N.E.2d 272, 294 (Ind. Ct. App. 2011), the Court reversed the termination judgment, and stated that a child's placement may be relevant in termination cases, especially where, as in this case, DCS relied heavily on a child's need for permanency. The three children, ages fourteen, eleven, and nine at the time of the termination hearing, had been placed together in a foster home which had been identified as the adoptive home for the children prior to the termination hearing. Id. at 279. Ten days after the termination hearing, DCS removed the children from the foster/adoptive home due to two licensing complaints. The children also told the family case manager that they would rather be moved to a new foster home than be adopted by the current foster parents. The Court acknowledged that adoption has been held to be a satisfactory plan even in cases where a potential adoptive family has not been identified, citing Lang v. Starke County Office of Fam. Children, 861 N.E.2d 366, 375 (Ind. Ct. App. 2007). H.G. at 294. The Court observed that "[a]though it is true that DCS is not required to *prove* anything concerning the adequacy of the children's placement, that it is not the same as saying that

the children's placement is *never relevant* to the facts that it must prove." (Emphasis in opinion.) Id.

In **In Re A.K.**, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010), the Court affirmed the termination judgment. The Court rejected Father's argument that DCS failed to prove there was a satisfactory plan for the child's care and treatment, noting the evidence established: (1) Foster Parents had filed a petition to adopt the child; (2) on the date of the termination hearing, the child had resided with Foster Parents for almost two years; (3) the child had a strong bond with the foster family and her interaction with Foster Mother was "excellent." Id.

In **In Re B.M.**, 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009), the Court, affirming the trial court's termination order, opined that the trial court did not err by failing to consider the child's placement with Father's sister in Illinois as an alternative to terminating Father's parental rights. The Court said that, contrary to Father's contention, **IC 31-34-6-2,** the statutory provision which requires DCS to consider placing a CHINS with an appropriate family member before considering any other placement, did not apply because this was a termination of parental rights proceeding rather than a CHINS proceeding. Id. The Court noted that: (1) as set forth in **IC 31-35-2-4(b)(2)(D)**, DCS is only required to establish that "there is a satisfactory plan for the care and treatment of the child" in termination proceedings; (2) adoption is a "satisfactory plan" for the care and treatment of a child under the termination of parental rights statute; and (3) the child had been living with his godparents for about a year and DCS's plan for the child was adoption. Id.

In **In Re L.B.**, 889 N.E.2d 326, 342 (Ind. Ct. App. 2008), the Court affirmed the trial court's order terminating Father's parental rights to his two children. In light of the evidence, the Court could not conclude that the plan set forth by DCS for the adoption of the children was unsatisfactory. Id. at 341. Citing In Re D.D., 804 N.E.2d 258 (Ind. Ct. App. 2004), the Court said the trial court must find there is a satisfactory plan for the care and treatment of the child, but the plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after termination. L.B. at 341. The Court noted the case manager's testimony that DCS's plan for the care and treatment of the children was adoption by their current foster parents. Id.

In **In Re S.L.H.S.**, 885 N.E.2d 603, 618-19 (Ind. Ct. App. 2008), the Court affirmed the termination judgment and found the evidence supported the trial court's finding that DCS had a satisfactory plan for the care and treatment of the child. The Court noted the plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated, and DCS's plan that the child be adopted was satisfactory. Id. at 618.

In **A.J. v. Marion County Office of Family**, 881 N.E.2d 706, 719 (Ind. Ct. App. 2008), the Court affirmed the termination judgment. Mother argued the plan was unsatisfactory, the seven children would be in three different homes, and there was no evidence that reunification with Mother would be harmful. In light of the evidence, the Court could not conclude that the DCS plan for adoption of the seven children in three different homes was unsatisfactory. Id. The caseworker testified: (1) the plan for the care and treatment of the children was adoption; (2) all seven children were currently in pre-adoptive homes and were doing well; (3) the three older boys were placed in a pre-adoptive home together, the next youngest child was placed in a separate home because she was struggling with some of her siblings, and the three youngest children were placed together in a third pre-adoptive foster home. Id.

In **Lang v. Starke Cty. Office of Fam. Children**, 861 N.E.2d 366, 379 (Ind. Ct. App 2007), the Court affirmed the termination judgment. The Court held the trial court's finding that there was a suitable plan in place for the children's care was supported by the evidence and was not clearly erroneous. Id. at 375. The Court noted the testimony of the DCS family case manager and the Court Appointed Special Advocate that the plan was adoption or independent living. Id. The Court found that: (1) attempting to find suitable parents to adopt the children was clearly a satisfactory plan; (2) the fact that there was not a specific family in place to adopt the children did not make the plan unsatisfactory; and (3) continuing the independent living situation, in which two of the children were currently enrolled, was an acceptable plan as it gave a general sense of the direction of the treatment and care that the two children would receive. Id.

VI. Selected Cases on Specific Subject Areas

Following are some selected termination cases on specific subject areas. The selected cases include opinions of the Indiana Supreme Court, recent opinions of the Indiana Court of Appeals, and some older Appellate opinions. Cases have been selected which offer a variety of opinions on each subject area.

Criminal Activity and Incarceration

In **In Re K.E.**, 39 N.E.3d 641 (Ind. 2015), the Indiana Supreme Court reversed the trial court's order which terminated Father's parental rights to the younger of his two children. Id. at 644. The Court held there was insufficient evidence to demonstrate there was a reasonable probability that Father could not remedy the conditions for removal or that

Father posed a threat to the child's well-being. Id. At the time of the termination hearing, Father, who had been convicted and incarcerated for dealing in methamphetamine, neglect of a dependent, and maintaining a common nuisance, expected to remain incarcerated for two to two and one-half years. The evidence revealed that Father had participated in twelve programs at the Department of Correction to improve his parenting and attitude and was attending AA and NA meetings. The Court opined that, although Father's possible release from prison was still over two years away at the time of the termination hearing, that fact alone was insufficient to demonstrate that the conditions for removal would not be remedied. Id. at 648. The Court declined to establish a bright-line rule for when release must occur to maintain parental rights. Id. The Court opined that a parent's potential release date is only one consideration of many that may be relevant in a given case. Id. The Court noted that it does not seek to establish a higher burden upon incarcerated parents based on their possible release dates, nor does the Court believe the burden of proof should be reduced mainly because a parent is incarcerated. Id.

In **In Re E.M.**, 4 N.E.3d 636 (Ind. 2014), the Indiana Supreme Court affirmed the trial court's order which terminated Father's parental rights to his two children, who were removed from home by DCS due to Father's repeated domestic violence against Mother when the older child was barely one year old and the younger child was in early infancy. Id. at 649. Father visited the children only once after their removal, and was incarcerated in Illinois for a felony firearm conviction the year after the children's removal. The Court recognized that Father's incarceration played a substantial role in his failure to bond with the children, but said that incarceration alone could not justify "tolling" a child welfare case as Father sought to do. Id. The Court observed that Father could not contend the lack of bonding with his children was merely a byproduct of his imprisonment when he had nearly a year before his imprisonment to engage in services and bond with his children but failed to do so. Id.

In **K.T.K. v. Indiana Dept. of Child Services**, 989 N.E.2d 1225 (Ind. 2013), the Indiana Supreme Court affirmed the trial court's termination judgment. Id. at 1236. The Court noted the record reflected Mother's history of criminal behavior, namely: (1) Mother was incarcerated for six months pending trial for charges of theft and receiving stolen property; (2) Mother was released, but was arrested again two weeks later for public intoxication, and remained incarcerated for three more months; (3) Mother's criminal background included operating while intoxicated convictions, multiple traffic citations, driving while suspended, and probation violations which resulted in probation revocation. Id. at 1232-1233. The Court also noted evidence from a psychologist evaluator that it was difficult to determine whether Mother's criminal mentality had been altered, and her criminal history strongly suggested that she was not opposed to violating the law or societal expectations for selfish purposes. Id. at 1233. The Court found the evidence clearly and convincingly supported the

trial court's finding that Mother had a "criminal mentality" that manifested itself in disregard for the law. Id. The Court quoted In Re A.C.B., 598 N.E.2d 570, 572 (Ind. Ct. App. 1992), a termination case, which states "[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." K.T.K. at 1235-36.

In **In Re C.G.**, 954 N.E.2d 910 (Ind. 2011), the Indiana Supreme Court affirmed the trial court's order which terminated the parental rights of incarcerated Mother. Id. at 925. Mother had left the child with a male friend in Indianapolis, traveled to Utah to visit family, and was arrested on federal charges and incarcerated in the Henderson County, Kentucky Jail awaiting trial. The Court, citing State of West Virginia ex rel Jeanette H., 529 S.E.2d 856, 877 (W. Va. 2000), adopted a policy that whether or not an incarcerated parent is permitted to attend a termination of parental rights hearing is within the sound discretion of the trial judge. C.G. at 922. The Court observed there is no absolute right to be present at a termination hearing. Id. at 921. The Court noted the following procedural safeguards undertaken by the trial court in this case: (1) Mother participated in both days of the termination hearing telephonically, with interpreters in the courtroom translating the proceeding into Spanish; (2) the courtroom was cleared out to provide Mother an opportunity to privately speak to her counsel; (3) the trial was bifurcated, giving Mother the opportunity to review the testimony presented by DCS with her counsel; (4) counsel had ample opportunity to confer with Mother, having been on the case for over six months. Id. The Court also noted the potentially significant cost of transporting Mother from Henderson, Kentucky to Indianapolis for the hearing, and said that its analysis might have been different if Mother had been across town in the Marion County Jail. Id. The Court said that videoconferencing equipment can be used in termination proceedings, subject to the provisions of Indiana Administrative Rule 14. Id. at 923 n.4. The Court noted evidence that Mother would be serving ten years of incarceration supported the trial court's findings that termination was in the child's best interests. Id. at 924-925.

In **In Re J.M.**, 908 N.E.2d 191 (Ind. 2009), the Indiana Supreme Court affirmed the trial court's denial of DCS's petition to terminate the parental rights of Mother and Father, who were incarcerated on dealing in methamphetamine charges. Id. at 196. The Court observed that Parents' release dates were relevant and important because their incarceration was the condition that resulted in the child's removal. Id. at 194-95. The Court also noted:
(1) Parents had fully cooperated with the services required of them while incarcerated;
(2) Parents had a relationship with the child prior to their imprisonment and attempted to keep the child in the care of relatives prior to their convictions; and (3) Parents' "ability to establish a stable and appropriate life upon release can be observed and determined within a relatively quick period of time. Thus the child's need of permanency is not severely prejudiced." Id. at 195-96.

In **In Re G.Y.**, 904 N.E.2d 1257 (Ind. 2009), the Indiana Supreme Court reversed the trial court's termination of Mother's parent-child relationship with her son, which had been affirmed by the Court of Appeals. Id. at 1266. The Court held the State did not present clear and convincing evidence to demonstrate that Mother's parental rights should be terminated. Id. at 1258. Among the evidence cited by the Court in support of its determination was that: (1) all of Mother's criminal history consisted of offenses committed before the child's conception; (2) the record gave no indication that Mother was anything but a fit parent for the first twenty months of the child's life; (3) at the time of the termination hearing, Mother had completed a drug rehabilitation program and a parenting class and was working on her associate's degree which would result in an earlier release date; (4) Mother and the child had been visiting once per month for two to four hours for at least one year and their interaction was appropriate. Id. at 1262-64.

In **Bester v. Lake County Office of Family**, 839 N.E.2d 143 (Ind. 2005), the Indiana Supreme Court reversed the trial court's termination of parental rights order, rejecting the court's conclusion (among others) that Father's criminal record supported a finding that continuation of the parent-child relationship threatened the child's well-being. Id. at 152-53. The Court noted evidence that Father's criminal history included five arrests and two convictions for possession of marijuana and one arrest for possession of controlled substances. Id. 152. The Court found the arrests and convictions did not demonstrate by clear and convincing evidence that Father's criminal history threatened the child's well-being when balanced against evidence that Father no longer had gang involvement, Father was employed full time, Father testified he had not used drugs since the child was born, Father tested negative for drugs on random tests, and the trial court made no finding that Father was currently or for the past three years had been involved with drugs. Id.

In **Matter of Danforth**, 542 N.E.2d 1330 (Ind. 1989), the termination petition was filed shortly after Father's release from prison, and granted after a hearing. The Indiana Supreme Court set aside the Court of Appeals opinion at 512 N.E.2d 228 and affirmed the juvenile court's termination judgment. Id. at 1331. The Supreme Court listed the following evidence as sufficient to support the judgment: (1) Father had recently been released from five years of incarceration; (2) Father had "repeatedly" committed armed robberies and one burglary; (3) Father had left the children in the getaway vehicle while he perpetrated a robbery; (4) Father told his wife he would kill her and the caseworker when released from prison; (5) the children had not been under the care of Father for six and a half years; and (7) Father's visits upset the children. The Supreme Court accepted Judge Buchanan's analysis of the situation in his dissent to the Court of Appeals opinion:

> The trial court must evaluate the parent's habitual patterns of conduct to determine whether there is a reasonable probability of future deprivation

> of the children. (citation omitted). The trial court need not wait until the children are irreversibly influenced such that their physical, mental and social growth is permanently impaired before terminating the parent-child relationship…Surely we need not wait for bleeding victims before we find sufficient evidence of the likelihood of Danforth's [Father's] future conviction.

