



Reprinted
March 26, 2019

ENGROSSED HOUSE BILL No. 1432

DIGEST OF HB 1432 (Updated March 25, 2019 2:53 pm - DI 104)

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

Synopsis: Parental incarceration. Requires a CHINS dispositional decree to provide a reasonable opportunity for a parent of the child who: (1) is incarcerated; and (2) has maintained a meaningful role in the child's life; to maintain a relationship with the child, subject to the safety of the community and best interests of the child. Provides that a petition to terminate a parent-child relationship (TPR) may be dismissed if: (1) the parent is incarcerated or the parent's prior incarceration is a significant factor in the child having been under the supervision of the department of child services (department) or a
(Continued next page)

Effective: July 1, 2019.

Macer, Steuerwald, Summers

(SENATE SPONSORS — YOUNG M, NIEZGODSKI, CRANE, FORD JON,
RANDOPHL LONNIE M)

January 15, 2019, read first time and referred to Committee on Family, Children and Human Affairs.

February 5, 2019, amended, reported — Do Pass.

February 7, 2019, read second time, amended, ordered engrossed.

February 8, 2019, engrossed.

February 18, 2019, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

March 4, 2019, read first time and referred to Committee on Family and Children Services.

March 11, 2019, amended, reported favorably — Do Pass.

March 25, 2019, read second time, amended, ordered engrossed.

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Digest Continued

county probation department for at least 15 of the most recent 22 months; (2) the parent maintains a meaningful role in the child's life; and (3) the department has not documented a reason to conclude that it would otherwise be in the child's best interests to terminate the parent-child relationship. Exempts the incarceration of certain crimes from the dismissal of the petition. Provides that in determining whether to dismiss a TPR, a court may consider: (1) the length of time remaining in an incarcerated parent's sentence; (2) if the parent has previously been incarcerated or granted a motion to dismiss from a prior incarceration, whether dismissing the petition would delay the permanent placement of the child; and (3) other factors the court considers relevant.



Reprinted
March 26, 2019

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.

ENGROSSED HOUSE BILL No. 1432

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 31-34-19-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. If consistent with the
3 safety of the community and the best interest of the child, the juvenile
4 court shall enter a dispositional decree that:
5 (1) is:
6 (A) in the least restrictive (most family like) and most
7 appropriate setting available; and
8 (B) close to the parents' home, consistent with the best interest
9 and special needs of the child;
10 (2) least interferes with family autonomy;
11 (3) is least disruptive of family life;
12 (4) imposes the least restraint on the freedom of the child and the
13 child's parent, guardian, or custodian; ~~and~~
14 (5) provides a reasonable opportunity for participation by the
15 child's parent, guardian, or custodian; **and**
16 **(6) provides a reasonable opportunity for the child's parent**
17 **who:**

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- 1 **(A) is incarcerated; and**
 2 **(B) has maintained a meaningful role in the child's life;**
 3 **to maintain a relationship with the child.**

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

- 10 (1) The attorney for the department.
 11 (2) The child's court appointed special advocate.
 12 (3) The child's guardian ad litem.

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

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

17 (2) The petition must allege:

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

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

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

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

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

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

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

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

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



- 1 (D) that there is a satisfactory plan for the care and treatment
 2 of the child.
- 3 (3) If the department intends to file a motion to dismiss under
 4 section 4.5 of this chapter, the petition must indicate whether at
 5 least one (1) of the factors listed in section 4.5(d)(1) through
 6 ~~4.5(d)(3)~~ **4.5(d)(4)** of this chapter applies and specify each factor
 7 that would apply as the basis for filing a motion to dismiss the
 8 petition.
- 9 (c) At the time the petitioner files the verified petition described in
 10 subsection (b) with the juvenile or probate court, the petitioner shall
 11 also file a:
- 12 (1) copy of the order approving the permanency plan under
 13 IC 31-34-21-7 for the child; or
- 14 (2) permanency plan for the child as described by
 15 IC 31-34-21-7.5.
- 16 SECTION 3. IC 31-35-2-4.5, AS AMENDED BY P.L.5-2015,
 17 SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2019]: Sec. 4.5. (a) This section applies if:
- 19 (1) a court has made a finding under IC 31-34-21-5.6 that
 20 reasonable efforts for family preservation or reunification with
 21 respect to a child in need of services are not required; or
- 22 (2) a child in need of services or a delinquent child:
- 23 (A) has been placed in:
- 24 (i) a foster family home, child caring institution, or group
 25 home licensed under IC 31-27; or
- 26 (ii) the home of a relative (as defined in IC 31-9-2-107(c));
 27 as directed by a court in a child in need of services proceeding
 28 under IC 31-34 or a delinquency action under IC 31-37; and
- 29 (B) has been removed from a parent and has been under the
 30 supervision of the department or county probation department
 31 for not less than fifteen (15) months of the most recent
 32 twenty-two (22) months, beginning with the date the child is
 33 removed from the home as a result of the child being alleged
 34 to be a child in need of services or a delinquent child.
- 35 (b) A person described in section 4(a) of this chapter shall:
- 36 (1) file a petition to terminate the parent-child relationship under
 37 section 4 of this chapter; and
- 38 (2) request that the petition be set for hearing.
- 39 (c) If a petition under subsection (b) is filed by the child's court
 40 appointed special advocate or guardian ad litem, the department shall
 41 be joined as a party to the petition.
- 42 (d) A person described in section 4(a) of this chapter may file a



1 motion to dismiss the petition to terminate the parent-child relationship
2 if any of the following circumstances apply:

3 (1) That the current case plan prepared by or under the
4 supervision of the department or the probation department under
5 IC 31-34-15, IC 31-37-19-1.5, or IC 31-37-22-4.5 has
6 documented a compelling reason, based on facts and
7 circumstances stated in the petition or motion, for concluding that
8 filing, or proceeding to a final determination of, a petition to
9 terminate the parent-child relationship is not in the best interests
10 of the child. A compelling reason may include the fact that the
11 child is being cared for by a custodian who is a relative (as
12 defined in IC 31-9-2-107(c)).

