

SENATE BILL No. 485

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-32; IC 31-34-10-3.5; IC 31-35-2-4; IC 33-40-9.

Synopsis: Office of the child representative. Requires a child's attorney to request an independent guardian ad litem or court appointed special advocate under certain circumstances. Provides that the following are entitled to representation by counsel: (1) A child in a proceeding to terminate the parent-child relationship. (2) A child who is, or is going to be, in an out-of-home placement with a child services provider. (3) A child who is at least 12 years of age in a child in need of services case. Allows a child at least 12 years of age to waive the right to counsel only after an initial meeting with the appointed attorney, in open court, on the record and confirmed in writing, and in the presence of the appointed attorney. Establishes the office of the child representative, which consists of both a council directed by a board of directors and a commission. Provides procedures and duties for the council and the commission. Creates the child representative fund. Makes an appropriation.

Effective: July 1, 2023.

Ford Jon

January 19, 2023, read first time and referred to Committee on Family and Children Services.



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.

SENATE BILL No. 485

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

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

1 SECTION 1. IC 31-32-3-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) A guardian ad
3 litem or court appointed special advocate need not be an attorney, but
4 the attorney representing the child may be appointed the child's
5 guardian ad litem or court appointed special advocate.

6 (b) **A child's attorney shall request that the court appoint an
7 independent guardian ad litem or court appointed special advocate
8 if the child's attorney:**

9 (1) **is also serving as the child's guardian ad litem or court
10 appointed special advocate; and**

11 (2) **determines the child's expressed interest differs from the
12 interests being advocated for as the child's guardian ad litem
13 or court appointed special advocate.**

14 SECTION 2. IC 31-32-4-1 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) The following
16 persons are entitled to be represented by counsel:

17 (1) A child charged with a delinquent act, as provided by



- 1 IC 31-32-2-2.
 2 (2) A parent, in a proceeding to terminate the parent-child
 3 relationship, as provided by IC 31-32-2-5.
 4 (3) **A child in a proceeding to terminate the parent-child**
 5 **relationship.**
 6 (4) **A child who is, or is going to be, in an out-of-home**
 7 **placement with a child services provider (as defined in**
 8 **IC 31-27-7-2).**
 9 (5) **A child at least twelve (12) years of age in a child in need**
 10 **of services case.**
 11 (6) Any other person designated by law.
 12 **(b) If a child in a child in need of services case turns twelve (12)**
 13 **years of age while the case is still ongoing, the child is entitled to be**
 14 **represented by counsel at the time the child turns twelve (12) years**
 15 **of age.**
 16 SECTION 3. IC 31-32-4-2 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) If:
 18 (1) a child alleged to be a delinquent child does not have an
 19 attorney who may represent the child without a conflict of
 20 interest; and
 21 (2) the child has not lawfully waived the child's right to counsel
 22 under IC 31-32-5 (or IC 31-6-7-3 before its repeal);
 23 the juvenile court shall appoint counsel for the child at the detention
 24 hearing or at the initial hearing, whichever occurs first, or at any earlier
 25 time.
 26 **(b) The court shall appoint counsel for a child at the detention**
 27 **hearing or at the initial hearing, whichever occurs first, or at any**
 28 **earlier time if the child:**
 29 **(1) is entitled to representation under section 1(a)(3) through**
 30 **1(a)(5) of this chapter; and**
 31 **(2) has not lawfully waived the child's right to counsel under**
 32 **IC 31-32-5.**
 33 ~~(b)~~ (c) The court may appoint counsel to represent any child in any
 34 other proceeding.
 35 SECTION 4. IC 31-32-5-1 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. **(a) Subject to**
 37 **subsections (b) and (c),** any rights guaranteed to a child under the
 38 Constitution of the United States, the Constitution of the State of
 39 Indiana, or any other law may be waived only:
 40 (1) by counsel retained or appointed to represent the child if the
 41 child knowingly and voluntarily joins with the waiver;
 42 (2) by the child's custodial parent, guardian, custodian, or



1 guardian ad litem if:

- 2 (A) that person knowingly and voluntarily waives the right;
 3 (B) that person has no interest adverse to the child;
 4 (C) meaningful consultation has occurred between that person
 5 and the child; and
 6 (D) the child knowingly and voluntarily joins with the waiver;
 7 or

8 (3) by the child, without the presence of a custodial parent,
 9 guardian, or guardian ad litem, if:

- 10 (A) the child knowingly and voluntarily consents to the
 11 waiver; and
 12 (B) the child has been emancipated under IC 31-34-20-6 or
 13 IC 31-37-19-27, by virtue of having married, or in accordance
 14 with the laws of another state or jurisdiction.