Id.

In **In Re A.W.**, 62 N.E.3d 1267 (Ind. Ct. App. 2016), the Court reversed the trial court's order which terminated Mother's parental rights to her two children. Id. at 1269. Mother was sentenced to probation for possession of heroin two months after the children were adjudicated to be CHINS. Mother violated probation because she failed multiple drug screens, missed meetings with her probation officer, failed to complete intensive outpatient treatment, and committed a new criminal offense, and served two months in jail. About a year after the children's CHINS adjudication, Mother's probation was revoked and she was incarcerated. Mother was incarcerated at the time of the termination hearing and was scheduled to be released seven months after the hearing. The Court found DCS failed to prove by clear and convincing evidence that Mother's drug problem was unlikely to be remedied. Id. at 1274. The Court noted that, at the time of the termination hearing, Mother had made significant progress in dealing with her addiction and had participated in services during her incarceration. Id.

In **A.B. v. Indiana Dept. of Child Services**, 61 N.E.3d 1182 (Ind. Ct. App. 2016), the Court affirmed the trial court's order terminating Parents' rights. Id. at 1191. When her younger child was one year old, Mother was arrested and later pled guilty to two methamphetamine related charges and one charge of neglect of a dependent. Mother was sentenced to a total of fifteen years, with ten years executed and five suspended to probation. Mother was incarcerated throughout the CHINS and termination proceedings and had not seen her children for three years at the time the trial court entered the termination order. The Court found the record amply supported the trial court's conclusion that "Mother is in no position to care for the children and it is beyond reason for the children to have to wait for Mother to demonstrate an ability or willingness to meet their needs." Id. at 1190.

In **In Re A.G.**, 45 N.E.3d 471 (Ind. Ct. App. 2015), *trans. denied*, the Court affirmed the trial court's order which terminated incarcerated Father's parental rights. Id. at 480. The Court noted the following in support of the trial court's judgment: (1) Father had been incarcerated for four years and ten months out of the last seven years; (2) Father was convicted of auto theft in New York, identity fraud in Florida, and possession of a firearm by a felon in Georgia; and (3) Father was incarcerated months before the child was born,

and had never seen, held, supported, or cared for his child, who had resided in foster care for eighteen months, the child's entire life. Id. at 479.

In **In Re B.H.**, 44 N.E.3d 745 (Ind. Ct. App. 2015), *trans. denied*, the Court affirmed the juvenile court's order terminating Parent's rights to their two children. Id. at 752. The Court found evidence about Father's incarceration and other issues demonstrated that the juvenile court did not err by concluding termination of parental right was in the children's best interests. Id. The Court found the fact of Father's incarceration was not the sole evidence supporting termination. Id. at 751-52. The Court noted that Father's children were five and seven years old when he stabbed the children's uncle in their presence. Id. at 751. The Court also noted the following evidence in support of the trial court's order: (1) when the children were removed, Father was dealing in and using methamphetamine, which contributed to an environment that led to his seven-year-old child's positive test for methamphetamine; (2) Father's release date was nearly five years away from the date of the termination hearing; (3) Father did not testify about his housing or employment plans following his release, or his completion of any substance abuse programs while incarcerated. Id. The Court observed that, to the extent Father argued reversal of the termination order was warranted because DCS did not provide him with services during his incarceration, it is well established that DCS is not required to provide services before commencing termination proceedings. Id. at 752 n.3.

In **In Re R.A.**, 19 N.E.3d 313 (Ind. Ct. App. 2014), *trans. denied*, the Court reversed the trial court's order terminating Father's parental rights to his two-year-old son. Id. at 321-22. Ten months after the child was removed from Mother, Father's paternity of the child was established by DNA testing. Father was incarcerated in jail awaiting trial for sexual misconduct with a minor, theft, and possession of paraphernalia when he learned that his paternity was confirmed. The trial court terminated parental rights while Father was still in jail awaiting trial. The Court noted that, at the time of the termination hearings, Father's sister was available to care for the child and had begun visiting the child and Father's ability to care for the child was uncertain due to his incarceration. Id. at 321.

In **H.G. v. Indiana Dept. of Child Services**, 959 N.E.2d 272 (Ind. Ct. App. 2011), the Court reversed the trial court's termination order. Id. at 294. At the time of the termination hearing, Mother of the three children, ages fourteen, eleven, and nine, was incarcerated and her earliest release date was in two years and three months. Father of the oldest child was incarcerated and his earliest release date was in two years and eight months. The Court concluded the evidence did not support the trial court's conclusion that termination was in the children's best interests. Id. at 289. The Court noted Mother and Father had been cooperative and involved in their child(ren)'s cases, had taken advantage of opportunities for improvement while in prison, had made every effort to obtain an early release, had a

bond with their child(ren), and their abilities to parent could be quickly assessed upon release. H.G. at 291-92.

In **In Re M.W.**, 943 N.E.2d 848 (Ind. Ct. App. 2011), the Court reversed the trial court's order which terminated Father's parental rights. Id. at 856. The Court found that, given Father's cooperation with the Amended Parental Participation Plan offered by DCS and his scheduled release from incarceration soon after the termination hearing, the trial court's findings were not supported by clear and convincing evidence. Id. The Court noted: (1) Father was incarcerated shortly after the child's removal; (2) Father was incarcerated for half of the twenty months between the child's removal and the termination hearing; (3) Father was due to be released shortly after the trial court granted the termination petition; (4) despite incarceration, Father complied with almost all of the requirements of the Amended Parental Participation Plan; (5) Father was bonded with the child and was appropriate during visitations; (6) Father completed anger management classes, was evaluated for domestic violence counseling, submitted to random drug screens, obtained a drug and alcohol assessment and followed all recommendations, and completed a psychological evaluation and followed all recommendations; (7) when not incarcerated Father was either employed or actively seeking employment; (8) Father had resolved all of his criminal matters except for completing his final sentence; and (9) prior to his incarceration, Father had been accepted as a student at Ivy Tech and had been attempting to file an action to establish paternity and custody of the child. Id. at 855.

In **In Re H.L.**, 915 N.E.2d 145 (Ind. Ct. App. 2009), the Court affirmed the trial court's termination of incarcerated Father's parental rights, finding that DCS had established by clear and convincing evidence the requisite elements to support the termination judgment. Id. at 150. Father was incarcerated when the child was born and remained incarcerated throughout the CHINS process. The Court noted: (1) Father had not asserted that he was able to provide a home for the child at any time within the next several years; (2) there was no evidence that Father was taking steps to further his education, acquire job skills, or secure employment to commence after his release from incarceration; and (3) there was no indication that Father had family members able or willing to assist him by providing care for the child. Id.

In **C.T. v. Marion Cty. Dept. of Child Services,** 896 N.E.2d 571 (Ind. Ct. App. 2008), the Court affirmed the trial court's denial of a request by Father's counsel to continue the termination hearing until Father's release from prison which was scheduled to occur ten months later, and affirmed the termination of Father's parental rights. Id. at 588. The Court observed that Father: (1) was incarcerated and therefore unavailable to parent the child when the child was initially removed from Mother's care; (2) had a significant criminal history including twenty-one convictions, which resulted in his being unavailable throughout the

majority of the CHINS proceedings because of being in and out of prison; (3) failed in two prior CHINS proceedings to avail himself of court-ordered reunification services, and his failure to do so ultimately resulted in the termination of his parental rights to the child's siblings; (4) by the time of the termination hearing, had failed to complete any of the dispositional goals specified in the pre-dispositional report and was once again incarcerated and remained unavailable to parent the child. Id. at 584-85.

In **Castro v. Office of Family and Children**, 842 N.E.2d 367 (Ind. Ct. App. 2006), the Court held there was sufficient evidence to support the trial court's order terminating incarcerated Father's parental rights. Id. at 375. The Court opined that, despite Father's remarkably good record during incarceration, which included obtaining college degrees and participation in anger management, parenting classes, and other services, the following evidence supported termination: (1) Father had been incarcerated since prior to the nine-year-old child's birth; (2) Father had never been a part of the child's life and had seen her only when she was an infant; (3) Father was serving a forty year sentence for criminal deviate conduct and burglary; and (4) it would be sheer speculation to conclude that Father's sentence would be modified and that he would have the ability to support and care for the child. Id. at 373-75.

In **Rowlett v. Office of Family and Children**, 841 N.E.2d 615 (Ind. Ct. App. 2006), the Court reversed the trial court's judgment which terminated Father's parental rights. Id. at 624. Father did not live in the home when the children were removed from Mother. Father established paternity, admitted the CHINS allegations, and was granted supervised visitation, and was then incarcerated for three years for multiple convictions related to methamphetamines. The Court found that, given Father's positive strides toward parenting while incarcerated and commitment to continue personal improvement programs and services, OFC did not establish by clear and convincing evidence that the conditions which resulted in the removal of the children would not be remedied. Id. at 622. The Court noted the following significant considerations in reaching its conclusion: (1) Father's criminal history, substance abuse, child neglect, and unstable housing and employment mostly occurred before the CHINS judgment; (2) Father did not deny his substance abuse problem but testified he had not used substances since he was incarcerated; (3) Father's habitual pattern of neglect with the children (including transience and filthy and dangerous living conditions) prior to the CHINS case, did not accurately reflect his status and ability to care for his children as of the time of the termination hearing since Father was currently in a Therapeutic Community within prison and had completed significant services and made arrangements for employment and housing upon release from incarceration. Id. at 620-22. The Court concluded the record did not support the finding that termination of the parent-child relationship was in the children's best interest because Father maintained a relationship with the children through letters and telephone calls and the children loved him.

Id. at 622. The Court saw "little harm in extending the CHINS wardship" because the children were thriving in their grandmother's care. Id. at 623.

Parent's Low Cognitive Functioning

In **Egly v. Blackford County DPW**, 592 N.E.2d 1232 (Ind. 1992), the Indiana Supreme Court vacated the Court of Appeals opinion at 572 N.E.2d 312 and affirmed the trial court's decision which terminated the parent-child relationship between Parents and their two children. Id. at 1235. Mother had an IQ of 57 and Father had an IQ of 73. The Supreme Court found there was clear and convincing evidence to support the termination of Parents' rights. Id. The Court noted the following evidence: (1) at the time the children were removed from Parents' home, the older child, who was almost four years of age, was not yet toilet trained and suffered from a speech problem and the younger child, age nine months, was unable to crawl; (2) after the children were placed in foster care, the older child was toilet trained within two weeks, the younger child learned to crawl, and both children showed marked improvement in communication skills, education levels, and interaction with others; (3) the case worker testified that Parents were not capable of providing a nurturing, stable environment for the children; (4) a psychologist who counseled Parents for more than a year testified that Parents made no progress, further counseling would be of no assistance, and the children would be at serious risk if they were returned to Parents' household. Id.

In **B.H. v. Indiana Dept. of Child Services**, 989 N.E.2d 355 (Ind. Ct. App. 2013), the Court affirmed the trial court's judgment which terminated Mother's parental rights. Id. at 366. Among the evidence noted by the Court in support of the termination judgment was the expert social worker's assessment of Mother, which indicated that, due to her low cognitive functioning and emotional immaturity, Mother was not likely to benefit from the services being offered to her. Id. at 365.

In **T.B. v. Indiana Department of Child Services**, 971 N.E.2d 104 (Ind. Ct. App. 2012), the Court affirmed the trial court's judgment which terminated Mother's parental rights. Id. at 105. Mother's cognitive functioning is in the low to well-below average range. Mother's sole argument on appeal was that mentally retarded parents should be immune from losing their parental rights. Mother compared involuntary termination proceedings to criminal proceedings and asked the Court to assume that the result of a termination proceeding is actually a penalty to the parent, rather than a decision made in the best interests of the child. Mother posited that such a penalty violates the prohibition against cruel and unusual punishment found in Article 1, Section 15 of the United States Constitution because the

ultimate result is to make the child "legally dead" to the parent. Mother asked the Court to adopt a prohibition against the practice of terminating the parental rights of a parent who is mentally retarded. Citing Egly v. Blackford County DPW, 592 N.E.2d 1232, 1234 (Ind. 1992), the Court responded that, contrary to Mother's argument, the Indiana Supreme Court has made clear that the "purpose of terminating parental rights is not to punish parents, but to protect the children." T.B. at 110. Quoting Egly at 1234, the Court observed it is well-settled that "mental retardation, standing alone, is not a proper ground for termination of parental rights." T.B. at 110. The Court opined that it therefore stands to reason that the converse should also be true, that mental retardation, standing alone, is not a proper ground for automatically *prohibiting* the termination of parental rights (emphasis in opinion). Id. The Court declined "Mother's invitation to depart from the clear and unambiguous language of Indiana's termination statute in order to judicially legislate an exception whereby mentally handicapped parents are immune from involuntary termination proceedings." Id. The Court held the trial court's unchallenged findings clearly and convincingly supported its ultimate decision to terminate Mother's parental rights and found no error. Id.

