

HOUSE BILL No. 1167

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-34; IC 31-35-2.

Synopsis: Children in need of services. Requires a court to: (1) provide that a foster parent or other caretaker with whom the child has been placed for temporary care has standing; and (2) allow a foster parent or other caretaker with whom the child has been placed for temporary care to present evidence to the court and make recommendations; at a detention hearing. Requires a court to: (1) provide that a foster parent or other caretaker with whom the child has been placed for temporary care has standing to appeal a decision by the court; and (2) allow a foster parent or other caretaker with whom the child has been placed for temporary care to be heard, present evidence, and make recommendations to the court; at a dispositional hearing. Requires a court to grant a petition to intervene filed in a child in need of services proceeding by a foster parent, long term foster parent, or a person who has been a foster parent of the child who is the subject of the proceeding if the petitioner has also filed: (1) a petition to adopt; or (2) a petition to terminate the parent-child relationship; concerning the child who is the subject of the child in need of services proceeding. Provides that if: (1) a child has been removed from a parent and has been under the supervision of the department of child services (department) for 15 of the most recent 22 months; and (2) a petition to terminate the parent-child relationship has not been filed; the court shall order the department to file a petition to terminate the parent-child relationship within 15 days of the order. Provides that failure to obey the court order is punishable as contempt of court.

Effective: July 1, 2019.

Mahan

January 8, 2019, read first time and referred to Committee on Family, Children and Human Affairs.



First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1167

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

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

1 SECTION 1. IC 31-34-5-1, AS AMENDED BY P.L.131-2009,
2 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 1. (a) If a child taken into custody under
4 IC 31-34-2 is not released, a detention hearing shall be held not later
5 than forty-eight (48) hours, excluding Saturdays, Sundays, and any day
6 on which a legal holiday is observed for state employees as provided
7 under IC 1-1-9, after the child is taken into custody. If the detention
8 hearing is not held, the child shall be released. Notice of the time,
9 place, and purpose of the detention hearing shall be given to the
10 following:
11 (1) The child.
12 (2) The child's parent, guardian, or custodian if the person can be
13 located.
14 (3) Each foster parent or other caretaker with whom the child has
15 been placed for temporary care under IC 31-34-4.
16 (b) The court shall:
17 (1) provide **that** a person who is required to be notified under



1 subsection (a)(2) or (a)(3) ~~an opportunity to be heard; has~~
 2 ~~standing;~~ and

3 (2) allow a person described in subdivision (1) to:

4 (A) **present evidence to the court; and**

5 (B) make recommendations to the court;

6 at the detention hearing.

7 (c) A petition alleging that a child described in subsection (a) is a
 8 child in need of services shall be filed before a detention hearing is
 9 held for the child.

10 SECTION 2. IC 31-34-5-1.5, AS AMENDED BY P.L.131-2009,
 11 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2019]: Sec. 1.5. (a) This section applies to a child taken into
 13 custody under IC 31-34-2.5.

14 (b) The juvenile court shall hold a detention hearing after an
 15 emergency medical services provider takes custody of a child under
 16 IC 31-34-2.5. The court shall hold the detention hearing not later than
 17 forty-eight (48) hours after the emergency medical services provider
 18 takes the child into custody, excluding Saturdays, Sundays, and any day
 19 on which a legal holiday is observed for state employees as provided
 20 under IC 1-1-9. A petition alleging that a child described in subsection
 21 (a) is a child in need of services shall be filed before the detention
 22 hearing is held for the child.

23 (c) The department may notify the emergency medical services
 24 provider that has taken emergency custody of a child under
 25 IC 31-34-2.5 of the detention hearing. The emergency medical services
 26 provider may be heard at the detention hearing.

