



April 3, 2017

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## ENGROSSED SENATE BILL No. 246

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DIGEST OF SB 246 (Updated April 3, 2017 1:39 pm - DI 123)

**Citations Affected:** IC 31-34; IC 34-30; IC 35-46.

**Synopsis:** Child neglect defense. Specifies under the safe haven law that it is a defense to a claim of neglect of a dependent if the individual left the child: (1) with a person who is an emergency medical services provider; or (2) in a newborn safety device that meets the specified requirements. Provides civil immunity for a hospital that operates a newborn safety device if the device meets specified requirements, unless the act or omission constitutes gross negligence or willful or wanton misconduct. Provides that neglect of a dependent with a mental or physical disability is a Level 1 felony in certain instances.

**Effective:** July 1, 2017.

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**Holdman, Head, Ford,  
Randolph Lonnie M**  
(HOUSE SPONSOR — CARBAUGH)

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January 9, 2017, read first time and referred to Committee on Family and Children Services.

February 20, 2017, amended, reported favorably — Do Pass.

February 23, 2017, read second time, ordered engrossed.

February 24, 2017, engrossed.

February 27, 2017, read third time, passed. Yeas 46, nays 3.

HOUSE ACTION

March 6, 2017, read first time and referred to Committee on Judiciary.

April 3, 2017, amended, reported — Do Pass.

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ES 246—LS 6968/DI 104





April 3, 2017

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 246

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 31-34-2.5-1, AS AMENDED BY P.L.128-2012,  
2 SECTION 158, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2017]: Sec. 1. (a) An emergency medical  
4 services provider (**as defined in IC 16-41-10-1**) shall, without a court  
5 order, take custody of a child who is, or who appears to be, not more  
6 than thirty (30) days of age if:  
7 (1) the child is voluntarily left:  
8 (A) with the provider by the child's parent; or  
9 (B) **in a newborn safety device that:**  
10 (i) **has been approved by a hospital licensed under**  
11 **IC 16-21;**  
12 (ii) **is physically located inside a hospital that is staffed**  
13 **continuously on a twenty-four (24) hour basis every day**  
14 **to provide care to patients in an emergency; and**  
15 (iii) **is located in an area that is conspicuous and visible**  
16 **to hospital staff; and**  
17 (2) the parent does not express an intent to return for the child.

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(b) An emergency medical services provider who takes custody of a child under this section shall perform any act necessary to protect the child's physical health or safety.

(c) Any person who in good faith voluntarily leaves a child:

(1) with an emergency medical services provider; or

(2) in a newborn safety device described in subsection (a)(1)(B);

is not obligated to disclose the parent's name or the person's name.

(d) A hospital that approves the operation of a newborn safety device that meets the requirements set forth in subsection (a)(1)(B) is immune from civil liability for an act or omission relating to the operation of the newborn safety device unless the act or omission constitutes gross negligence or willful or wanton misconduct.

SECTION 2. IC 34-30-2-134.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 134.5. IC 31-34-2.5-1 (Concerning a hospital operating a newborn safety device).**

SECTION 3. IC 35-46-1-4, AS AMENDED BY P.L.168-2014, SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:

(1) places the dependent in a situation that endangers the dependent's life or health;

(2) abandons or cruelly confines the dependent;

(3) deprives the dependent of necessary support; or

(4) deprives the dependent of education as required by law;

commits neglect of a dependent, a Level 6 felony.

(b) However, the offense is:

(1) a Level 5 felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and:

(A) results in bodily injury; or

(B) is:

(i) committed in a location where a person is violating IC 35-48-4-1 (dealing in cocaine or a narcotic drug) or IC 35-48-4-1.1 (dealing in methamphetamine); or

(ii) the result of a violation of IC 35-48-4-1 (dealing in cocaine or a narcotic drug) or IC 35-48-4-1.1 (dealing in methamphetamine);

(2) a Level 3 felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and results in serious bodily injury;

(3) a Level 1 felony if it is committed under subsection (a)(1),



(a)(2), or (a)(3) by a person at least eighteen (18) years of age and results in the death of a dependent who is less than fourteen (14) years of age **or in the death of a dependent of any age who has a mental or physical disability**; and

(4) a Level 5 felony if it is committed under subsection (a)(2) and consists of cruel confinement or abandonment that:

(A) deprives a dependent of necessary food, water, or sanitary facilities;

(B) consists of confinement in an area not intended for human habitation; or

(C) involves the unlawful use of handcuffs, a rope, a cord, tape, or a similar device to physically restrain a dependent.