15 **(b) Following the appointment of counsel and an initial meeting**
 16 **between the child and the child's attorney:**

17 **(1) if the child is at least twelve (12) years of age, the child**
 18 **may waive the right to counsel:**

- 19 **(A) in open court;**
 20 **(B) on the record and confirmed in writing; and**
 21 **(C) in the presence of the child's attorney; or**

22 **(2) if the child is less than twelve (12) years of age, the child**
 23 **may not waive the right to counsel.**

24 **(c) A child may withdraw the child's waiver under this section**
 25 **at any time in a proceeding, and the court shall appoint counsel for**
 26 **the child before the proceeding may resume.**

27 SECTION 5. IC 31-32-5-2 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. The child may waive
 29 the child's right to meaningful consultation under section ~~1(2)(C)~~
 30 **1(a)(2)(C)** of this chapter if:

- 31 (1) the child is informed of that right;
 32 (2) the child's waiver is made in the presence of the child's
 33 custodial parent, guardian, custodian, guardian ad litem, or
 34 attorney; and
 35 (3) the waiver is made knowingly and voluntarily.

36 SECTION 6. IC 31-34-10-3.5 IS ADDED TO THE INDIANA
 37 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2023]: **Sec. 3.5. (a) Before complying with the**
 39 **other requirements of this chapter, the court shall determine**
 40 **whether:**

- 41 **(1) the child is entitled to counsel under IC 31-32-4-1; and**
 42 **(2) counsel has been:**



- 1 (A) waived under IC 31-32-5; or
 2 (B) previously obtained.
 3 (b) The finding of whether the child is entitled to counsel must
 4 be made on the record at every hearing, including the initial
 5 hearing.
 6 (c) If the child is entitled to counsel and counsel has not been
 7 waived or previously obtained, the juvenile court shall appoint
 8 counsel.

9 SECTION 7. IC 31-35-2-4, AS AMENDED BY P.L.258-2019,
 10 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2023]: Sec. 4. (a) A petition to terminate the parent-child
 12 relationship involving a delinquent child or a child in need of services
 13 may be signed and filed with the juvenile or probate court by any of the
 14 following:

- 15 (1) The attorney for the department.
 16 (2) The child's court appointed special advocate **or guardian ad**
 17 **litem.**
 18 (3) ~~The child's guardian ad litem.~~ **The child's attorney on behalf**
 19 **of the child.**
 20 (b) The petition must meet the following requirements:
 21 (1) The petition must be entitled "In the Matter of the Termination
 22 of the Parent-Child Relationship of _____, a child, and
 23 _____, the child's parent (or parents)".
 24 (2) The petition must allege **the following:**
 25 (A) That one (1) of the following is true:
 26 (i) The child has been removed from the parent for at least
 27 six (6) months under a dispositional decree.
 28 (ii) A court has entered a finding under IC 31-34-21-5.6 that
 29 reasonable efforts for family preservation or reunification
 30 are not required, including a description of the court's
 31 finding, the date of the finding, and the manner in which the
 32 finding was made.
 33 (iii) The child has been removed from the parent and has
 34 been under the supervision of a local office or probation
 35 department for at least fifteen (15) months of the most recent
 36 twenty-two (22) months, beginning with the date the child
 37 is removed from the home as a result of the child being
 38 alleged to be a child in need of services or a delinquent
 39 child.
 40 (B) That one (1) of the following is true:
 41 (i) There is a reasonable probability that the conditions that
 42 resulted in the child's removal or the reasons for placement



1 outside the home of the parents will not be remedied.

2 (ii) There is a reasonable probability that the continuation of
3 the parent-child relationship poses a threat to the well-being
4 of the child.

5 (iii) The child has, on two (2) separate occasions, been
6 adjudicated a child in need of services.

7 (C) That termination is in the best interests of the child. ~~and~~

8 (D) That there is a satisfactory plan for the care and treatment
9 of the child.

