

HOUSE BILL No. 1407

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-13; IC 31-10.5; IC 31-34.

Synopsis: Parental rights. Provides that the state of Indiana, a political subdivision or other governmental entity of the state of Indiana, a government official, or any other person acting under the color of law shall not infringe on the fundamental right of a parent to direct the upbringing, education, health care, and mental health of the parent's child without demonstrating that the infringement: (1) is required by a compelling governmental interest of the highest order as long recognized in the history and traditions of the state of Indiana; and (2) as applied to the child, is narrowly tailored and not otherwise served by a less restrictive means. Creates a right of action for violation of a parent's rights with respect to the upbringing, education, and health care of the parent's child. Provides that a child is not a child in need of services due to the child's parent, guardian, or custodian: (1) referring to and raising the child consistent with the child's biological sex; or (2) declining to consent to the child receiving: (A) specified medication; (B) a medical procedure the purpose of which is to alter the apparent gender or sex of the child or affirm the child's perception of the child's gender or sex in a manner inconsistent with the child's biological sex; or (C) counseling or other mental health services the purpose of which is to affirm the child's perception of the child's gender or sex if the child's perception is inconsistent with the child's biological sex. Provides that a juvenile court may not enter a dispositional decree ordering removal of a child from the home of the child's parent, guardian, or custodian if: (1) the juvenile court has found the child to be a child in need of services under a specified statutory definition of a child in need of services; and (2) the parent, guardian, or custodian of the child: (A) is a fit parent, guardian, or custodian of the child; and (B) does not consent to the child being removed from the child's home.

Effective: July 1, 2023.

DeVon

January 17, 2023, read first time and referred to Committee on Family, Children and Human Affairs.



First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1407

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 31-9-2-13, AS AMENDED BY P.L.243-2019,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 13. (a) "Child", for purposes of IC 31-15, IC 31-16
4 (excluding IC 31-16-12.5), and IC 31-17, means a child or children of
5 both parties to the marriage. The term includes the following:
6 (1) Children born out of wedlock to the parties.
7 (2) Children born or adopted during the marriage of the parties.
8 (b) "Child", for purposes of the Uniform Interstate Family Support
9 Act under IC 31-18.5, has the meaning set forth in IC 31-18.5-1-2.
10 (c) "Child", for purposes of IC 31-19-5, includes an unborn child.
11 (d) Except as otherwise provided in this section, "child", for
12 purposes of the juvenile law and IC 31-27, means:
13 (1) a person who is less than eighteen (18) years of age;
14 (2) a person:
15 (A) who is eighteen (18), nineteen (19), or twenty (20) years
16 of age; and
17 (B) who either:



- 1 (i) is charged with a delinquent act committed before the
 2 person's eighteenth birthday; or
 3 (ii) has been adjudicated a child in need of services before
 4 the person's eighteenth birthday; or
 5 (3) a person:
 6 (A) who is alleged to have committed an act that would have
 7 been murder if committed by an adult;
 8 (B) who was less than eighteen (18) years of age at the time of
 9 the alleged act; and
 10 (C) who is less than twenty-one (21) years of age.
 11 (e) "Child", for purposes of IC 31-36-3 **and IC 31-10.5**, means a
 12 person who is less than eighteen (18) years of age.
 13 (f) "Child", for purposes of the Interstate Compact on Juveniles
 14 under IC 31-37-23-1, has the meaning set forth in IC 31-37-23-1.
 15 (g) "Child", for purposes of IC 31-16-12.5, means an individual to
 16 whom child support is owed under:
 17 (1) a child support order issued under IC 31-14-10 or IC 31-16-6;
 18 or
 19 (2) any other child support order that is enforceable under
 20 IC 31-16-12.5.
 21 (h) "Child", for purposes of IC 31-32-5, means an individual who is
 22 less than eighteen (18) years of age.
 23 (i) "Child", for purposes of the Uniform Child Custody Jurisdiction
 24 Act under IC 31-21, has the meaning set forth in IC 31-21-2-3.
 25 (j) "Child", for purposes of IC 31-35-2-4.5, means an individual who
 26 is:
 27 (1) less than eighteen (18) years of age; and
 28 (2) a delinquent child or a child in need of services.
 29 SECTION 2. IC 31-10.5 IS ADDED TO THE INDIANA CODE AS
 30 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 31 2023]:
 32 **ARTICLE 10.5. PARENTAL RIGHTS AND**
 33 **RESPONSIBILITIES**
 34 **Chapter 1. Definitions**
 35 **Sec. 1. Except as otherwise provided, the definitions in this**
 36 **chapter apply throughout this article.**
 37 **Sec. 2. "Parent" means, with regard to a child:**
 38 (1) a biological parent of the child;
 39 (2) an adoptive parent of the child; or
 40 (3) a legal guardian of the child.
 41 **Chapter 2. Rights of Parents**
 42 **Sec. 1. (a) The state of Indiana, a political subdivision or other**



1 governmental entity of the state of Indiana, a government official,
 2 or any other person acting under the color of law shall not infringe
 3 on the fundamental right of a parent to direct the upbringing,
 4 education, health care, and mental health of the parent's child
 5 without demonstrating that the infringement:

6 (1) is required by a compelling governmental interest of the
 7 highest order as long recognized in the history and traditions
 8 of the state of Indiana; and

9 (2) as applied to the parent and the child, is narrowly tailored
 10 and not otherwise served by a less restrictive means.