In **In Re A.S.**, 905 N.E.2d 47 (Ind. Ct. App. 2009), the Court found there was clear and convincing evidence to support the termination of Mother's rights, and that Mother's mental deficits did not preclude this result. Id. at 51. The Court held that, regardless of Mother's mental deficits, she was unwilling to participate in the programs offered to her and was unwilling or unable to maintain suitable employment and housing, even with the help and resources of family members and programs. Id. The Court acknowledged that the Indiana Supreme Court has recognized that mental retardation, standing alone, is not a proper ground for terminating parental rights, but pointed out that rather than basing the termination on mental retardation, the trial court relied on Mother's failure to remedy the conditions that resulted in removal of her children and her ongoing threat to their well-being. Id. at 50. According to the Court, the trial court found that Mother displayed a continuing lack of stability, a neglect of the children's medical needs, and a lack of progress in participating in services offered, and, although there might be some link between Mother's mental deficits and her failures to participate in offered services, her mental deficits did not excuse those failures or allow her to keep her children regardless of the danger to their health and well-being. Id.

In **In Re J.T.**, 742 N.E.2d 509 (Ind. Ct. App. 2011), Mother had a borderline IQ of 79 and suffered from adult attention deficit disorder. The Court affirmed the termination judgment on the following evidence: (1) Mother did not understand basic child care concepts of child development and nutrition; (2) Mother lacked capacity to understand, appreciate, and provide a safe environment for the child; (3) Mother's tendency to be impatient, impulsive, intolerant, immature, and highly motivated by her feelings interfered with her ability to parent; and (4) Mother's prognosis for change was poor because she did not believe she had

problems and therefore was not likely to benefit from help. Id. at 512-14. In rejecting Mother's claim that her parental rights were terminated because of her low IQ and attention deficit disorder, the Court noted that Mother's rights were terminated because of her persistent inability to provide the child with care and ensure his safety. Id. at 514.

In **Stone v. Daviess Co. Div. of Child Serv.**, 656 N.E.2d 824 (Ind. Ct. App. 1995), Mother had cognitive and personality deficiencies, a dependent personality, and an IQ of 67; Father had an IQ of 71. Parents participated in services provided by OFC, including parenting classes, homemaker services, visitation, and family and individual counseling, but made little progress in solving their parenting problems. On appeal of the termination judgment, the Court found the evidence was sufficient to support the termination judgment based on the facts from the CHINS case and the following evidence: (1) Father's belief that hitting and use of a belt were acceptable and his unwillingness to consider different means of discipline; (2) testimony of the clinical social worker that Parents denied psychological or parenting skills problems and that the children would be at high risk of regression if returned to Parents' home; (3) testimony of the caseworker regarding Parents' continued denial of problems or need to change; (4) testimony of the homemaker regarding lack of progress on safety and cleanliness issues in the home; and (5) testimony regarding emotional and psychological harm suffered by the children in Parents' custody. Id. at 828-29. Parents alleged that OFC had violated the Americans with Disabilities Act (ADA) by failing to provide rehabilitation and reunification serves based upon their special needs. The Court found compliance with ADA was not an issue in the termination case because Indiana's termination statute does not require the State to prove that services were offered to assist parents to fulfill their parental obligations. Id. at 829-30.

In **Matter of Dull**, 521 N.E.2d 972 (Ind. Ct. App. 1988), the Court affirmed the trial court's judgment terminating Parents' rights to their two children. Id. at 973. Mother's IQ was 62 and Father's IQ was 72. Upon removal from Parents' home, the older child was found to be emotionally disturbed and the younger child was determined to be developmentally delayed. After spending time in foster care, the older child became less hyperactive and could be disciplined more easily and the younger child became a normal, healthy child. Parents attended court-ordered classes, but were unable to comprehend and learn basic parenting skills. The Court concluded the evidence supported the trial court's findings that Parents lacked the necessary skills to raise their children properly, thereby inhibiting the children's emotional development. Id. at 976. The Court opined that "although Parents' incapacity to provide properly for [the children's] emotional development was necessarily linked to Parents' mental retardation, their continued inability to provide for the children's well-being was clearly demonstrated by the testimony of DPW caseworkers, psychologists, and family counselors…" Id. at 977. The Court concluded that the trial court's consideration of

Parents' low intelligence levels, along with other evidence, supported the finding that the requirements of the termination statute were satisfied. Id.

Parent's Mental Illness

In **In Re Wardship of B.C.**, 441 N.E.2d 208 (Ind. 1982), the Indiana Supreme Court vacated the Court of Appeals opinion at 433 N.E.2d 19 and affirmed the trial court's order terminating the parental rights of Mother, who suffered from mental illness. Id. at 212. Mother had given her twenty-month-old child to a couple whom she did not know. Mother had been provided counseling, medication, hospitalization, and assistance in finding a stable home and employment, but Mother failed to take the medications, cooperate with the group home placement for herself, or visit the child. The Court stated, "[w]e find no reason to reverse the trial court on the mere claim that some medical program might exist which might possibly cure the mother." Id. at 211.

In **In Re G.H.,** 906 N.E.2d 248 (Ind. Ct. App. 2009), the Court affirmed the trial court's order terminating the parent-child relationship of Mother with her daughter. Id. at 254. The Court quoted the trial court's extensive findings regarding Mother's mental health, and summarized some of its own reasons as follows: (1) Mother might have a sincere desire to be reunited with the child, but she had been unable to make choices to support the child's well-being; (2) throughout DCS's involvement, Mother had demonstrated several troubling patterns of conduct, including her failure to regularly take medication to treat her bi-polar disorder, her inconsistent exercise of visitation with the child, her non-compliance with individual and group counseling, and her "blackout episodes," during which she exhibited violent behavior and had no memory of it; and (3) these patterns contributed to Mother's continuing inability to provide a safe and stable environment for the child. Id.

In **In Re A.J.**, 877 N.E.2d 805 (Ind. Ct. App. 2007), the Court affirmed the termination judgment, finding that it was supported by sufficient evidence. Id. at 816-17. The CHINS petition alleged that Mother was hospitalized in the psychiatric unit and needed mental health treatment. The Court noted the following evidence on Mother's mental health issues in support of the trial court's judgment: (1) Mother suffered from mental health issues, which were not likely to be remedied; thus the risk of future neglect and endangerment of the three children would also not likely be remedied; (2) Mother testified that she believed she did not have a mental health problem; (3) Mother admitted she had not participated in any psychological evaluation for nine months, and despite multiple recommendations by her therapists and case managers, she had not participated in any follow up counseling nor taken any medications for her mental health issues; (4) the social worker who conducted Mother's

psychosexual assessment had concerns about Mother's mental health issues and her inability to progress in therapy; (5) Mother's most recent case manager witnessed behaviors consistent with the social worker's concerns, including extreme belligerence, defensiveness, irrational thinking, and screaming at the case manager. Id. at 816.

In **In Re Invol. Termn. of Par. Child Rel. A.H.**, 832 N.E.2d 563 (Ind. Ct. App. 2005), the Court ruled the evidence was sufficient to support the trial court's termination of Father's parental rights. Id. at 571. The Court noted evidence that: (1) Father's mental health disorders included intermittent explosive disorder, anti-social personality disorder, and avoidant personality disorder; (2) Father's mental health disorders impaired his ability to adequately and safely parent; (3) Father had exhibited threatening and violent behavior to himself and others over a long period of time. Id. at 570-01. The Court found the evidence of Father's mental health impairment, together with his habitual pattern of conduct and inability to maintain a stable living environment for children, clearly demonstrated that termination was in the best interests of the children and that Father posed a threat to the well-being of the children. Id. at 571. The Court also noted the children, who had special needs, had thrived since their placement in foster care. Id.

Sexual Abuse

In **In Re E.P.**, 20 N.E.3d 915 (Ind. Ct. App. 2014), *trans. denied*, the Court affirmed the trial court's order which terminated Father's parental rights to his child. Id. at 917. Father had pled guilty to molesting his child's half-sister, and was incarcerated. The Court looked to **IC 31-35-3-8(1)**, which states that a showing that Father was convicted of an offense listed at **IC 31-35-3-4** [which includes the offense of child molesting] is prima facie evidence that "the conditions that resulted in the removal of the child from the parent under a court order will not be remedied." Id. The Court noted that DCS introduced evidence of Father's incarceration for molesting his child's half-sister, and Father did not object. Id. at 921. Although Father argued he had contradicted the prima facie evidence by protesting his innocence, the Court was not convinced that his claims contradicted the prima facie evidence presented by DCS. Id.

In **In Re S.L.H.S.**, 885 N.E.2d 603 (Ind. Ct. App. 2008), the Court affirmed the trial court's termination of Father's parental rights and noted: (1) Father had a history of substantiated sexual abuse of his former stepdaughter; (2) Father's niece testified that he had repeatedly molested her when she was a child; (3) Father had failed to complete court-ordered

counseling services and sex offender specific treatment; and (4) Father refused to admit he had a problem. Id. at 617-18.

In **In Re A.J.**, 877 N.E.2d 805 (Ind. Ct. App. 2007), the Court affirmed the termination judgment and opined that the evidence supported the trial court's termination order. Id. at 816-17. The three children were removed from Parents in part because there was a concern that the children had been sexually abused by Father. The Court found the record clearly supported the trial court's findings that one of the children had been sexually molested by Father and that Mother had failed to protect her from the molestations. Id. at 816. In support of the sufficiency of the evidence for the termination judgment, the Court noted: (1) the child's testimony regarding the abuse she suffered while in the care of Parents was both detailed and credible; (2) the child's testimony was substantiated by the testimony of her therapist and a psychologist who evaluated her; (3) at the time of the termination hearing, Father still had not admitted to sexually molesting the child; (4) Father had not completed *any* of the services recommended by DCS, including the sexual offender classes, which were necessary for reunification (emphasis in original). Id. The Court also concluded the trial court did not error in allowing the expert on sexual abuse treatment to testify to his recommendations, which were based on part on Parents' polygraph results. Id. at 814. The Court noted the polygraph results were not specifically reported, and DCS laid a proper foundation demonstrating that the use of polygraph examinations for the purposes of assessment and treatment is reasonably relied upon by experts in the field of sexual abuse treatment. Id.

In **Ramsey v. Madison County Dept. of Family**, 707 N.E.2d 814 (Ind. Ct. App. 1999), the Court ruled that prima facie evidence of Father's conviction for sexually molesting the child, together with evidence that the child feared being abused by Father, and exhibited behavioral and emotional problems including encopresis, running away, setting fires, and sexual acting out, was sufficient to support the termination judgment. Id. at 817.

In **Adams v. Office of Fam. & Children**, 659 N.E.2d 202 (Ind. Ct. App. 1995), the Court opined that Parents were collaterally estopped from arguing in the termination case that Father had not sexually molested his daughters. Id. at 206. The Court said that the proper forum for this argument was an appeal from the CHINS dispositional order. Id. In the CHINS proceeding, the trial court had found that Father had molested his daughters. The Court noted that Parents were parties in the CHINS and disposition hearings, and Parents had a full and fair opportunity to litigate the issue of whether Father had molested his daughters. Id. The Court found the state proved the statutory elements of the termination case, and noted the following evidence from the record: (1) the children were removed from Parents' home because Father had sexually molested the two oldest daughters and there was a reasonable probability that the abuse would continue if the children were returned to

Parents' home; (2) Parents did not satisfactorily complete their required counseling and services; (3) numerous experts testified that the children would still be vulnerable to sexual abuse if returned to Parents' home. Id. at 206-07. The Court affirmed the termination judgment. Id. at 207.

Physical Abuse, Unreasonable Corporal Punishment, and Failure to Protect

In **In Re N.G.**, 51 N.E.3d 1167 (Ind. 2016), the Indiana Supreme Court affirmed the trial court's order which terminated Mother's parental rights to her children. Id. at 1174. The Court affirmed the trial court's conclusion that the findings clearly and convincingly supported the judgment. Id. at 1172. The findings included Mother's history of physically abusing her son, Mother's failure to protect her son from abuse by her boyfriend, and Mother's history of verbal abuse toward her children. Id. at 1172-73.

In **Matter of Robinson**, 538 N.E.2d 1385 (Ind. 1989), the Indiana Supreme Court affirmed the termination judgment, and noted the following evidence: (1) Father had visited the children only one time since their removal; (2) Father had "failed to make any efforts to reestablish himself with the children"; (3) Father had been convicted of abuse of two of the girls and they were terrified of him; (4) one of the girls was still in psychiatric care and her recovery was questionable; (5) Father had not complied with the disposition order; (6) Father had been under psychiatric care and had been uncooperative and disruptive in partial hospitalization and residential programs; and (7) Father had resisted all efforts by the welfare department toward rehabilitation. Id. at 1388.