10 (3) If the department intends to file a motion to dismiss under
11 section 4.5 of this chapter, the petition must indicate whether at
12 least one (1) of the factors listed in section 4.5(d)(1) through
13 4.5(d)(4) of this chapter applies and specify each factor that
14 would apply as the basis for filing a motion to dismiss the
15 petition.

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

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

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

23 SECTION 8. IC 33-40-9 IS ADDED TO THE INDIANA CODE AS
24 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
25 1, 2023]:

26 **Chapter 9. Office of the Child Representative**

27 **Sec. 1. As used in this chapter, "office" refers to the office of the**
28 **child representative established by section 2 of this chapter.**

29 **Sec. 2. The office of the child representative is established and**
30 **consists of a commission, a council, and the employees necessary to**
31 **carry out the duties of the office.**

32 **Sec. 3. (a) The commission for the office of the child**
33 **representative is established.**

34 **(b) The commission consists of the following eleven (11)**
35 **members:**

36 **(1) Three (3) members appointed by the governor, with not**
37 **more than two (2) of the appointees belonging to the same**
38 **political party.**

39 **(2) Three (3) members appointed by the chief justice of the**
40 **supreme court, with not more than two (2) appointees**
41 **belonging to the same political party.**

42 **(3) One (1) member appointed by the board of trustees of the**



1 **Indiana criminal justice institute, who is an attorney admitted**
 2 **to the practice of law in Indiana.**

3 **(4) Two (2) members of the house of representatives, to be**
 4 **appointed by the speaker of the house of representatives. The**
 5 **members appointed under this subdivision may not be from**
 6 **the same political party.**

7 **(5) Two (2) members of the senate, to be appointed by the**
 8 **president pro tempore. The members appointed under this**
 9 **subdivision may not be from the same political party.**

10 **Sec. 4. (a) The members of the commission shall designate one**
 11 **(1) member of the commission as chairperson.**

12 **(b) The term of office for a member of the commission is four**
 13 **(4) years. A vacancy occurring among the members of the**
 14 **commission before the expiration of a term must be filled in the**
 15 **same manner as the original appointment. An appointment to fill**
 16 **a vacancy occurring before the expiration of a term is for the**
 17 **remainder of the unexpired term.**

18 **(c) A member of the commission who is a state employee is**
 19 **entitled to reimbursement for traveling expenses and other**
 20 **expenses actually incurred in connection with the member's duties,**
 21 **as provided in the state travel policies and procedures established**
 22 **by the Indiana department of administration and approved by the**
 23 **budget agency.**

24 **(d) A member of the commission who is not a state employee is**
 25 **entitled to:**

26 **(1) the minimum salary per diem provided by**
 27 **IC 4-10-11-2.1(b); and**

28 **(2) reimbursement for traveling expenses and other expenses**
 29 **actually incurred in connection with the member's duties, as**
 30 **provided in the state travel policies and procedures**
 31 **established by the Indiana department of administration and**
 32 **approved by the budget agency.**

33 **(e) The commission shall meet at least quarterly and at times**
 34 **called by the chairperson or at the request of three (3) commission**
 35 **members.**

36 **Sec. 5. The commission shall do the following:**

37 **(1) Make recommendations for standards for the**
 38 **representation of children in the child welfare system,**
 39 **including the following:**

40 **(A) Selection and qualifications of attorneys to represent**
 41 **youth in the child welfare system.**