27 (d) The department shall notify each foster parent or other caretaker
 28 with whom the child has been temporarily placed under IC 31-34-2.5
 29 of the detention hearing. The court shall:

30 (1) provide ~~that~~ a person who is required to be notified under this
 31 subsection ~~an opportunity to be heard; has standing;~~ and

32 (2) allow a person described in subdivision (1) to:

33 (A) **present evidence to the court; and**

34 (B) make recommendations to the court;

35 at the detention hearing.

36 SECTION 3. IC 31-34-19-1.3, AS ADDED BY P.L.138-2007,
 37 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2019]: Sec. 1.3. (a) The department shall provide notice of the
 39 date, time, place, and purpose of the dispositional hearing under this
 40 chapter to each:

41 (1) party or person for whom a summons is required to be issued
 42 under IC 31-34-10-2; and



1 (2) foster parent or other caretaker with whom the child is placed
 2 for temporary care;
 3 at the time the dispositional hearing is scheduled.

4 (b) The court shall:

5 (1) provide a person required to be notified under subsection (a)
 6 ~~an opportunity to be heard;~~ **standing to appeal a decision by the**
 7 **court;** and

8 (2) allow a person described in subdivision (1) to **be heard,**
 9 **present evidence, and** make recommendations to the court;

10 at the dispositional hearing.

11 SECTION 4. IC 31-34-21-4.5, AS AMENDED BY P.L.183-2017,
 12 SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2019]: Sec. 4.5. (a) Except as provided in subsection (b) a
 14 foster parent, long term foster parent, or a person who has been a foster
 15 parent may petition the court to request intervention as a party to a
 16 proceeding described in this chapter.

17 (b) A foster parent who has been:

18 (1) the subject of a substantiated report of child abuse or neglect;
 19 or

20 (2) convicted of a nonwaivable offense, as defined in
 21 IC 31-9-2-84.8;

22 may not petition the court to intervene under this section.

23 (c) **Except as provided in subsection (d),** a court may grant a
 24 petition filed under this section if the court determines that intervention
 25 of the petitioner is in the best interests of the child.

26 (d) **A court shall grant a petition filed under this section if the**
 27 **petitioner has also filed:**

28 (1) **a petition to adopt under IC 31-19-2-2; or**

29 (2) **a petition to terminate the parent-child relationship under**
 30 **IC 31-35-2-4;**

31 **concerning the child who is the subject of the child in need of**
 32 **services proceeding.**

33 SECTION 5. IC 31-35-2-4, AS AMENDED BY P.L.42-2017,
 34 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2019]: Sec. 4. (a) A petition to terminate the parent-child
 36 relationship involving a delinquent child or a child in need of services
 37 may be signed and filed with the juvenile or probate court by any of the
 38 following:

39 (1) The attorney for the department.

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

41 (3) The child's guardian ad litem.

42 (4) **A foster parent, relative of the child, or de facto custodian**



1 **with whom the child has been placed for at least six (6)**
 2 **months.**

3 (b) The petition must meet the following requirements:

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

7 (2) The petition must allege:

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

9 (i) The child has been removed from the parent for at least
 10 six (6) months under a dispositional decree.

11 (ii) A court has entered a finding under IC 31-34-21-5.6 that
 12 reasonable efforts for family preservation or reunification
 13 are not required, including a description of the court's
 14 finding, the date of the finding, and the manner in which the
 15 finding was made.

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

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

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

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

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

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

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

35 (3) If the department intends to file a motion to dismiss under
 36 section 4.5 of this chapter, the petition must indicate whether at
 37 least one (1) of the factors listed in section 4.5(d)(1) through
 38 4.5(d)(3) of this chapter applies and specify each factor that
 39 would apply as the basis for filing a motion to dismiss the
 40 petition.

41 (c) At the time the petitioner files the verified petition described in
 42 subsection (b) with the juvenile or probate court, the petitioner shall



1 also file a:

- 2 (1) copy of the order approving the permanency plan under
 3 IC 31-34-21-7 for the child; or
 4 (2) permanency plan for the child as described by
 5 IC 31-34-21-7.5.