In **In Re J.S.**, 906 N.E.2d 226 (Ind. Ct. App. 2009), the two-month-old child had been hospitalized with multiple fractures, including fractures to the 6th and 7th ribs, the left tibia, and a hairline skull fracture with bleeding behind the fracture, and a CHINS petition was filed. Id at 229. The Court found that the trial court's subsequent termination judgment was supported by sufficient evidence. Id. at 237. The Court noted the finding that there was a reasonable probability the conditions justifying removal and continued placement in foster care would not be remedied was supported by specific evidence including: (1) the child was removed from Parents' care at two months of age because he received several serious fractures while in Parents' care; (2) there was no explanation as to the cause of the injuries, but the medical diagnosis report indicated that all of the injuries happened within 24 to 48 hours of the child's hospital admission and were "non-accidental"; (3) although Parents did participate in and even complete some of the court-ordered services, their participation was sporadic, often volatile, and ultimately unsuccessful; (4) the case manager testified that the results of the court-ordered psychological evaluations had raised more concerns about

Parents' ability to appropriately care for the child, and that Parents were unable to apply the techniques they had learned in their parenting classes during their visits with the child. Id. at 232-34.

In **Lang v. Starke Cty. Office of Fam. Children**, 861 N.E.2d 366 (Ind. Ct. App. 2007), the Court affirmed the trial court's termination judgment, concluding that clear and convincing evidence existed to support the judgment. Id. at 370. The CHINS petition was filed because Father hit one of his three children with a belt, leaving bruises and marks and affecting her ability to walk. Father was convicted of class D felony battery resulting in bodily injury, and his child was the victim. The Court held the trial court's finding that there was a reasonable probability that the conditions which led to the children's removal would not be remedied was supported by the evidence and was not clearly erroneous. Id. at 373. The Court noted the following evidence in support of its conclusion: (1) Father clearly had a lengthy history of using unreasonable corporal punishment; (2) besides the incident for which Father was convicted, the battery victim testified that Father had done similar things to her sisters and that he had thrown her into a dresser; (3) Father had not shown the ability to differentiate between reasonable and unreasonable corporal punishment or that he had changed his views on what corporal punishment would be reasonable; (4) Father continued to defend his actions surrounding the battery incident for which he was convicted. Id. at 372-73.

In **McBride v. County Off. Of Family & Children**, 798 N.E.2d 185 (Ind. Ct. App. 2003), the children were removed from Mother's care and adjudicated CHINS because she was living with Father, who had been convicted of cruelty to the children in Georgia. There had also been new incidents of domestic violence between Mother and Father in the presence of one of the children. The Court affirmed the trial court's subsequent termination order and concluded that OFC proved by clear and convincing evidence that the conditions which led to the children's removal would not be remedied. Id. at 202-03. The Court noted the following evidence concerning Mother's failure to protect the children which supported its conclusion: (1) although OFC repeatedly recommended that Mother have no contact with Father to protect both her and the children's interests, Mother refused the recommendations and maintained contact with Father; (2) Mother attended only four counseling sessions and stopped attending domestic violence counseling; (3) the OFC caseworker testified she did not see that the pattern of Mother going back to an abuser was going to change; (4) the psychologist evaluator testified that Mother had been placing her needs before the needs of the children; (5) the children's Court Appointed Special Advocate testified that for the last seven and one-half years Mother had been making decisions which endangered her children, and the Court Appointed Special Advocate did not see this endangerment changing after four removals and multiple evaluations and services. Id. at 202.

In **Everhart v. Scott County Office of Family**, 779 N.E.2d 1223 (Ind. Ct. App. 2002), the Court affirmed the trial court's termination judgment, finding that there was sufficient evidence to sustain it. Id. at 1235. The CHINS adjudication was due to Father's physical abuse of his two-month-old child, during which the child suffered two skull fractures and permanent injuries requiring surgeries. The Court observed the trial court's findings relating to the reasonable probability that the continuation of the parent-child relationship posed a threat to the children were not clearly erroneous. Id. at 134-35. The Court noted the following evidence in support of the findings: (1) while the two episodes of abuse during a two-week period did not show a long history of abuse, they did show a series of uncontrollable, violent conduct; (2) Father admitted that when the child was crying, he picked her up by her head and squeezed her head; (3) Father admitted to throwing the child and striking her on the head; (4) Father demonstrated a lack of interest in the well-being of the children while he was incarcerated; (5) Father was sentenced to fourteen years of incarceration; although he asserted that he would be out of prison in seven years, counting good time and other available credits; (6) Father indicated his willingness to move to Georgia for treatment and to not see the children again. Id. at 1234.

In **In Re Children: T.C. and Parents: PC**, 630 N.E.2d 1368 (Ind. Ct. App. 1994), Mother admitted in the CHINS case that she struck her five-year-old child with a belt causing welts on his buttocks and face, she lacked financial means to support the child, and the child attended kindergarten sporadically. A later born child was removed a few days after birth based on the caseworker's assessment that Mother would be unable to care for him. A termination petition was filed and granted for both children. The Court reversed the termination judgment. Id. at 1375. The Court found the younger child's removal from home based on a single incident of abuse which occurred with a sibling two years previously did not warrant termination. Id. at 1374. The Court stated the "vague reference to the possibility of inappropriate conduct with [younger child] is not clear and convincing evidence of the factors" in the termination statute. Id. The Court ruled that the one incident of unreasonable punishment of the older child, combined with the record, did not support a termination order. Id. The Court noted that only unreasonable corporal punishment is proscribed by statute. Id.

Drug Use

In **K.T.K. v. Indiana Dept. of Child Services**, 989 N.E.2d 1225 (Ind. 2013), the Indiana Supreme Court affirmed the trial court's termination judgment and found the evidence clearly and convincingly showed there was a reasonable probability that the conditions which led to the children's removal from Mother's home would not be remedied. Id. at

1234. The Court noted the following evidence on Mother's drug abuse problem and her response to treatment: (1) the children were placed in foster care due to Mother's serious substance abuse issues, which rendered her incapable of providing the necessary care and supervision which the children required; (2) Mother admitted she had snorted hydrocodone and Xanax at the time, which contributed to the children's removal; (3) Mother began taking illegal drugs at the age of fifteen, had battled an addiction to prescription drugs for seven years, and had abused other illegal substances throughout the children's lives; (4) DCS case managers testified that Mother's drug screens tested positive for opiates, cocaine, and marijuana. Id. at 1232. The Court noted evidence that Mother had forty negative drug screens during seventeen months, but opined it was within the trial court's discretion to consider that the first eleven months of Mother's sobriety were spent in prison. Id. at 1234.

In **Bester v. Lake County Office of Family**, 839 N.E.2d 143 (Ind.2005), the Indiana Supreme Court reversed the termination judgment, rejecting the trial court's conclusion that Father's record of crimes and drug abuse supported a finding that continuation of the parent-child relationship threatened the child's well being. Id. at 152. The Court noted the evidence of Father's criminal history, which included five arrests and two convictions for possession of marijuana and an arrest for possession of controlled substances. Id. The Court found Father's criminal history did not demonstrate by clear and convincing evidence that continuation of the relationship threatened the child's well-being when balanced against evidence that Father no longer had gang involvement, was employed full time, testified he had not used drugs since the child was born, the record showed negative drug tests for Father, and the trial court made no finding that Father had been involved with drugs in the past three years or was currently involved with drugs. Id.

In **Matter of G.M.**, 71 N.E.3d 898 (Ind. Ct. App. 2017), the Court affirmed the trial court's order terminating Mother's parental rights, finding the juvenile court did not err when it concluded there was no reasonable probability that Mother would remedy the conditions which led to the child's removal from her care. Id. at 909. The CHINS petition was filed when the child was six days old, and was based on Mother's use of unprescribed painkillers and heroin and the child's drug withdrawal at birth. Among the juvenile court's findings in the termination order were that Mother did not comply with services and had four positive drug screens, which were for oxycodone, methadone, and opiates without a prescription, before she stopped reporting for drug screens. Mother disputed the court's findings, but the Court noted multiple exhibits containing the results of Mother's drug screens which were presented by DCS supported the trial court's conclusion. Id. at 906.

In **In Re O.G.**, 65 N.E.3d 1080 (Ind. Ct. App. 2016), *trans. denied*, the Court reversed and remanded the juvenile court's order which terminated Parents' rights to their child. Id. at 1096. The Court identified Mother's marijuana use as a reason for the child's removal from

her care and custody, but found no evidence supported a conclusion that Mother's substance abuse would not be remedied. Id. at 1092. The Court noted evidence that: (1) Mother completed a substance abuse assessment, which recommended no further substance abuse services; (2) Mother completed a number of random drug screens, and there was no evidence that Mother provided any problematic screens. Id.

In **In Re B.H.**, 44 N.E.3d 745 (Ind. Ct. App. 2015), the Court affirmed the trial court's order which terminated Mother's and Father's rights to their two children. Id. at 752. The Court said the children were removed as a result of Mother's admitted drug use and the older child's positive test for methamphetamine. Id. at 750. The Court noted the following evidence: (1) over the course of the CHINS case, Mother repeatedly failed to take a substance abuse assessment; (2) after Mother completed the assessment, she failed to complete the recommended Intensive Outpatient Program; (3) Mother repeatedly tested positive for opiates for which she did not have a prescription and failed to appear for multiple random drug screens; (4) during the CHINS proceedings, Mother gave birth to a third child who tested positive for opiates and methamphetamine at birth. Id.

In **In Re A.S.**, 17 N.E.3d 994 (Ind. Ct. App. 2014), *trans. denied*, the Court affirmed the trial court's order which terminated Mother's and Father's parental rights. Id. at 997. The children were removed from home as a result of Parents' drug use during the trial home visits. The Court noted the following evidence on Parents' failures to complete substance abuse treatment: (1) Mother's substance abuse worsened when DCS returned the children for the trial home visit; (2) after her second substance abuse evaluation, Mother attended only four meetings of group and individual therapy in the months before the termination hearing; (3) although Father did not abuse drugs in the eight months preceding the termination hearing, he failed to complete his substance abuse assessment when the children were placed with him for a trial home visit; (4) Father failed to attend the last eight weeks of his substance abuse program, and was discharged for non-compliance. Id. at 1005.

In **In Re D.W.**, 969 N.E.2d 89 (Ind. Ct. App. 2012), the Court affirmed the trial court's termination judgment. Id. at 97. Evidence showed that Father: (1) completed a substance abuse assessment, but failed to show up for any of the intensive outpatient group sessions that met twice per week; (2) during two years of CHINS proceedings, complied with submitting to random drug screens and tested negative for drugs during only three months; (3) at other times did not call in for drug screens or tested positive for drugs, including heroin, marijuana, alcohol, and opiates; (4) lost his employment due to drugs and remained unemployed; (5) never completed home-based services due to missed appointments; (6) failed to participate in substance abuse therapy; (7) attended court-ordered counseling only sporadically and did not show motivation; and (8) admitted that he had still been using drugs on first day of the termination hearing. Id. at 92-93. The Court concluded the trial

court had sufficient findings to support its conclusion that Father consistently failed to take advantage of services provided and ordered by the court, consistently failed to stay clean of drugs, and, although Father testified he had not used drugs for a month, his sobriety was "tenuous" in light of his history. Id. at 97.

In **In Re A.B.**, 924 N.E.2d 666 (Ind. Ct. App. 2010), the Court affirmed the trial court's termination judgment, and found there was sufficient evidence to support the trial court's findings with respect to Mother. Id. at 671. The child tested positive for cocaine at birth. Mother challenged the trial court's finding that the conditions that led to the child's removal from her care would not be remedied, nothing the lack of documentary evidence that she ever failed any drug test. The Court stated the sole condition that led to the child's removal was Mother's drug use shortly before the child's birth, leading to the child's positive cocaine test. Id. at 670. The Court noted the trial court found that Mother had "failed to address her substance abuse issues…" Id. at 671. The Court could not say this finding was clearly erroneous because: (1) Mother was twice referred to participate in a drug and alcohol abuse assessment, but she failed to follow through both times; (2) Mother twice began submitting to random drug screens but both times she quit participating in them shortly thereafter; (3) there was some indirect evidence that Mother did in fact test positive for cocaine usage after the child was born, when Mother attempted to give an implausible explanation for why there was cocaine in her system. Id. The Court opined this evidence made it reasonable to reach the conclusion that Mother's drug abuse issue was not remedied. Id. The Court stated, "[a] parent whose drug use led to a child's removal cannot be permitted to refuse to subject to drug testing, then later claim DCS has failed to prove that the drug use has continued. Mother cannot and should not prevail with such a circular and cynical argument." Id.

In **In Re A.D.W.,** 907 N.E.2d 533 (Ind. Ct. App. 2009), the two children were removed from the home following Mother's stay in a hospital emergency room for a panic attack, during which she tested positive for methamphetamines, benzodiazepine, and cocaine. In affirming the termination judgment, the Court concluded that Mother's extensive drug use; her failure to complete court-ordered services, including her failure to cooperate with the drug treatment facility personnel and failure to complete the drug treatment program; and her recent positive test for morphine, hydrocodone, hydromorphone, and alpha-hydroxy alprzolam was sufficient to support the termination of Mother's parental rights. Id. at 539.

