

# Senate Enrolled Act 287- DCS Cleanup Legislation

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*DCS “Cleanup” legislation includes proposals to repeal obsolete and outdated language from statute, codify case law, align Indiana law with federal law, and add language to clarify current statute.*

## **1. Align Indiana Law and Federal Law**

### **Align Statute with Federal Child Support Law Requiring SSN’s on IV-D Documents**

#### *Section 1*

Indiana statute lists the specific programs under which a full SSN can be printed on documents. The DCS Child Support Bureau is required by federal law to print a full SSN on certain documents and communications. Amend statute to clarify that a full SSN can be printed on IV-D Child Support related documents.

### **Align Statute with Federal Child Support Paternity Affidavit Requirements\***

#### *Section 19*

Federal law requires State statute to specify the data elements that must be included on the State’s paternity affidavit form. The Indiana Paternity Affidavit form already includes these required data elements but state statute does not list each data element. Amend statute to list each data element on the form to align with federal requirements (AT 98-02 issued by OCSE in 1998) & current practice.

### **Clarify IV-D Agency Administrative Authority to Redirect Support Payments per Federal Law\***

#### *Sections 32, 38 and 89*

The Personal Responsibility and Work Opportunity Act (PRWORA) of 1996 requires the State IV-D agency to have administrative authority to redirect support payments to the appropriate government entity, after notice to both parties, in cases where the payee is receiving government assistance under IV-A or IV-E. The money is used to pay back the State and federal government for benefits provided. Amend statute to align with Federal law and current practice by specifying that CSB has administrative authority to redirect payments to the appropriate government entity.

### **Clarify Federal Requirement for Social Security Number (SSN) in Child Support Records\***

#### *Sections 33 and 179*

The Personal Responsibility and Work Opportunity Act (PRWORA) of 1996 requires states to keep the SSN of any individual subject to a divorce decree, support order, paternity determination or acknowledgement in the records. Current Indiana statute only requires that the parents supply the clerk of the court with their SSN at the time a child support order is issued or modified, but it is not clear that the SSN must be maintained in the record (ISETS).

### **Child Support Income Withholding Order (IWO) Form Elements**

#### *Sections 39*

Current Indiana statute and IWO form requires an income payor to forward the amount withheld for current support and any arrears to the state central collection unit. State statute requires that the IWO form list the SSN of each obligee but federal law does not, nor is the SSN currently required on Indiana’s IWO form. Amend statute to remove requirement that the IWO include the SSN to match Federal law and current practice.

### **Align Background Check Statute with Federal Law**

*Sections 56, 110, 159, 165, and 170*

Federal law prohibits DCS from placing a child with an individual who has been convicted of a “drug related offense”, if the crime occurred within the past five years. Federal law includes alcohol related felony convictions in the definition of a “drug related offense”, but Indiana law does not. Amend statute to include drug related felonies in the list of crimes that prohibit DCS from placing a child, aligning Indiana law with federal law. Federal law requires DCS to conduct background checks on individuals living in a household where a child will be placed consistent with their permanency plan. The court is prohibited from placing a child in a home if the household members have committed certain offenses with certain exceptions. Amend statute to align the allowable exceptions consistent with federal law.

### **DCS Authority to Request Consumer Report for Foster Youth**

*Section 87*

The Child and Family Services Improvement and Innovation Act, passed by the federal government in September 2011, requires state child welfare agencies to request a copy of a consumer report for foster youth over the age of 16. Amend statute to ensure that the Department has the authority to request a copy of the consumer report on behalf of the foster youth.

### **Update ICPC Statute to Align with Federal Law**

*Section 152*

The Interstate Compact for the Placement of Children (ICPC) governs the placement of children in different states. After Indiana adopted the new ICPC the Federal government made several technical amendments, but Indiana law has yet to be updated to reflect those changes. Amend statute to align with Federal law.

## **2. Repeal Obsolete and Outdated Language in Statute**

### **Title 12 Clean Up**

*Sections 3- 15, 17- 18, 92, 181, and 192*

DCS was created as a single state agency in 2005 when it was separated from FSSA. In order for this separation to occur many statutory changes had to be made. During a review of the statute the Department found many references to programs, responsibilities and funds no longer applicable to FSSA in Title 12 and that need to be repealed.