42 **(B) Minimum duties and responsibilities of counsel for**



- 1 youth in representing children involved in judicial
 2 proceedings.
- 3 (C) Determination of conflicts of interest.
- 4 (D) Investigative, clerical, and other support services
 5 necessary to provide adequate legal representation for
 6 youth.
- 7 (E) Determination of appropriate minimum and maximum
 8 caseloads for persons serving as counsel for youth.
- 9 (2) Recommend fair compensation rates for salaried,
 10 contractual, and assigned counsel for youth.
- 11 (3) Make recommendations concerning the funding and
 12 delivery of services by attorneys serving as legal
 13 representatives of children.
- 14 (4) Make an annual report to the governor, the general
 15 assembly, and the supreme court on the operation of the
 16 office. A report made to the general assembly must be in an
 17 electronic format under IC 5-14-6.
- 18 **Sec. 6. (a) The council for the office of the child representative**
 19 **is established and consists of all:**
- 20 (1) public defenders;
- 21 (2) contractual pauper counsel; and
- 22 (3) other attorneys regularly appointed to represent indigent
 23 defendants.
- 24 (b) The council shall represent an individual who is:
- 25 (1) a child or older youth party in a child in need of services
 26 case;
- 27 (2) a child or older youth party in a termination of parental
 28 rights proceeding; or
- 29 (3) an older youth in a collaborative care case.
- 30 **Sec. 7. (a) The activities of the council shall be directed by an**
 31 **eleven (11) member board of directors, ten (10) of whom must be**
 32 **elected by the entire membership of the council, and the state**
 33 **public defender.**
- 34 (b) The members of the board of directors shall designate one
 35 (1) member of the board as chairperson.
- 36 (c) The term for a member of the board of directors is four (4)
 37 years. A vacancy occurring among the members before the
 38 expiration of a term must be filled in the same manner as the
 39 original election. An election to fill a vacancy occurring before the
 40 expiration of a term is for the remainder of the unexpired term.
- 41 (d) A member of the board of directors who is a state employee
 42 is entitled to reimbursement for traveling expenses and other



1 expenses actually incurred in connection with the member's duties,
 2 as provided in the state travel policies and procedures established
 3 by the Indiana department of administration and approved by the
 4 budget agency.

5 (e) A member of the board of directors who is not a state
 6 employee is entitled to:

7 (1) the minimum salary per diem provided by
 8 IC 4-10-11-2.1(b); and

9 (2) reimbursement for traveling expenses and other expenses
 10 actually incurred in connection with the member's duties, as
 11 provided in the state travel policies and procedures
 12 established by the Indiana department of administration and
 13 approved by the budget agency.

14 (f) The board of directors shall meet at least quarterly and at
 15 times called by the chairperson or at the request of at least three
 16 (3) members of the board.

17 Sec. 8. (a) The board of directors shall:

18 (1) appoint an office director; and

19 (2) fix an annual salary for the office director.

20 (b) The office director serves at the pleasure of the board and
 21 must be:

22 (1) a resident of Indiana; and

23 (2) a practicing attorney in Indiana.

24 Sec. 9. The office director shall do the following:

25 (1) Create a statewide office, as well as regional offices under
 26 subdivision (6), to discharge the office director's duties.

27 (2) Employ staff attorneys and clerical staff to assist the office
 28 director in running the statewide office.

29 (3) Appoint or employ regional directors to:

30 (A) oversee regional offices throughout Indiana; and

31 (B) oversee the employment of attorneys at regional
 32 offices.

33 (4) Create standards for the representation of children in the
 34 child welfare system, including the following:

35 (A) Selection and qualifications of attorneys to represent
 36 youth in the child welfare system.

37 (B) Minimum duties and responsibilities of counsel for
 38 youth in representing children involved in judicial
 39 proceedings.

40 (C) Determination of conflicts of interest.

41 (D) Investigative, clerical, and other support services
 42 necessary to provide adequate legal representation for



- 1 youth.
- 2 (E) Determination of appropriate minimum and maximum
- 3 caseloads for persons serving as counsel for youth.
- 4 (5) Ensure fair compensation rates for salaried, contractual,
- 5 and assigned counsel for youth.
- 6 (6) Establish the creation and operation of regional offices
- 7 with local directors.
- 8 (7) Make recommendations concerning the funding and
- 9 delivery of services by attorneys serving as legal
- 10 representatives of children.
- 11 (8) Adopt and use a seal that contains the words "Office of the
- 12 Child Representative, State of Indiana".
- 13 Sec. 10. (a) The child representative fund is created to receive
- 14 court costs or other revenues for county reimbursement and
- 15 administrative expenses.
- 16 (b) The office shall administer the fund.
- 17 (c) The treasurer of state shall invest the money in the fund not
- 18 currently needed to meet the obligations of the fund in the same
- 19 manner as other public funds may be invested.
- 20 (d) Money in the fund at the end of a fiscal year does not revert
- 21 to the state general fund.
- 22 (e) Money accruing to the fund is appropriated continuously for
- 23 the purposes of the fund.