(c) It is a defense to a prosecution based on an alleged act under this section that:

(1) the accused person left a dependent child who was, at the time the alleged act occurred, not more than thirty (30) days of age:

**(A) in a newborn safety device that:**

**(i) has been approved by a hospital licensed under IC 16-21;**

**(ii) is physically located inside a hospital that is staffed continuously on a twenty-four (24) hour basis every day to provide care to patients in an emergency; and**

**(iii) is located in an area that is conspicuous and visible to hospital staff; or**

**(B) with an individual who is an emergency medical services provider (as defined in IC 16-41-10-1) who took custody of the child under IC 31-34-2.5;**

when

~~(A)~~ the prosecution is based solely on the alleged act of leaving the child **in the newborn safety device** or with the emergency medical services provider and

~~(B)~~ the alleged act did not result in bodily injury or serious bodily injury to the child; or

(2) the accused person, in the legitimate practice of the accused person's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to the accused person's dependent.

(d) Except for property transferred or received:

(1) under a court order made in connection with a proceeding under IC 31-15, IC 31-16, IC 31-17, or IC 31-35 (or IC 31-1-11.5 or IC 31-6-5 before their repeal); or

(2) under section 9(b) of this chapter;



- 1 a person who transfers or receives any property in consideration for the
- 2 termination of the care, custody, or control of a person's dependent
- 3 child commits child selling, a Level 6 felony.



## COMMITTEE REPORT

Madam President: The Senate Committee on Family and Children Services, to which was referred Senate Bill No. 246, 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 15, begin a new paragraph and insert:

"SECTION 1. IC 31-34-2.5-1, AS AMENDED BY P.L.128-2012, SECTION 158, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. (a) An emergency medical services provider **(as defined in IC 16-41-10-1)** shall, without a court order, take custody of a child who is, or who appears to be, not more than thirty (30) days of age if:

(1) the child is voluntarily left:

(A) with the provider by the child's parent; **or**

**(B) in a newborn safety device that:**

**(i) has been approved by a hospital licensed under IC 16-21;**

**(ii) is physically located inside a hospital that is staffed continuously on a twenty-four (24) hour basis every day to provide care to patients in an emergency; and**

**(iii) is located in an area that is conspicuous and visible to hospital staff; and**

(2) the parent does not express an intent to return for the child.

(b) An emergency medical services provider who takes custody of a child under this section shall perform any act necessary to protect the child's physical health or safety.

(c) Any person who in good faith voluntarily leaves a child:

(1) with an emergency medical services provider; **or**

**(2) in a newborn safety device described in subsection (a)(1)(B);**

is not obligated to disclose the parent's name or the person's name.

**(d) A hospital that approves the operation of a newborn safety device that meets the requirements set forth in subsection (a)(1)(B) is immune from civil liability for an act or omission relating to the operation of the newborn safety device unless the act or omission constitutes gross negligence or willful or wanton misconduct.**

SECTION 2. IC 34-30-2-134.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 134.5. IC 31-34-2.5-1 (Concerning a hospital operating a newborn safety device)."**

Page 2, delete lines 37 through 42, begin a new line block indented



and insert:

"(1) the accused person left a dependent child who was, at the time the alleged act occurred, not more than thirty (30) days of age:

(A) in a newborn safety device that:

(i) has been approved by a hospital licensed under IC 16-21;

(ii) is physically located inside a hospital that is staffed continuously on a twenty-four (24) hour basis every day to provide care to patients in an emergency; and

(iii) is located in an area that is conspicuous and visible to hospital staff; or

(B) with an individual who is an emergency medical services provider (as defined in IC 16-41-10-1) who took custody of the child under IC 31-34-2.5;

when

~~(A)~~ the prosecution is based solely on the alleged act of leaving the child **in the newborn safety device or** with the emergency medical services provider and

~~(B)~~ the alleged act did not result in bodily injury or serious bodily injury to the child; or".

Page 3, delete lines 1 through 4.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 246 as introduced.)

GROOMS, Chairperson

Committee Vote: Yeas 7, Nays 0.





## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 246, 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 3, line 3, delete ";" and insert "**or in the death of a dependent of any age who has a mental or physical disability;**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 246 as printed February 21, 2017.)

MCNAMARA

Committee Vote: yeas 8, nays 0.