SSBG Administration Clean Up- In 2006 the responsibility for administering Indiana’s Social Services Block Grant (SSBG) changed from FSSA to DCS (IC 31-25-2-8). However, the statute that makes FSSA the single state agency responsible for administering the grant has not been repealed. Repeal IC 12-13-10-1 through 9 and amend IC 5-22-2-31 to reference the correct statute for SSBG administration.

*\*Sections 3 and 8*

Repeal IC 12-13-5-2 (4) – This statute states that FSSA shall administer “prevention services to high risk youth”, however this is now the responsibility of DCS as specified in IC 31-25-2-7.

*\*Section 5*

Repeal IC 12-13-7-9(b)(3) – This section states that certain funds received by FSSA for the “assistance in the promotion of child welfare services shall be paid into the child welfare services account”. This is no longer a function performed by FSSA and is covered by DCS under IC 31-26-3.5.

*\*Section 6*

Remove DCS References from IC 12-13-7-12 – This statute requires DCS to provide records on accounts of programs that are administered by FSSA.

*\*Section 7*

Correct Reference of “County Office” to “Department of Family Resources”- These activities are no longer performed by DCS.

*Sections 9, 12- 14*

Correct Reference of “County Office” to “Department of Child Services” in IC 12-14-1-1.5- Current statute provides certain exceptions to the TANF eligibility requirements, one of which is “wardship obtained by the county office”. The term “county office” is no longer accurate and needs to be changed to “the Department of Child Services”.

*\*Section 10*

Repeal Obsolete “Planning Council”- In the process of repealing references to the “county office of family and children” from Title 12 it was discovered that Planning Council’s were obsolete and should be repealed.

*\*Sections 4 and 11*

Repeal IC 12-17-17 “County Child Advocacy Fund”- This fund is no longer used by either FSSA or DCS.

*\*Sections 15, 92, 181- 182*

Repeal Reference to County Office of Family and Children in IC 12-17.2-4-2

*\*Section 17*

Repeal IC 12-26-8-9 “Progress reports; case reviews”- This statute is obsolete as FSSA and DCS no longer make these types of placements. Title 31 covers reports to the court for all CHINS & probation youth.

*\*Section 18*

### **Repeal Outdated Term “County Office of Family and Children”**

*Sections 9, 12- 14, 16, 25, 27, 37, 43- 45, 47- 85, 88, 92, 104, 107, 116, 125, 128, 140- 151, 153- 155, 157, 161- 164, 166- 168, 170, 172, 174- 176, and 183*

Repeal the definition of “County Office of Family and Children” in Title 31 and amend all references of “County Office of Family and Children” to either “the Department” or “The Local Office”. This will ensure that all references to DCS are consistent in current statute.

### **Repeal Conflicting Requirement that DCS Investigate the Fitness of a Guardian**

*Section 20*

When DCS was created in 2005 Title 31 limited the authority of the department to investigate allegations of child abuse or neglect to those committed by a parent, guardian or custodian. However, the guardianship statute (IC 29) still includes a requirement that DCS investigate the fitness and conduct of a guardian if ordered to do so by a court. Repeal the requirement in IC 29 to align with the authority given to the Department in Title 31.

### **Repeal Obsolete Fund “Assistance of Destitute Children”**

*Sections 23- 26, 29- 31, and 91*

IC 31-26-2 “Assistance of Destitute Children” is no longer a fund used by DCS, therefore references to the fund in statute need to be repealed. Repeal IC 31-6-2 “Assistance of Destitute Children” and amend the definition of “assistance” in Title 31 to remove the reference to the fund.

### **Repeal Obsolete Definition “Kinship Navigator”**

*Section 28*

IC 31-9-2-72.5 defines a “kinship caregiver” for the purposes of IC 31-25-2-20 the “kinship care navigator pilot”. However, the kinship care navigator pilot statute sunset on January 1, 2011. As a result the definition is obsolete.

## **Repeal Outdated ICWIS Requirement**

### *Section 156*

The statute that governs the DCS case management system, the Indiana Child Welfare Information System (ICWIS), requires that DCS purchase one computer for every two Family Case Managers. Amend statute to repeal the requirement as the provision is outdated.

## **3. Amendments to Cleanup or Clarify Current Statute**

### **Clarify Child Protection Team Responsibilities for DCS Ombudsman**

#### *Section 2*

This change is included in SB 287 at the request of the DCS Ombudsman. Statute allows the DCS Ombudsman to request a local Child Protection Team to assist the Ombudsman with a review by redacting or revising any report in order to maintain confidentiality laws. However, current practice is for the DCS Local Office Attorney to review the Ombudsman's report and redact any information in order to maintain confidentiality. This change will align statute with practice.