In **Prince v. Department of Child Services**, 861 N.E.2d 1223 (Ind. Ct. App. 2007), the children had been adjudicated CHINS on two separate occasions because of Mother's drug and alcohol abuse and because she left the children unattended. The Court affirmed the termination order despite Mother's insufficiency of the evidence challenge. Id. at 1224. Mother argued the evidence that she had begun drug treatment two months after the filing of

the termination petition and that she had been sober for nine months at the time of the termination trial should have compelled the trial court to conclude that the circumstances resulting in the children's removal had changed. The Court was not persuaded, noting the trial court's decision did not undermine the rehabilitative focus of the CHINS statutory scheme; rather, it reinforced that the time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the termination petition. Id. at 1230. The Court opined the termination statutes do not require the court to give a parent additional time to meet obligations under a Parent Participation Plan. Id. The Court also rejected the suggestion that the responsibility for Mother's failure to achieve and maintain sobriety in a timely fashion belonged to either the trial court or DCS. Id. at 1231. The Court stated the responsibility to make positive changes must stay on the parent, and, if the parent feels the services ordered by the court are inadequate to facilitate the changes required for reunification, then the onus is on the parent to request additional assistance from the court or DCS. Id.

In **In Re A.I.**, 825 N.E.2d 798 (Ind. Ct. App. 2005), the Court affirmed the termination judgment and found there was "little doubt that the parties' serious substance abuse addictions detrimentally affected or greatly endangered" the child. Id. at 811, 817. The Court noted the following: (1) Mother checked herself into substance abuse treatment three times, but left each time before completing the program; (2) Mother had abused Klonopin, morphine, Oxycontin, and Lortab and used methamphetamine, cocaine, alcohol and marijuana; (3) a substance abuse facility staff person believed that Mother's dependence was at a very high level, that Mother needed intensive treatment, and that Mother would die if she did not quit substance abuse; (4) Mother had ingested 25-30 Lortabs on one of the days of the termination trial; (5) Parents tested positive for drug use in random tests. Id. at 810-11.

Failure to Cooperate with Services

In **Matter of G.M.**, 71 N.E.3d 898 (Ind. Ct. App. 2017), the Court affirmed the juvenile court's order which terminated Mother's parental rights. Id. at 909. The juvenile court ordered Mother not to have drugs in her system when she visited the child, to participate in a substance abuse evaluation and ongoing substance abuse treatment, to attend visitation with the child, and to attend random drug screens. In support of the juvenile court's termination order, the Court noted the following evidence: (1) Mother did not complete the substance abuse evaluation and never met with a substance abuse counselor; (2) Mother did not visit with the child regularly; (3) Mother did not seek to understand the child's heart condition and how to treat it; and (4) Mother had multiple positive drug screens, the last of which resulted in her arrest and subsequent incarceration for violation of probation. Id. at 908. The

Court said that Mother did not complete services, and "the time for completion of those services had long passed." Id.

In **In Re J.W., Jr.**, 27 N.E.3d 1185 (Ind. Ct. App. 2015), the Court affirmed the trial court's termination of Parents' rights to their two children. Id. at 1191. The Court noted the trial court found that Parents had repeatedly failed to cooperate with, attend, or make progress in the parenting aid services, visitation, and drug screens when those programs were made available to them, and the evidence supported the court's findings. Id.

In **D.B.M. v. Indiana Dept. of Child Services**, 20 N.E.3d 174 (Ind. Ct. App. 2014), *trans. denied*, the Court affirmed the trial court's termination judgment. Id. at 182. The Court noted the following evidence: (1) the case manager and the Guardian ad Litem testified that Father did not comply with the court's order to participate in services recommended by the family functioning assessment; (2) Father did not exercise any parenting time with the child and had no relationship with him; (3) Father did not attend the termination hearing, and the case manager and the Guardian ad Litem did not know his whereabouts. Id.

In **In Re S.E.**, 15 N.E.3d 37 (Ind. Ct. App. 2014), *trans. denied*, the Court affirmed the trial court's order terminating Mother's parental rights. Id. at 48. The Court noted the following evidence supported the trial court's conclusion that the reasons for the child's removal or continued placement outside of Mother's home would not be remedied: (1) multiple service providers testified they were unable to provide services to Mother because she was confrontational, accusatory, or noncompliant; (2) a psychologist, the lone provider who was still working with Mother at the time of the termination hearings, characterized Mother's progress as "mild"; (3) the DCS case manager testified that Mother made essentially no progress while the case was pending. Id. at 46.

In **In Re D.K.**, 968 N.E.2d 792 (Ind. Ct. App. 2012), the Court affirmed the termination judgment and held there was clear and convincing evidence that the conditions that led to the child's removal and continued placement outside Mother's care would not be remedied because Mother never completed any of the recommendations or requirements set forth in the CHINS dispositional order. Id. at 798. The Court noted that Mother: (1) never completed a parenting class, despite many opportunities; (2) failed to maintain a stable residence, and lived in no fewer than eight places over two years, and testified that she didn't "stay in one place"; (3) wasted her opportunity to be reunited with the child in a group home, and instead, chose to violate the group home's rules, resulting in her expulsion from the home; (4) continued to display a lack of interest in the child by declining DCS's interstate assistance in arranging for the child to live with Mother while she was in Louisville. Id. at 798-99.

In **In Re D.B.**, 942 N.E.2d 867 (Ind. Ct. App. 2011), the Court reversed the juvenile court's judgment which terminated Father's parental rights. Id. at 875. The child and her five half-siblings were taken into custody by DCS when Mother was arrested. Father was located and began visiting the child but did not get involved in services because Mother was "on track" with regaining custody of the child. Upon learning of Mother's subsequent arrest and incarceration, Father began participating in parenting classes, individual and family counseling, home-based services, and substance abuse classes in order to gain custody of the child. After first testing positive for marijuana, Father completed six months of clean random drug screens following his successful completion of the substance abuse classes. The Court opined a thorough review of the record revealed that the trial court's finding that Father had tested positive for marijuana *throughout the case* was not supported by clear and convincing evidence (emphasis in opinion). Id. at 873. The Court noted: (1) although Father tested positive for marijuana at the beginning of the CHINS case, he did not test positive on any subsequent drug screens throughout the remaining two years of the underlying proceedings; (2) Father successfully completed a substance abuse program and thereafter submitted to six consecutive months of drug screens; (3) the case manager explained that there were some "initial issues" with marijuana, but Father thereafter "tested clean" for six months and DCS "dismissed" that service; (4) Father confirmed he had not used marijuana since he tested positive. Id. The Court opined the juvenile court's findings that Father "did not participate in individual counseling" and was "sporadic with his visitation" were also not supported by the evidence. Id. at 874. The Court said the law makes it abundantly clear that termination of a parent-child relationship is an extreme measure to be used only as a last resort when all other reasonable efforts have failed. Id. at 875. Given the circumstances, the Court did not believe this case had reached the "last resort" stage. Id.

In **In Re A.K.**, 924 N.E.2d 212 (Ind. Ct. App. 2010), the Court concluded that clear and convincing evidence supported the trial court's judgment terminating Mother's and Father's rights to the child. Id. at 224. The Court observed the child's developmental delay and poor hygiene when she was taken into DCS custody suggested that Father did not know how to properly care for the child. Id. at 223. The Court also noted the following evidence concerning Father which supported the termination judgment: (1) Father tested positive for marijuana and failed to take two random drug screens; (2) Father refused to participate in A.A. or N.A., which reflected poorly on his stated goal of reunification with the child; (3) the DCS caseworker testified Father did not complete a domestic violence class or an additional parenting class as ordered by the court. Id. at 222-23. The Court noted that Father had actively participated in family therapy and visitation with the child, but the child feared Father and her behavioral problems escalated after visitation with Father. Id. at 223-24. The Court observed Father still had not demonstrated that he had the knowledge to care for the child properly. Id. at 224.

Visitation Issues

In **In Re N.G.**, 51 N.E.3d 1167 (Ind. 2016), the Indiana Supreme Court affirmed the trial court's judgment terminating Mother's parental rights to her three children. Id. at 1174. The Court affirmed the trial court's conclusion that the findings about the children's best interests and whether there was a reasonable probability that the conditions for the children's removal would not be remedied "clearly and convincingly supported the judgment." Id. at 1172-73. The Court noted findings about Mother's visitation with the children: (1) Mother was unable to control and redirect the children's behavior during visitation; (2) the children exhibited negative behaviors immediately following visitation; (3) the children suffered emotional distress as a result of contact with Mother; and (4) the children's behavior and mental health improved after visitation with Mother was suspended. Id. at 1173.

In **C.A. v. Indiana Dept. of Child Services**, 15 N.E.3d 85 (Ind. Ct. App. 2014), the Court affirmed the trial court's order which terminated Mother's and Father's parental rights. Id. at 95-96. The Court noted the evidence about Mother's visitation with the children which supported the termination order: (1) Mother frequently cancelled visits with the children and did not meet with the provider who transported her to the visits; and (2) when Mother visited the children, she talked on the phone throughout the visits, and then left thirty to forty-five minutes early. Id. at 94.

In **In Re D.B.**, 942 N.E.2d 867 (Ind. Ct. App. 2011), the Court reversed the juvenile court's judgment terminating Father's parental rights and remanded the case for further proceedings under the CHINS orders. Id. at 875. The Court found the juvenile court's determination that continuation of the parent-child relationship posed a threat to the child's well-being was without evidentiary support. Id. at 874. The Court noted the following evidence on Father's visitation with the child: (1) Father had missed only six out of forty-one scheduled visits; (2) Father explained that his missed visits were oftentimes due to a request by the office to change his regularly-scheduled weekday visits to some other date which Father could not accommodate due to his work schedule with a temporary agency; (3) weekend visits took place in a different office, which was not on the public bus route, and Father lacked a car since he had given the family car to his wife when they separated; (4) Father wanted to see the child in December and had a gift for her, but was told the Christmas visit would have to wait until the following week when Father's work commitment made it impossible to switch to a different date as requested by the office. Id. at 873-74.

In **In Re A.K.**, 924 N.E.2d 212 (Ind. Ct. App. 2010), the Court affirmed the trial court's termination judgment. Id. at 224. On the issue of Father's visitation with the child, the Court noted the following evidence in support of the judgment: (1) Father actively participated in visitation and had been trying to find ways to connect with the child through toys; (2) the therapist observed that the child was excited to see Father, appropriately physically affectionate toward Father, and had commented on her love for Father; (3) the Court Appointed Special Advocate and family consultant testified that the child had indicated that she was afraid of Father; (4) the therapist opined that the child was secure in her attachment to her foster family and was struggling with the idea of reunification with Father; (5) the child's behavioral problems escalated after she had visitation with Father; (6) the child's level of anxiety had increased as visitation with Father continued; (7) the foster mother testified that, after visitation with Father, the child acted aggressively, had nightmares, did not sleep well, and urinated in odd places; (8) the child's therapist testified that she asked for Father's visitation to be decreased because of the child's "continual acting out around the visits." Id. at 223.

In **Lang v. Starke Cty. Office of Fam. Children**, 861 N.E.2d 366 (Ind. Ct. App. 2007), the Court affirmed the judgment terminating Father's parental rights. Id. at 379. Father had not visited the children for over two years because he refused to comply with DCS conditions of not using corporal punishment and not discussing termination proceedings with the children. The Court noted that Father's inaction regarding visitation reflected his lack of commitment to preserving his relationship with his children and the fact that Father would rather not see his children than to see them with imposed conditions spoke volumes of his commitment to remedying the problems that led to the children's removal. Id. at 373.

In **In Re E.S.**, 762 N.E.2d 1287 (Ind. Ct. App. 2002), the Court reversed the trial court's termination order because there was insufficient evidence to support it. Id. at 1288. DFC did not provide Mother with any services, but Mother sought assistance on her own. She attended parenting classes, at which her instructor reported that she excelled. Mother also regularly attended counseling. The trial court had terminated Mother's visitation with the child due to the child's deteriorating behavior following visits, and visitation was never resumed. The Court noted Mother's assertion that the child changed foster homes, was put on psychotropic medication, and changed therapists and therapy methods after Mother's visitation was terminated. Id. at 1291. The Court said, given that visitation was never resumed after the changes in the child's life, there was insufficient evidence to prove that maintenance of the parent-child relationship posed a threat to the child's well-being. Id. at 1292.

Parent-Child Bonding Issues

In **In Re E.M.**, 4 N.E.3d 636 (Ind. 2014), the Indiana Supreme Court affirmed the trial court's order terminating Father's parental rights to his two children, who were removed from home when the older child was barely one year old and the younger child was in early infancy. Id. at 649. The Court noted that: (1) the children had been removed from home for nearly three and one-half years at the time of the termination trial: (2) Father had visited the children one time; (3) the children had lived and bonded with their grandmother for nearly a year and a half, while never having bonded with Father. Id. at 648. The Court observed that Father could not contend the lack of bonding was merely a byproduct of his imprisonment when he had nearly a year before his imprisonment to engage in services and bond with his children but failed to do so. Id.