13 (2) That:

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

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

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

25 (3) That:

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

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

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

36 **(4) This subdivision does not apply if the person was**
37 **incarcerated for a crime described in IC 31-35-3-4, a crime of**
38 **child abuse (as defined in IC 5-2-22-1), or neglect of a**
39 **dependent (IC 35-46-1-4) if the incarceration for neglect of a**
40 **dependent was a Level 5 or above felony. That:**

41 **(A) the parent is incarcerated or the parent's prior**
42 **incarceration is a significant factor in the child having**



1 **been under the supervision of the department or a county**
 2 **probation department for at least fifteen (15) of the most**
 3 **recent twenty-two (22) months;**

4 **(B) the parent maintains a meaningful role in the child's**
 5 **life; and**

6 **(C) the department has not documented a reason to**
 7 **conclude that it would otherwise be in the child's best**
 8 **interests to terminate the parent-child relationship.**

9 The motion to dismiss shall specify which of the allegations described
 10 in subdivisions (1) through ~~(3)~~ (4) apply to the motion. If the court
 11 finds that any of the allegations described in subdivisions (1) through
 12 ~~(3)~~ (4) are true, as established by a preponderance of the evidence, the
 13 court shall dismiss the petition to terminate the parent-child
 14 relationship.

15 **(e) In determining whether to dismiss a petition to terminate a**
 16 **parent-child relationship pursuant to a motion to dismiss that**
 17 **specifies circumstances described in subsection (d)(4), the court**
 18 **may consider the following:**

19 **(1) The length of time remaining in the incarcerated parent's**
 20 **sentence.**

21 **(2) If the parent has previously been:**

22 **(A) incarcerated; or**

23 **(B) granted a motion to dismiss described in subsection**
 24 **(d)(4) for a prior incarceration;**

25 **whether dismissing the petition would delay the permanent**
 26 **placement of the child.**

27 **(3) Any other factor the court considers relevant.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Family, Children and Human Affairs, to which was referred House Bill 1432, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 4.

Page 5, delete lines 1 through 15.

Page 6, line 2, delete "will" and insert "**may**".

Page 6, delete lines 40 through 42.

Page 7, delete lines 1 through 20.

Page 7, line 40, delete "given the considerations under IC 31-35-2-4.5(e)(4);" and insert "**taking into consideration the factors under IC 31-35-2-4.5(e);**".

Page 7, delete line 42.

Delete pages 8 through 9.

Page 10, delete lines 1 through 29.

Page 12, delete lines 25 through 42.

Delete page 13.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1432 as introduced.)

FRIZZELL

Committee Vote: yeas 12, nays 0.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1432 be amended to read as follows:

Page 3, line 26, after "life" delete "," and insert ";".

Page 3, delete lines 27 through 28.

Page 5, line 24, after "relationship." insert "**In determining whether to dismiss a petition to terminate a parent-child relationship pursuant to a motion to dismiss that specifies allegations described in subdivision (4), the court may consider the**

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length of time remaining in the incarcerated parent's sentence and any other factor the court considers relevant."

(Reference is to HB 1432 as printed February 5, 2019.)

MACER

COMMITTEE REPORT

Madam President: The Senate Committee on Family and Children Services, to which was referred House Bill No. 1432, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Delete page 2.

Page 3, delete lines 1 through 7.

Page 3, between lines 27 and 28, begin a new paragraph and insert: "SECTION 2. IC 31-35-2-4, AS AMENDED BY P.L.42-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (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.
- (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)~~ **4.5(d)(4)** of this chapter applies and specify each factor that would apply as the basis for filing a motion to dismiss the petition.

(c) At the time the petitioner files the verified petition described in subsection (b) with the juvenile or probate court, the petitioner shall also file a:

(1) copy of the order approving the permanency plan under IC 31-34-21-7 for the child; or

(2) permanency plan for the child as described by IC 31-34-21-7.5."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1432 as reprinted February 8, 2019.)

GROOMS, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1432 be amended to read as follows:

Page 4, line 36, after "(4)" insert **"This subdivision does not apply if the person was incarcerated for a crime described in IC 31-35-3-4, a crime of child abuse (as defined in IC 5-2-22-1), or neglect of a dependent (IC 35-46-1-4) if the incarceration for neglect of a dependent was a Level 5 or above felony."**

Page 5, line 10, delete "In determining whether to dismiss a petition to".

Page 5, delete lines 11 through 15, begin a new paragraph and insert:

"(e) In determining whether to dismiss a petition to terminate a parent-child relationship pursuant to a motion to dismiss that specifies circumstances described in subsection (d)(4), the court may consider the following:

(1) The length of time remaining in the incarcerated parent's sentence.

(2) If the parent has previously been:

(A) incarcerated; or

(B) granted a motion to dismiss described in subsection (d)(4) for a prior incarceration;

whether dismissing the petition would delay the permanent placement of the child.

(3) Any other factor the court considers relevant."

(Reference is to EHB 1432 as printed March 12, 2019.)

HOUCHIN