### **Safe Haven Law Clean Up**

#### *Sections 21- 22, 158, and 172*

The safe haven law (IC 31-34-2.5-1) enables a person to anonymously give up an unwanted infant who is under 45 days old without fear of arrest or prosecution. However the statute that provides protection from prosecution (IC 35-46-1-4) says that the child must be less than 30 days old. Amend the age of a child from 45 to 30 days in the safe haven law, the definition of abandoned child, and in the definition of abandoned infant, making both statutes consistent. In addition, amend statute to clarify that when a person turns a child over under the safe haven law his or her identity is to be protected to ensure parental anonymity.

### **Update References to Indiana's System for Child Support Enforcement**

#### *Sections 34- 36, 39- 42, 177- 180*

Indiana is in the process of creating a new data system for child support enforcement, INvest, to replace ISETS. Current statute specifically refers to ISETS in many places. Amend statute to clarify that either ISETS or its successor statewide automated child support system can be used to ensure compliance with the law once the new system is rolled out.

### **Correct Reference to Licensed Child Placing Agency (LCPA) Definition**

#### *Section 46*

IC 31-19-2-12 references an LCPA as defined in IC 31-19-7-1. However, IC 31-19-7-1 does not define an LCPA and instead deals with "prior written approval of placements; criminal history checks". Amend IC 31-19-2-12 to reference the correct IC defining "LCPA".

### **Technical Correction- Caseload Limitation**

#### *Section 86*

Amend statute to align all code cites on caseload limitations for DCS Family Case Managers. Current statute is not consistent in all areas.

## **IV-D Child Support Fee**

### *Section 90*

Currently, in Indiana child support cases become IV-D cases in one of four ways:

1. The custodial parent (CP) or non-custodial parent (NCP) is receiving public assistance (TANF or Medicaid),
2. A case is IV-E,
3. A case is IV-D in another state and is referred to Indiana for action,
4. An application for services is filled out and a one-time \$25 fee is paid by the CP or NCP.

The first three items list automatic mandatory case referrals and there is no fee collected for IV-D services. In the final instance, anyone is able to access IV-D services by paying a *onetime* \$25.00 fee and filling out an application. The \$25 fee that is collected is sent to the state; however, 66% of the fee is then sent to the federal government. As a consequence, county and state workers in Indiana spend more time in administrative overhead than the state is able to retain. The Federal government requires that a fee is charged, but they do not specify how much the fee must be. Other States have successfully implemented a program where the fee is reduced to \$1.00 and then paid by the State. This benefit's the state by eliminating the administrative overhead associated with processing this nominal fee. More importantly this eliminates a barrier to services for our most vulnerable residents. Indiana is considering adopting that approach, however current statute would limit the ability to implement this change. The proposed amendment would give Indiana the flexibility to determine who will pay the fee by rule.

## **Licensing Statutes Cleanup**

### *Sections 93- 106, 108- 115, 117- 124, 126- 127, and 129- 139*

Amend statute to make various technical changes to DCS licensing statutes for foster homes, group homes, and child caring institutions. One example is to repeal language on administrative hearing timelines for licensing that conflict with AOPA, because DCS now follows AOPA guidelines for all administrative appeal hearings.

## **Add Missing Word to DCS CHINS Hearing Statute**

### *Section 160*

State statute makes evidence of prior or subsequent acts or omissions of child abuse admissible when alleging a child is a CHINS, but the statute fails to address child neglect in IC 31-34-12-5. DCS believes this was a drafting oversight when it was originally put into code in 1997. Amend statute to allow prior acts of both child abuse and neglect to be admissible when alleging a child is CHINS.

## **Clarify Conditions for Consent to Voluntary Termination of Parental Rights (TPR)**

### *Section 171*

Codify current practice that a parent cannot consent to a voluntary TPR if their decision is based upon any promise regarding the child's adoption or post adoption contact with the child.

## **Codify Case Law- Findings of Facts and Conclusions of Law in Final TPR Decision**

### *Section 173*

In A.K., 924 N.E.2d 212, 220 the appellate court found that there must be findings of facts and conclusions of law in the final decision of a TPR case. Amend statute to codify this case law.

*\*Items with an asterisk next to them were identified in a GAP analysis as items where there was a gap between Indiana child support law and federal child support law.*