In **In Re I.A.**, 934 N.E.2d 1127 (Ind. 2010), the Indiana Supreme Court reversed the trial court's judgment which had terminated Father's parental rights. Id. at 1136. The Court concluded DCS had failed to prove by clear and convincing evidence that there was a reasonable probability that by continuing the parent-child relationship, the emotional or physical well-being of the child was thereby threatened. Id. at 1136. As an alternative ground for terminating Father's parental rights, the trial court determined that continuance of the relationship posed a threat to the child's well-being because Father had "not bonded" with the child. Id. at 1135. The Court observed that the trial court and DCS apparently were referring to what they perceived as insufficient emotional attachment and interaction between Father and child. Id. The Court noted the record certainly demonstrated that Father's parenting skills were lacking, but observed that a case plan for reunification was never developed for Father indicating what was expected of him. Id. The Court also noted that, other than a parent aide, no services were provided to assist Father in developing effective parenting skills. Id. at 1135-36. The Court saw "little harm in extending the CHINS wardship until such time as Father has a chance to prove himself a fit parent for his child." Id. at 1136.

In **In Re R.H.,** 892 N.E.2d 144 (Ind. Ct. App. 2008), the Court reversed and remanded the trial court's termination of Father's parental rights with respect to his son. Id. at 145. The Court held that, although evidence of Father's lackluster efforts to communicate and visit with his son, Father's refusal to relocate to Indiana from Alaska, and his son's strong bond with his grandparents with whom he had lived for over three years, would be relevant to a determination of custody and/or guardianship, the evidence was insufficient on its own to support the radical act of severing the parent-child relationship. Id. at 151. The Court opined that the termination order essentially rested on three conclusions: (1) Father had not made a

sufficient effort to communicate and bond with his son; (2) Father had refused to move to Indiana; and (3) it would be traumatic to the child to have to leave his grandparents, to whom he was strongly bonded, to live with Father, with whom he was not bonded. Id. at 150. The Court observed that: (1) Father completed all court-ordered services; (2) there were successful outcomes to those services in that his psychological evaluation revealed no problems, he completed two multi-week parenting classes, his residence was found to be a suitable place for his son to live, and he was found to have a suitable support system in Alaska consisting of his father and stepmother; (3) Father attended all hearings either in person or telephonically; and (4) Father stayed in touch with his son's case managers and Guardian ad Litem. Id. The Court remanded the case, leaving the trial court with the option of holding a hearing to determine issues of custody and guardianship. Id. at 151.

In **Castro v. Office of Family and Children**, 842 N.E.2d 367 (Ind. Ct. App. 2006), the Court affirmed the order terminating incarcerated Father's parental rights. Id. at 378. Father was serving a forty year sentence for criminal deviate conduct and burglary. The trial court's findings included that Father had held the child once while Father was in jail, had ten visits with the child between her birth and the time she was eighteen months old, and had written four letters which had been conveyed to the child through her therapist. Id. at 371. The Court cited Matter of A.C.B., 598 N.E.2d 570, 572 (Ind. Ct. App. 1992), stating the Court recognized that "[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." Castro at 374.

In **In Re D.L.**, 814 N.E.2d 1022 (Ind. Ct. App. 2004), the Court concluded the trial court's denial of the termination petition for Mother's older child was clearly erroneous, and reversed and remanded the case with instructions to enter a termination order regarding the older child. Id. at 1030. The Court noted the older child was bonded to Mother and to Foster Parents. Id. at 1029. The younger child was bonded to Foster Parents, who desired to adopt both children. Id. The Court deemed the bonding of the older child to Mother was inconsequential, as it was likely the result of the age difference between the two children. Id. at 1030.

Housing, Hygiene, Safety, and Stability

In **In Re V.A.**, 51 N.E.3d 1140 (Ind. 2016), the Indiana Supreme Court reversed the trial court's order which terminated Father's parental rights. Id. at 1153. The child was removed from the care of her parents because Mother, who suffered from mental illness, was unwilling to take her medication, and Father was unwilling to live separately from Mother,

to whom he was married. The Court opined that Father's unwillingness to live separately from his mentally ill spouse, without more, was an insufficient basis upon which to terminate *his* parental rights (emphasis in opinion). Id. at 1147. The Court observed that, other than concerns expressed by therapists and DCS case managers based on generalized behaviors of individuals suffering from psychotic disorders, there was no evidence that *this* Mother had acted in a way that resulted in or created a substantial risk of harm to the child, and the record did not support the conclusion that the child in Father's care, albeit with Mother present, would be at risk (emphasis in opinion). Id. at 1149.

In **Bester v. Lake County Office of Family**, 839 N.E.2d 143 (Ind. 2005), the Indiana Supreme Court reversed the trial court's judgment which terminated Father's parental rights. Id. at 153. The Court opined the trial court's finding that Father had neither established himself as independent nor obtained his own residence provided little guidance concerning whether these facts demonstrated that the child's well-being would be threatened by Father's custody. Id. at 150. The Court reviewed the evidence regarding Father's living arrangements over the relevant period and found the trial court's findings revealed no causal connection between Father's living arrangements and any adverse impact those arrangements might have on the child. Id. at 151. The Court noted the trial court had not concluded that Father was unable or unwilling to provide the child with an adequate home or that the homes of his relatives where he had lived were unsuitable for the child. Id. The Court concluded that the evidence offered on Father's housing did not support a reasonable inference that Father's living arrangements and his alleged lack of independence posed or had ever posed a threat to the well-being of his child. Id. The Court also reviewed the Interstate Compact on the Placement of Children, and found it did not apply to the sending or bringing of a child into a receiving state when it is done by a parent. Id. at 153. The Court opined the trial court's finding that Father could not obtain approval from the State of Illinois to allow his child to be placed with him was irrelevant to the question of whether continuing the parent-child relationship posed a threat to the child's well-being. Id.

In **In Re B.H.**, 44 N.E.3d 745 (Ind. Ct. App. 2015), *trans. denied*, the Court affirmed the trial court's judgment terminating Mother's and Father's parental rights. Id. at 752. The Court noted the following evidence in support of the termination judgment: (1) Mother had been wholly unable to maintain stable housing; (2) while Mother's one-time residence met minimal standards, her live-in boyfriend, a convicted violent felon with substance abuse issues and DCS history, did not; (3) Mother was homeless one month before the second day of the termination hearing; (4) Father had dealt in and used methamphetamine in the house where the children were living, which contributed to an environment that cause his seven-year-old child to test positive for methamphetamine. Id. at 750-51.

In **B.H. v. Indiana Dept. of Child Services**, 989 N.E.2d 355 (Ind. Ct. App. 2013), the Court affirmed the trial court's judgment which terminated Mother's parental rights. Id. at 366. Affirming the trial court's ultimate determination that there was a reasonable probability the conditions leading to the children's removal and continued placement outside Mother' care would not be remedied, the Court noted: (1) Mother had moved twelve times since the children's removal, and she paid for only one of those residences; and (2) at the time of the termination hearing, Mother was living with her brother and sister in a two bedroom apartment, and Mother testified that the children could not live there. Id. at 365-66.

In **In Re D.K.**, 968 N.E.2d 792 (Ind. Ct. App. 2012), the Court held there was sufficient clear and convincing evidence to support the termination of Mother's parental rights. Id. at 799. The Court noted that Mother lived in no fewer than eight places over a period of two years, and Mother testified that she did not "stay in one place." Id. at 798-99. The Court said that Mother's evidence that she had obtained a new apartment and put a down payment on the rent was not, by itself, sufficient evidence to reverse the trial court's judgment. Id. at 799. Since a parent's habitual conduct must be considered in determining whether to terminate parental rights, a last minute change in conditions does not necessarily trump evidence of years of a pattern of behavior. Id. The Court noted Mother was highly unstable for two years, and this was her habitual pattern; there was no guarantee that her last minute improvement would last any longer than any of her previous living situations, especially given her current unemployment. Id.

Child's Need for Permanency

In **Termination of Parent-Child Relationship [R.S.]**, 56 N.E.3d 625 (Ind. 2016), the Indiana Supreme Court reversed the trial court's order which terminated Father's parental rights to his ten-year-old son. Id. at 626. The Court noted that the child had a stable home environment with Grandmother. Id. at 531. The Court opined that, when a child is in relative placement, and the permanency plan is adoption into the home where the child has lived for years, prolonging the adoption is unlikely to have an effect upon the child. Id. at 630.

In **In Re V.A.**, 51 N.E.3d 1140 (Ind. 2016), the Indiana Supreme Court reversed the trial court's order which terminated Father's rights to his four-year-old child. Id. at 1153. The Court opined that permanency is certainly *a* factor in determining whether termination is in the child's best interests, but clarified that a child's need for immediate permanency is not reason enough to terminate parental rights where the parent has an established relationship with his child and has taken positive steps toward reunification (emphasis in opinion). Id. at 1152.

In **In Re K.E.**, 39 N.E.3d 641 (Ind. 2015), the Indiana Supreme Court reversed the trial court's order which terminated incarcerated Father's parental rights. Id. at 652. The Court found it significant that the child's aunt, with whom the child was placed, the Court Appointed Special Advocate, and the DCS case manager all acknowledged that it was unlikely the child would be harmed by delaying termination of Father's parental rights. Id. at 650. The Court noted the aunt's willingness to adopt the child at any time and that her willingness to adopt the child would not change if termination was delayed. Id.

In **In Re E.M.**, 4 N.E.3d 636 (Ind. 2013), the Indiana Supreme Court affirmed the trial court's order which terminated Father's parental rights. Id. at 649. Father's two children, a newborn infant and barely one year old, were removed from home due to Father's repeated domestic violence against Mother. At the time of the termination trial, the children had been removed from Father for nearly three and one-half years. The children had never bonded with Father, and he was still not ready to parent them. The Court held it was not clearly erroneous for the trial court to conclude that; (1) Father's efforts toward reunification simply came too late; and (2) the children needed permanency more than they needed a final effort at family preservation. Id. at 649.

In **K.T.K. v. Indiana Dept. of Child Services**, 989 N.E.2d 1225 (Ind. 2013), the Indiana Supreme court affirmed the trial court's order which terminated Mother's parental rights to her three children. Id. at 1236. The Court concluded that the evidence supported the trial court's finding that termination of Mother's parental rights was in the children's best interests. Id. The Court noted the trial court's conclusion that the children's need for permanency was paramount. Id. at 1235. Since the children were adjudicated wards of DCS, they had been placed in five different living environments over a period of sixteen months and had been separated at times. The Court noted the following evidence: (1) the children's home-based therapist testified that the uncertainty of their placement and future had been troublesome to the children; (2) the children's psychologist testified the children were more bonded with Foster Parents than would normally be expected and opined that the children's best interests would be served by allowing them to remain in Foster Parents' care; (3) the Guardian ad litem and the case manager testified the children needed a permanent home; (4) the case manager confirmed the children's permanency needs would be satisfied because Foster Parents had already expressed a desire and willingness to adopt them. Id.

In **In Re J.M.**, 908 N.E.2d 191 (Ind. 2009), the Indiana Supreme Court affirmed the trial court's denial of the petition to terminate the parental rights of Parents, who were both incarcerated at the time of the termination hearing, finding that the trial court's judgment was not clearly erroneous. Id. at 196. The Court observed that the evidence from the record supported the trial court's conclusion that Mother's and Father's "ability to establish a stable

and appropriate life upon release can be observed and determined within a relatively quick period of time. Thus, the child's need of permanency is not severely prejudiced." Id.

In **In Re G.Y.**, 904 N.E.2d 1257 (Ind. 2009), the Indiana Supreme Court reversed the trial court's order terminating incarcerated Mother's parental rights. Id. at 1266. The Court noted the trial court's reason that termination was in the child's best interests because of his general need for "permanency" and "stability", based on the testimony of the caseworker and the child's Guardian ad Litem. Id. at 1265. The Court further noted the Guardian ad Litem's recommendation that there be some future agreement which would allow the child to have contact with Mother, based on the Guardian ad Litem's observation that the child and Mother had a bond and their interaction was generated on both sides. Id. The Court said that: (1) permanency is a central consideration in determining the best interests of a child; (2) in this case the child was under the age of five and Mother's release from prison was imminent; (3) given the highly positive reports about the quality of the placement, the Court was unable to conclude that continuation of the CHINS foster care arrangement would have much, if any, negative impact on the child's well-being. Id. The Court did not find the child's need for immediate permanency through adoption to be a sufficiently strong reason, either alone or in conjunction with the court's other reasons, to warrant a conclusion that termination of Mother's parental rights was in the child's best interests. Id. at 1265-66.

In **In Re O.G.**, 65 N.E.3d 625 (Ind. Ct. App. 2016), *trans. denied*, the Court reversed and remanded the juvenile court's order terminating Parents' rights to their child. Id. at 1096. The Court opined that, although the need for permanency and stability in a child's life cannot be overlooked, that need cannot trump a parent's fundamental right to parent her child. Id. at 1094.