6 SECTION 6. IC 31-35-2-4.5, AS AMENDED BY P.L.5-2015,
 7 SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2019]: Sec. 4.5. (a) This section applies if:

- 9 (1) a court has made a finding under IC 31-34-21-5.6 that
 10 reasonable efforts for family preservation or reunification with
 11 respect to a child in need of services are not required; or
 12 (2) a child in need of services or a delinquent child:

- 13 (A) has been placed in:
 14 (i) a foster family home, child caring institution, or group
 15 home licensed under IC 31-27; or
 16 (ii) the home of a relative (as defined in IC 31-9-2-107(c));
 17 as directed by a court in a child in need of services proceeding
 18 under IC 31-34 or a delinquency action under IC 31-37; and
 19 (B) has been removed from a parent and has been under the
 20 supervision of the department or county probation department
 21 for not less than fifteen (15) months of the most recent
 22 twenty-two (22) months, beginning with the date the child is
 23 removed from the home as a result of the child being alleged
 24 to be a child in need of services or a delinquent child.

- 25 (b) A person described in section 4(a) of this chapter shall:
 26 (1) file a petition to terminate the parent-child relationship under
 27 section 4 of this chapter; and
 28 (2) request that the petition be set for hearing.

29 (c) If a petition under subsection (b) is filed by the child's court
 30 appointed special advocate or guardian ad litem, the department shall
 31 be joined as a party to the petition.

32 (d) A person described in section 4(a) of this chapter may file a
 33 motion to dismiss the petition to terminate the parent-child relationship
 34 if any of the following circumstances apply:

- 35 (1) That the current case plan prepared by or under the
 36 supervision of the department or the probation department under
 37 IC 31-34-15, IC 31-37-19-1.5, or IC 31-37-22-4.5 has
 38 documented a compelling reason, based on facts and
 39 circumstances stated in the petition or motion, for concluding that
 40 filing, or proceeding to a final determination of, a petition to
 41 terminate the parent-child relationship is not in the best interests
 42 of the child. A compelling reason may include the fact that the



1 child is being cared for by a custodian who is a relative (as
2 defined in IC 31-9-2-107(c)).

3 (2) That:

4 (A) IC 31-34-21-5.6 is not applicable to the child;

5 (B) the department or the probation department has not
6 provided family services to the child, parent, or family of the
7 child in accordance with a currently effective case plan
8 prepared under IC 31-34-15 or IC 31-37-19-1.5 or a
9 permanency plan or dispositional decree approved under
10 IC 31-34 or IC 31-37, for the purpose of permitting and
11 facilitating safe return of the child to the child's home; and

12 (C) the period for completion of the program of family
13 services, as specified in the current case plan, permanency
14 plan, or decree, has not expired.

15 (3) That:

16 (A) IC 31-34-21-5.6 is not applicable to the child;

17 (B) the department has not provided family services to the
18 child, parent, or family of the child, in accordance with
19 applicable provisions of a currently effective case plan
20 prepared under IC 31-34-15 or IC 31-37-19-1.5, or a
21 permanency plan or dispositional decree approved under
22 IC 31-34 or IC 31-37; and

23 (C) the services that the department has not provided are
24 substantial and material in relation to implementation of a plan
25 to permit safe return of the child to the child's home.

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

31 (e) If:

32 **(1) a child in need of services or a delinquent child has been**
33 **removed from a parent and has been under the supervision of**
34 **the department or county probation department for not less**
35 **than fifteen (15) months of the most recent twenty-two (22)**
36 **months, beginning with the date the child is removed from the**
37 **home as a result of the child being alleged to be a child in need**
38 **of services or a delinquent child; and**

39 **(2) a petition to terminate the parent-child relationship has**
40 **not been filed by the department or another person described**
41 **in section 4(a) of this chapter;**

42 **the court shall order the department to file a petition to terminate**



1 **the parent-child relationship within fifteen (15) days of the order.**
2 **Failure to obey the court order is punishable as contempt of court.**