11 (b) Unless those rights have been legally waived or legally
 12 terminated, parents have inalienable rights that are more
 13 comprehensive than those described in subsection (a). Subsection
 14 (a):

15 (1) does not prescribe all rights of parents; and

16 (2) does not preempt or foreclose claims or remedies in
 17 support of parental rights that are available under the
 18 Constitution of the United States, the Constitution of the State
 19 of Indiana, or the statutes and common law of the state of
 20 Indiana.

21 Sec. 2. (a) A parent:

22 (1) may bring an action for a violation of this chapter; and

23 (2) may raise this chapter as a defense in any judicial or
 24 administrative proceeding regardless of whether the
 25 proceeding is brought by or in the name of the state of
 26 Indiana, a private person, or any other party.

27 (b) Notwithstanding any other provision of law:

28 (1) an action under this section may be commenced; and

29 (2) a court may grant relief in an action commenced under
 30 this section;

31 regardless of whether the person commencing the action has
 32 sought or exhausted administrative remedies available to the
 33 person.

34 (c) A court may grant to a person who successfully asserts a
 35 claim or defense under this section:

36 (1) declaratory relief;

37 (2) injunctive relief;

38 (3) compensatory damages;

39 (4) reasonable attorney's fees and costs; and

40 (5) any other relief the court considers appropriate.

41 (d) Sovereign, governmental, and qualified immunity to suit and
 42 from liability are waived and abolished to the extent of liability



1 **created by this chapter.**

2 SECTION 3. IC 31-34-1-17 IS ADDED TO THE INDIANA CODE
3 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2023]: **Sec. 17. A child is not a child in need of services under any**
5 **section of this chapter due to the child's parent, guardian, or**
6 **custodian:**

7 **(1) referring to and raising the child consistent with the**
8 **child's biological sex;**

9 **(2) declining to consent to the child receiving:**

10 **(A) puberty blocking medication;**

11 **(B) supraphysiologic doses of testosterone or estrogen; or**

12 **(C) any surgical procedure the purpose of which is to:**

13 **(i) alter the apparent gender or sex of the child in a**
14 **manner inconsistent with the child's biological sex; or**

15 **(ii) affirm the child's perception of the child's gender or**
16 **sex, if the child's perception is inconsistent with the**
17 **child's biological sex; or**

18 **(3) declining to consent to the child receiving counseling or**
19 **other mental health services for the purpose of affirming the**
20 **child's perception of the child's gender or sex, if the child's**
21 **perception is inconsistent with the child's biological sex.**

22 SECTION 4. IC 31-34-20-1, AS AMENDED BY P.L.172-2022,
23 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2023]: **Sec. 1. (a)** Subject to this section and section 1.5 of this
25 chapter, if a child is a child in need of services, the juvenile court may
26 enter one (1) or more of the following dispositional decrees:

27 **(1) Order supervision of the child by the department.**

28 **(2) Order the child to receive outpatient treatment:**

29 **(A) at a social service agency or a psychological, a psychiatric,**
30 **a medical, or an educational facility; or**

31 **(B) from an individual practitioner.**

32 **(3) Remove the child from the child's home and authorize the**
33 **department to place the child in another home, shelter care**
34 **facility, child caring institution, group home, or secure private**
35 **facility. Placement under this subdivision includes authorization**
36 **to control and discipline the child.**

37 **(4) Award wardship of the child to the department for**
38 **supervision, care, and placement.**

39 **(5) Partially or completely emancipate the child under section 6**
40 **of this chapter.**

41 **(6) Order the child's parent, guardian, or custodian to complete**
42 **services recommended by the department and approved by the**



- 1 court under IC 31-34-18 and IC 31-34-19, which may include
 2 services described in section 3(a) of this chapter.
 3 (7) Order a person who is a party to refrain from direct or indirect
 4 contact with the child.
 5 (8) Order a perpetrator of child abuse or neglect to refrain from
 6 returning to the child's residence.
 7 (b) A juvenile court may not place a child in a home or facility that
 8 is located outside Indiana unless:
 9 (1) the placement is recommended or approved by the director of
 10 the department or the director's designee; or
 11 (2) the juvenile court makes written findings based on clear and
 12 convincing evidence that:
 13 (A) the out-of-state placement is appropriate because there is
 14 not an equivalent facility with adequate services located in
 15 Indiana;
 16 (B) institutional care in the other jurisdiction is in the best
 17 interest of the child and will not produce undue hardship; or
 18 (C) the location of the home or facility is within a distance not
 19 greater than fifty (50) miles from the county of residence of
 20 the child.
 21 **(c) A juvenile court may not enter a dispositional decree**
 22 **ordering removal of a child from the home of the child's parent,**
 23 **guardian, or custodian if:**
 24 **(1) the juvenile court has found the child to be a child in need**
 25 **of services under IC 31-34-1-6; and**
 26 **(2) the parent, guardian, or custodian of the child:**
 27 **(A) is a fit parent, guardian, or custodian of the child; and**
 28 **(B) does not consent to the child being removed from the**
 29 **child's home.**
 30 **(d)** If a dispositional decree under this section:
 31 (1) orders or approves removal of a child from the child's home or
 32 awards wardship of the child to the department; and
 33 (2) is the first juvenile court order in the child in need of services
 34 proceeding that authorizes or approves removal of the child from
 35 the child's parent, guardian, or custodian;
 36 the juvenile court shall include in the decree the appropriate findings
 37 and conclusions described in IC 31-34-5-3(b) and IC 31-34-5-3(c).