In **In Re A.S.**, 17 N.E.3d 994 (Ind. Ct. App. 2014), *trans. denied*, the Court affirmed the trial court's order which terminated Parents' rights to their children. Id. at 1007. The Court opined that the need for permanency alone is insufficient to terminate parental rights. Id. at 1006. The Court noted multiple service providers had testified that termination would serve the children's best interests, and that, in the two years of the children's removal, Parents still had not completed services and continued to struggle with substance abuse. Id.

In **H.G. v. Indiana Dept. of Child Services**, 959 N.E.2d 272 (Ind. Ct. App. 2011), the Court reversed the trial court's termination judgment, finding DCS failed to prove that termination was in the children's best interests. Id. at 294. On the subject of permanency, the Court noted the testimony of the case manager and Court Appointed Special Advocate that the children needed permanency, but said that the mere invocation of words like "stability" or "permanency" does not suffice to terminate parental rights. Id. at 293. Mother and Father of the oldest child were incarcerated at the time of the termination hearing and Father of the

two youngest children had only recently obtained full-time employment. The Court noted that Parents still had work to do before reunification would be possible, but they had shown willingness to continue working toward reunification and they clearly had a bond with the children. Id. The Court also noted that Parents all had issues with drug use and run-ins with the law, but they had each made significant efforts at self-improvement. Id. The Court opined that because no adoptive family had been identified and the children were placed in a new foster home shortly after the termination hearing, there appeared to be little harm in allowing Parents to continue to work toward reunification. Id. The Court said that this was especially true in the oldest child's case, as he had expressed an unwillingness to be adopted. Id.

In **A.J. v. Marion County Office of Family**, 881 N.E.2d 706 (Ind. Ct. App. 2008), the Court affirmed the trial court's termination judgment and addressed the trial court's finding that the children needed permanency and stability which Parents were unable to provide. Id. at 718. The Court held that this finding was supported by the testimony of the children's DCS caseworker and Guardian ad Litem. Id. The Guardian ad Litem testified: (1) the children's behavioral problems, as well as some of the other problems, would be rectified if they had permanency; (2) the children needed to be somewhere they knew they were going to stay and feel comfortable; and (3) Parents had not been engaged with the children, had not been visiting them, and had not moved forward on reunification over a long period of time. Id. The caseworker testified: (1) termination was in the children's best interests because they needed a permanent home; and (2) the children needed stability and a "forever family." Id. Both the Guardian ad Litem and the caseworker testified they had visited the children in their three pre-adoptive foster homes, the children were doing well, and the foster parents were committed to adoption, engaged in the children's lives, and were addressing the children's emotional needs. Id.

In **McBride v. County Off. Of Family & Children**, 798 N.E.2d 185 (Ind. Ct. App. 2003), the Court affirmed the termination of parental rights on evidence that the children needed permanency. Id. at 203. Both the Court Appointed Special Advocate and DCS caseworker testified that permanency was needed. Id. The children had been removed from their parents three times and had been in and out of the system for at least 75 percent of their lives. The three children had lived in nine foster homes and one shelter. Id. at 193.

Child's Desires and Fears

In **K.T.K. v. Indiana Dept. of Child Services**, 989 N.E.2d 1225 (Ind. 2013), the Indiana Supreme Court affirmed the trial court's order terminating Mother's parental rights to her

three children, ages ten, seven, and two years of age at the time of the termination order. Id. at 1228. Among the evidence the Court noted was: (1) in a letter which the ten-year-old child wrote to the trial court, the child begged the court to allow the children to remain with their Foster Parents and recounted instances when he observed Mother snorting drugs in the bathroom; (2) the seven-year-old child told a psychologist that she did not feel safe with Mother because Mother drank beer and the child fell into a fire pit when Mother was supposed to be watching her. Id. at 1236.

In **Matter of A.F.**, 69 N.E.3d 932 (Ind. Ct. App. 2017), *trans. denied*, the Court affirmed the trial court's order which terminated Father's parental rights to his three children. Id. at 949. The trial court allowed the Guardian ad litem to summarize the children's wishes for their future placement as follows: (1) the oldest child wanted only to be adopted; (2) the middle child wanted to be returned to Mother or Father, but, if this was not possible, she felt loved by Foster Parents and wanted to be adopted; (3) the youngest child wanted Mother and Father to reunite or to live with Father, her uncle, and her grandfather, but if these two options were not possible, she would be happy to be adopted by Foster Parents. Although Father argued that the trial court had abused its discretion by allowing the Guardian ad Litem to testify about the children's statements to her, the Court noted: (1) Father did not object following the court's statement that the Guardian ad Litem could summarize what the children said; and (2) two of the children indicated that they would live with Father. Id. at 948. The Court opined that, under the circumstances and in light of other evidence, reversal was not warranted. Id.

In **C.A. v. Indiana Dept. of Child Services**, 15 N.E.3d 85 (Ind. Ct. App. 2014), the Court affirmed the trial court's order which terminated Parents' rights to their three children. Id. at 87. The Court noted the following evidence in support of the trial court's conclusion that there was a reasonable probability that continuation of the relationship with Father posed a threat to the children's well-being: (1) the children suffered from Post-Traumatic Stress Disorder as a result of living with Father; (2) according to their therapist, the children had connected to Foster Parents and were doing very well in school; (3) the children's therapist opined that the children "would be re-traumatized" if they were reunited with their parents, which is "a very negative thing because the more repeated trauma a child suffers, the less likely they are [sic] to heal"; (3) the oldest child began "sobbing uncontrollably" and "had a complete meltdown" when the therapist mentioned the possibility of reunification. Id. at 96.

In **Lang v. Starke Cty. Office of Fam. Children**, 861 N.E.2d 366 (Ind. Ct. App. 2007), the Court affirmed the termination order, holding the trial court's finding that termination was in the children's best interests was supported by the evidence and was not clearly erroneous. Id. at 374. Among the evidence noted by the Court was the testimony of DCS caseworkers and the Court Appointed Special Advocate that termination was in the children's best

interest because the children did not wish to return home due to their fear of Father and that termination would ease the children's anxiety about the possibility of returning home in the future. Id.

In **Ramsey v. Madison County Dept. of Family**, 707 N.E.2d 814 (Ind. Ct. App. 1999), the Court affirmed the trial court's termination judgment. Id. at 818. In response to Father's claim that OFC had not presented clear and convincing evidence, the Court noted: (1) Father was convicted of child molesting and incest, and the child, age seven at the time of the offenses, was the victim of these crimes; (2) due to Father's conviction and because the child victim was under the age of sixteen, there was prima facie evidence that the conditions that resulted in the child's removal from Father would not be remedied and that continuation of the parent-child relationship posed a threat to the child's well-being; (3) there was evidence that the child feared being abused by Father again; (4) the child exhibited behavioral and emotional problems and would require counseling indefinitely; (5) Father had sent the child letters and pictures despite the court's no contact order. Id. at 817.

In **Stone v. Daviess Co. Div. Child Serv.**, 656 N.E.2d 824 (Ind. Ct. App. 1995), the Court was not persuaded by Father's argument that it was error to terminate the parent-child relationship against the wishes of one of the children. Id. at 832. The facts showed that the thirteen-year-old child had been deposed with his parents present when he was eleven years old. The child stated in the deposition that he did not want the parent-child relationship to be terminated. Analogizing termination proceedings to custody proceedings pursuant to IC 31-1-11.5-21(a) (recodified at IC 31-17-2-8), the Court noted that the child's wishes in a custody dispute are merely one of the six factors enumerated by statute that the trial court must consider in making a best interests determination. Id. The Court concluded that other evidence that the child had bonded with Foster Parents and wanted to stay with them, coupled with the circumstances of the child's deposition, could have reasonably led the trial court to afford little or no weight to the child's stated wishes. Id. The two Court Appointed Special Advocates and the Guardian ad Litem did not raise any issue regarding the child's wishes, and all three recommended termination. Id. The Court found the representation by the Court Appointed Special Advocates and Guardian ad Litem was sufficient to protect the rights of the children. Id.

Child's Special Needs

In **Matter of G.M.,** 71 N.E.3d 898 (Ind. Ct. App. 2017), the Court affirmed the trial court's order which terminated Mother's parental rights. Id. at 909. The child was removed from

Parents when he was two days old because Mother admitted using unprescribed painkillers and heroin during pregnancy. The child underwent drug withdrawal at birth and also had a heart condition and many medical appointments. Among the evidence supporting the juvenile court's conclusion that there was no reasonable probability that Mother would remedy the conditions that led to the child's removal was Mother's failure to seek information on the child's medical condition and how to treat it. Id.

In **In Re S.S.**, 990 N.E.2d 978 (Ind. Ct. App. 2013), *trans. denied*, the Court affirmed the order terminating Mother's parental rights to her three children. Id. at 986. The Court noted the children had the following problems at the time of the DCS assessment: (1) the oldest child, age four, was aggressive and non-verbal; (2) the middle child, age two, had untreated ringworm and significant bruising on his face due to being bitten by the oldest child; (3) the youngest child, age eight months, needed to be fed through a G-tube, Mother was unable to pass G-tube training and unable to feed him, and he failed to gain weight under her care. Id. at 980-81. In support of the juvenile court's judgment, the Court noted evidence that, despite the children's very bad teeth, Mother brought candy and sugary drinks to visits to bribe her children into behaving; and Mother disobeyed repeated instructions to feed the youngest child slowly through his G-tube and could not feed him without assistance. Id. at 983.

In **In Re H.L.**, 915 N.E.2d 145 (Ind. Ct. App. 2009), the Court affirmed the termination judgment, concluding that DCS had established by clear and convincing evidence the requisite elements to support the termination of Father's parental rights. Id. at 150. The child had been diagnosed as suffering from cystic fibrosis, had been treated for pneumonia, and had experienced multiple hospitalizations for "failure to thrive" while in Mother's care before the CHINS petition was filed. The Court noted the following evidence on the child's medical needs which supported the trial court's finding that termination was in the child's best interests: (1) the child required extraordinary medical care and supervision in seclusion; (2) the child's visitors must be strictly limited and carefully screened for recent exposure to illnesses; (3) the child required twice-daily "breathing treatments", a feeding tube, and a strict regimen of medications; (4) the child must be regularly examined by a liver specialist, a pulmonologist, and a gastroenterologist. Id.

In **In Re I.A.**, 903 N.E.2d 146 (Ind. Ct. App. 2009), the Court affirmed the trial court's order terminating Mother's parent-child relationship with her youngest child. Id. at 155. The child tested positive for cocaine at birth and had numerous problems, including extra digits on both hands, a heart murmur, right ventricular enlargement, pulmonary stenosis, organic encephalopathy, a disfigured scalp, a sensitive immune system, and was diagnosed as suffering from Noonan's Disorder. The Court concluded there was sufficient evidence to support the trial court's determination that there was a reasonable probability that the reasons for the child's placement outside Mother's home would not be remedied. Id. at 155.

The Court noted Mother: (1) had not availed herself of the training needed to provide for the child's special medical needs; (2) had made no real effort to lean about the child's medical conditions or needs and was unsure of the child's diagnoses at birth; (3) refused when doctors asked her to give a blood sample to help diagnosis of the child; (4) did not know the names of the child's doctors, medicines, or his therapies; (5) blamed the child's Foster Parents for her ignorance about the child's medical needs; and (6) had been indifferent to the child's needs. Id. at 154-55.

In **In Re M.S.,** 898 N.E.2d 307 (Ind. Ct. App. 2008), the Court reversed and remanded the trial court's order terminating Mother's parent-child relationship with her oldest child, because there was insufficient evidence that termination was in the child's best interests. Id. at 314. The child had severe behavioral difficulties, including Pervasive Personality Disorder, which is "autistic-like but it is not as severe. And autism is lack of social skills, behavioral difficulty." Id. at 309. People who suffer from this disorder require a very structured environment and a substantial commitment to childcare and supervision by a caregiver. Id. The disorder is controlled with behavior management and medication. Id. The Court emphasized: (1) the problem was not Mother's parenting skills or her love for her children, and she had not been reluctant to comply with DCS's suggested services, but instead, the problem was the child's special needs; and (2) rather than taking the radical action of severing the parent-child bond prematurely, DCS and the courts should be focused on helping the child to become stabilized and reevaluating his best interests, when and if stabilization occurred. Id. at 314.

Parent's Physical Illness/Condition

In **In Re M.W.**, 942 N.E.2d 154 (Ind. Ct. App. 2011), the Court reversed the trial court's termination of Mother's parental rights. Id. at 161. DCS had filed a termination petition, and the trial court, having heard one day of evidence, noted that DCS had not met its burden of showing by clear and convincing evidence that Parents' rights should be terminated. Id. at 156. Shortly thereafter the parties filed an amended disposition/parental participation plan. Id. at 157. The plan provided in part that DCS agreed to continue the termination case and gave Parents one last chance to strictly comply with the court orders. Shortly thereafter, Mother suffered bleeding in her brain and a severe stroke, was hospitalized and placed in a rehabilitation facility for two and a half months, and then spent two months in a nursing home. Mother was partially paralyzed on her right side and used a walker, but was expected to make a full recovery within six to twelve months. The trial court held another hearing on the termination petition about seven months after Mother's stroke, and terminated Mother's parental rights. The Court observed that DCS purportedly gave Mother a second chance, and

due to circumstances beyond her control, Mother had been unable to take advantage of that second chance due to her severe stroke. Id. at 160. The Court noted that Mother had moved into a shelter where she could reside with the child, was receiving Social Security disability payments, and was expected to fully recover from the stroke. Id.

