

To: Indiana Trial Court Judges

From: Judge Dana Kenworthy, Chair of the Juvenile Justice Improvement Committee and President of the Indiana Council of Juvenile and Family Court Judges

Date: April 22, 2020

Parenting Time for CHINS Children in Foster/Relative Placement in Light of Covid-19¹

Issue:

Should trial courts issue a blanket order ceasing all face-to-face parenting time in CHINS cases?

The Juvenile Justice Improvement Committee (JJIC) and Indiana Council of Juvenile and Family Court Judges (ICJFCJ) Board of Directors met jointly on April 7, 2020 to consider issues related to face to face parenting time in child welfare cases and other juvenile justice issues. The JJIC and ICJFCJ also solicited and received input from the Indiana Public Defender Council, Indiana DCS, and Indiana CASA. On April 9, 2020, the JJIC and ICJFCJ approved the following guidance for trial courts regarding parenting time in Child in Need of Services (CHINS) cases.

References

On March 20, 2020, DCS Director Terry Stigdon issued written guidelines, effective until May 1, 2020, to help navigate COVID-19 challenges.² Those guidelines state: “parenting time and sibling visits are not required to occur in person unless required by the court. Efforts must be made to maintain parent child contact requirements using an allowable alternative, such as phone, Skype, Facetime or other available technology. Caseworkers should not prohibit approved parenting time or sibling visits. However, the frequency, duration, and type of contact may be tailored to the case circumstances, government and local public health directives, and in consultation with and agreement among parents and caregivers . . . Staff attorneys should contact their court to make them aware of any changes to court ordered parenting time due to public health and safety issues.” The letter also includes guidance for safety during in-person parenting time.

On March 27, 2020, The Department of Health and Human Services, Administration for Children and Families in Washington DC, issued letter to Child Welfare Legal and Judicial Leaders from Associate Commissioner of the Children’s Bureau Jerry Milner.³ The Children’s Bureau “strongly discourages the issuance of blanket orders that are not specific to each child and family that suspend family time; doing so is contrary to the well-being and best interest of children, may contribute to additional child trauma, and may

¹ This document does not apply to children placed in residential facilities. Courts should consider the Indiana State Department of Health’s guidance on restricting visitors from such facilities, and should consider increasing amount of visitation via remote technology while face-to-face visits are restricted. <https://coronavirus.in.gov/files/Visitation%20guidelines%203.14.20.pdf>

² https://www.in.gov/dcs/files/COVID-19_Field_Update_2020.03.20.pdf

³ https://www.cwda.org/sites/main/files/file-attachments/cws_acf_guidance_03_27_20.pdf?1585609015

impede the likelihood of reunification.” The letter provides guidance for courts making parenting time decisions in child welfare cases.

On March 31, 2020, the Indiana Supreme Court issued Order in Cause 20S-MS-238,⁴ clarifying that custody and parenting time orders “shall remain in place during the COVID-19 pandemic and shall be followed . . . [i]f both parents and any other parties . . . believe there is a reason to temporarily modify or change the terms of a custody or parenting time court order during the COVID-19 pandemic and modification is not prohibited by the terms of their existing order, they may informally agree in writing to temporarily modify their existing order.”

On April 6, 2020, Governor Holcomb issued Executive Order 20-18.⁵ Paragraphs 16(b) and (f) of this order defines transporting children pursuant to a custody order or agreement, and to care for minors and dependents, as essential travel.⁶

Response

No. Blanket court orders ceasing all face-to-face parenting time in CHINS cases contravene available authority and are not best practice.

Suggested Best Practices

- Courts should expect DCS staff to follow the guidelines in Director Stigdon’s letter dated March 20, 2020, and the March 27, 2020 letter from Jerry Milner cited above.⁷
- Courts should clearly communicate that all existing court orders remain in full force and effect, and no party, including DCS, can unilaterally change the terms of those orders or otherwise restrict parenting time absent agreement of all parties, or court approval.
- Courts should expect DCS to consult with all parties regarding parenting time, and encourage communication among the parties to maximize out-of-court agreements.
- Courts should encourage DCS, CASA and caregivers to arrange more frequent and/or longer virtual visits when face-to-face visits are restricted.
- DCS staff attorneys should file Notice to the Court of all agreements modifying the terms of existing parenting time orders.
- In the event that the parties are unable to come to an agreement, Courts should timely entertain emergency motions, and set hearings regarding parenting time if needed.
- In determining whether or not to restrict parenting time, Courts should consider the following list of factors:
 - Are restrictions on parenting time in the child’s best interest?
 - Can in-person parenting time occur safely, either supervised or unsupervised?

⁴ <https://www.in.gov/judiciary/files/order-other-2020-20S-ms-238.pdf>

⁵ <https://www.in.gov/gov/files/Executive%20Order%2020-18%20Cont%20Stay%20at%20Home%20Restaurants%20Govt%20Ops.pdf>

⁶ Executive Order 20-08 issued on March 23, 2020 included similar provisions regarding transportation for parenting time and care of children.

⁷ https://www.cwda.org/sites/main/files/file-attachments/cws_acf_guidance_03_27_20.pdf?1585609015. These guidelines, in part, advise that we all: (1) become familiar with ways in-person visitation may safely continue, (2) encourage resource parents to provide transportation to, and supervision of, family time, (3) engage in visitation outdoors where feasible, (4) ask parents if they prefer family time via technology, (5) consider whether children can be safely reunited with their parents in an expedited manner.

- Can existing in-person parenting time be modified to occur safely, i.e. can it happen outdoors?
- Is the child, parent, and/or caregiver at high risk to succumb to the COVID-19 virus?
- Is the child and/or parent in a household with someone who is under quarantine?
- Is the child, parent, and/or caregiver displaying symptoms of illness?
- Is the child, parent, and/or caregiver medically fragile?
- Does a medical provider recommend suspension of in-person visits?
- Are service providers, family members, or other third parties available to safely provide in-person parenting time supervision?
- Is the restriction of in-person parenting time consistent with research on child development?
- Will restriction on in-person visits cause additional trauma to the child?
- What alternatives for in-person visits are available to the family, i.e., does the family have access to computer, internet, phone? Can DCS or other agency provide additional resources to facilitate virtual visits?
- If in-person visits are restricted, are there opportunities for more frequent and/or extended virtual visits?
- What are the wishes of the parents, children, and caregivers?
- Will restriction of in-person visits substantially hinder the reunification process?
- What additional factors affect out-of-state travel?
- Other factors the Court finds relevant.
- If the Court restricts in-person parenting time, the Court should regularly review the need for continued restriction. The parties may agree that continuation of the restriction is necessary in lieu of a scheduled hearing.

"The measure of a country's greatness is its ability to retain compassion in times of crisis."

—Thurgood Marshall, US Supreme Court Justice (1908-1993)