In **R.W., Sr. v. Marion Cty Dept. Child Serv.**, 892 N.E.2d 239 (Ind. Ct. App. 2008), the Court affirmed the juvenile court's termination judgment. Id. at 250. The three-year-old child, who was naked and unsupervised, had been found by police wandering around the alley behind the family home, which resulted in the filing of the CHINS petition. Among the issues was Mother's inability to hear, exacerbated by her failure to maintain health coverage and keep appointments necessary to obtain hearing aids and by her refusal to learn sign language. The Court found the juvenile court's determination that the reasons for the children's placement outside of Parents' home would not be remedied was supported by clear and convincing evidence and was not clearly erroneous. Id. at 249. The Court also noted a thorough review of the record revealed that the juvenile court did not in any way base its determination to terminate Mother's parental rights upon the mere fact that Mother had a hearing disability. Id. The Court opined the juvenile court properly considered Mother's refusal to take readily available steps to bridge the communication gap which seriously hindered her ability to care for her children. Id.

In **In Re D.Q.**, 745 N.E.2d 904 (Ind. Ct. App. 2001), the Court affirmed the trial court's denial of the termination petition with regard to Mother. Id. at 911. After the children had been removed due to neglect, Mother was diagnosed with Graves' Disease, and placed on medication. The evidence showed that the symptoms associated with Mother's disease could have accounted for some of her negligent behaviors and history of irresponsibility, including her careless child-rearing practices. Many of the symptoms of the disease had lessened, some had disappeared, and many had improved to a greater degree by the time of the termination hearing. The trial court concluded termination of parental rights would be inappropriate if the reasons for removal were based on a medical or physical condition which could be remedied by the administration of prescription drugs or other therapies. Id. at 910. The Court could not conclude the trial court's determination that DCS failed to prove the termination requirements by clear and convincing evidence was contrary to law. Id. at 911.

Child's Improvement in Foster Care and Potential Adoption by Foster Parents or Relatives

In **K.T.K. v. Indiana Dept. of Child Services**, 989 N.E.2d 355 (Ind. 2013), the Indiana Supreme Court affirmed the trial court's judgment which terminated Mother's parental

rights. Id. at 1236. Among the evidence noted by the Court in support of the trial court's finding was: (1) a psychologist evaluator testified the children were more bonded with Foster Parents than would normally be expected for the placement time period of nine months; (2) the evaluator stated the children's best interests would be served by allowing them to remain in Foster Parents' care; (3) the children's home-based therapist testified the children were doing better since they were placed in Foster Parents' home; (4) the therapist explained that the children were beginning to sense attachment, peace, and security with Foster Parents; (5) the case manager testified that Foster Parents had expressed a desire and willingness to adopt the children. Id. at 1235.

In **In Re C.G.**, 954 N.E.2d 910 (Ind. 2011), the Indiana Supreme Court found the evidence supported the trial court's findings that termination of the parent-child relationship was in the child's best interests. Id. at 925. The Court noted that the child's therapeutic needs were being served in foster care, the child was bonded to her foster family, the child had been placed with Foster Parents from the time of her removal, and Foster Parents were willing to adopt her. Id. at 924-25.

In **In Re N.Q.**, 996 N.E.2d 385 (Ind. Ct. App. 2013), the Court reversed and remanded the trial court's termination order, finding there was insufficient evidence to support it. Id. at 387. The Court said that, although DCS demonstrated the children were thriving in a loving pre-adoptive foster home, "a parent's constitutional right to raise his or her own child may not be terminated solely because there is a better home available for the child." N.Q. at 395, quoting In Re D.B., 942 N.E.2d 867, 875 (Ind. Ct. App. 2011).

In **B.H. v. Indiana Dept. of Child Services**, 989 N.E.2d 355 (Ind. Ct. App. 2013), the Court affirmed the termination judgment. Id. at 366. Evidence noted by the Court included that: (1) when the older child, then age twenty-eight months, was placed in foster care, he could only say ten words and hid food; (2) when the younger child, age sixteen months, was placed in foster care, he could not walk normally, could not drink out of a child's cup or chew food, and became rigid when held; (3) when they were first placed in foster care, both children were violent and sometimes attacked each other if left alone; (4) at the time of the termination hearing, both children were thriving in foster care despite being diagnosed with post-traumatic stress disorder and attachment issues; (5) Foster Parents wanted to adopt the children; and (6) at the time of the termination hearing, the children were doing well in school and receiving counseling and developmental services. Id. at 358.

In **In Re H.L.**, 915 N.E.2d 145 (Ind. Ct. App. 2009), the Court affirmed the trial court's termination judgment for a child who had been diagnosed with cystic fibrosis. Id. at 150. The Court noted the Guardian ad Litem's testimony that: (1) the child had extraordinary medical needs and the foster mother was very diligent in administering medical procedures;

(2) the child was doing very well in foster care; and (3) adoption by Foster Parents was in the child's best interests. Id.

In **R.W., Sr. v. Marion Cty Dept. Child Serv.,** 892 N.E.2d 239 (Ind. Ct. App. 2008), the Court found the evidence sufficient to support the determination that termination of Father's parental rights was in the child's best interests. Id. at 250. In doing so, the Court noted, among other things, that the child was happy, bonded with his pre-adoptive relative foster parent, and doing well in his foster home where he had spent more than one-half of his life. Id.

VII. Appeals of Involuntary Termination Judgments

IC 31-32-15-1, which applies to termination proceedings, provides that appeals may be taken as provided by law. **IC 31-35-2-2** [terminations]; **IC 31-35-3-2** [terminations for individuals convicted of specified crimes]. Parties to the termination appeal include the Guardian ad Litem and Court Appointed Special Advocate. **See In Re Involuntary Term. of Parent-Child Rel. [of A.K.]**, 755 N.E.2d 109, 1099 (Ind. Ct. App. 2001), in which the Court found that there is both statutory authority, **IC 31-35-2-7**, which states that if a parent objects to termination, the court shall appoint a Guardian ad Litem or Court Appointed Special Advocate, or both, for the child, and an Appellate Rule (Appellate Rule 17(A)) which provide that the Guardian ad Litem or Court Appointed Special Advocate is a proper party to a termination appeal. A putative or alleged father is also a party to a termination appeal. **See In Re Parent-Child Relationship of S.M.**, 840 N.E.2d 865, 872 (Ind. Ct. App. 2006). **See also IC 31-9-2-88(b)**, which provides that "parent" for purposes of **IC 31-35-2** [termination statutes] includes an alleged father.

The Indiana Rules of Appellate Procedure apply to termination appeals, and must be strictly followed. In **In Re D.L.**, 952 N.E.2d 209, 213 (Ind. Ct. App. 2011), the Court opined that Parents had forfeited their right to appeal because they did not file a timely Notice of Appeal, and dismissed the appeal. Recognizing the constitutional dimensions of a termination case, the Court reviewed the record and concluded there was no clear error in the trial court's termination decision. Id. at 214. **See also Termination of Parent-Child Rel. [J.G. and C.G.] v. DCS**, 4 N.E.3d 814, 820-21 (Ind. Ct. App. 2014), in which the Court dismissed Mother's appeal from the trial court's order which terminated her parental rights because the Notice of Appeal was not timely filed. The Court of Appeals urged the Indiana Supreme Court to consider allowing belated appeals in cases where parents' parental rights have been terminated. Id. at 820 n.1.

In **Parent-Child Rel. [of I.B.] v. Indiana Child Services**, 933 N.E.2d 1264, 1267 (Ind. 2010), the Indiana Supreme Court held that Indiana statutes dictate that the parents' right to counsel continues through all stages of the proceeding to terminate the parent-child relationship, including appeal. The Court also opined that, if a parent's lawyer in an involuntary termination proceeding is unable to locate the client despite due diligence and cannot get clear instructions from the client with respect to an appeal, the lawyer should not file a notice of appeal. Id. at 1270. The Court looked to the Rules of Professional Conduct to provide general guidance on this question, noting that: (1) Prof. Cond. R. 1.2 requires lawyers to abide by the client's decision as to the objectives to be pursued; (2) Prof. Cond. R. 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client; (3) Prof. Cond. R. 1.4(a) and comments 2-5 require the lawyer to maintain reasonable communication between the lawyer and the client so the client can participate effectively in the representation; (4) Prof. Cond. R. 1.4(b) requires the lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Id. at 1268-69. The Court opined that to sanction an appeal as a matter of course would not further the objective of bringing permanency to the child through the prompt resolution of termination proceedings. Id. at 1270.

In **Bester v. Lake County Office of Family**, 839 N.E.2d 143, 147 (Ind. 2005), the Indiana Supreme Court reiterated that, when reviewing the termination of parental rights, the Court does not reweigh the evidence or judge witness credibility, citing Doe v. Daviess County, 669 N.E.2d 192, 194 (Ind. Ct. App. 1996). The Court noted a trial court's judgment will be set aside only if it is clearly erroneous. The Court opined that OFC has the burden of proving the termination allegations outlined at **IC 31-35-2-4(b)(2)** by clear and convincing evidence, citing In Re R.J., 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005). The Bester Court also quoted Egly v. Blackford County Dep't. of Pub. Welfare, 592 N.E.2d 1232, 133-34 (Ind. 1992), in which the Indiana Supreme Court opined that clear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child's very survival; rather, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development are threatened by the respondent parent's custody. Bester at 148. In **In Re E.M.**, 4 N.E.3d 636 (Ind. 2014), the Indiana Supreme Court opined that reweighing whether the evidence "clearly and convincingly" supports the trial court's findings or the findings "clearly and convincingly" support the judgment is not a license to reweigh the evidence; rather it is akin to the "reasonable doubt" standard in criminal sufficiency of the evidence appeals, in which the Court considers only whether there is probative evidence from which a *reasonable jury could have found* the defendant guilty beyond a reasonable doubt (emphasis in opinion). Id. at 642.

A party may waive allegations of due process violation by failing to raise the due process issues during the CHINS or termination proceedings. It is well established law that

Appellate Courts may consider a party's constitutional claim waived when it is raised for the first time on appeal. **See N.C. v. Indiana Dept. of Child Services**, 56 N.E.3d 65 (Ind. Ct. App. 2016) (Court found Father's termination appeal was waived for failure to develop an argument supported by cogent reasoning and because issue was raised for the first time on appeal); **S.L. v. Indiana Dept. of Child Services**, 997 N.E.2d 1114 (Ind. Ct. App. 2013) (Court found that incarcerated Father's due process claim was waived because it was never raised at the termination trial). A party may waive an issue on appeal by failing to present cogent argument in the appellate brief. **See Bergman v. Knox County OFC**, 750 N.E.2d 809, 810-811 (Ind. Ct. App. 2001) (Mother contended trial court erred in admission of litigation-oriented documents over her hearsay objections but provided only an incomplete statement to shore up her claim; hence, issue was waived.)

IC 31-35-6-3 provides that an appeal of a court's termination decision does not prevent the court, in the court's discretion, from referring the matter for adoption proceedings while the appeal is pending. Some adoptive parents file their petitions for adoption while the termination appeal is pending. **But see IC 31-19-11-6**, an adoption statute, which provides that a petition for adoption cannot be granted if the parent-child relationship has been terminated and: (A) the time for filing an appeal (including a request for transfer or certiorari) has not elapsed; or (B) an appeal is pending; or (C) an appellate court is considering a request for transfer or certiorari. Sometimes parents request a stay of the termination judgment pending the appeal. In **In Re Invol. Term. of Parent-Child Rel. [of A.K.]**, 755 N.E.2d 1090 (Ind. Ct. App. 2001), Mother appealed the trial court's judgment terminating the parent-child relationship and also appealed the trial court's denial of her motion to stay the termination pending appeal. The children's foster mother desired to adopt them and the children had bonded to her. Mother argued the trial court had abused its discretion in denying her motion for a stay. The Court found that the trial court had not abused its discretion by denying the stay and thus immediately creating a stable environment for the children. Id. at 1098.

After the time period for an appeal of the termination judgment has passed, a party could file a Trial Rule 60(B) motion for relief from judgment. **See K.E. v. MCOFC**, 812 N.E.2d 177 (Ind. Ct. App. 2004), *trans. denied*, in which Birth Mother filed a pro se motion to set aside the court's judgment terminating the parent-child relationship two years after the entry of the judgment. The Court affirmed the trial court's order denying Birth Mother's motion to set aside the judgment, finding Birth Mother's two-year delay in challenging the termination judgment did not meet the requirements of T.R. 60(B)(8) that the "motion shall be filed within a reasonable time" and must allege a "a meritorious claim or defense." Id. at 180.