

HOUSE BILL No. 1242

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-30-1-11; IC 31-37; IC 35-38-1-22.

Synopsis: Minimum age for juvenile detention. Provides that a child who is less than 12 years of age may not be held in a juvenile detention facility, unless: (1) the child is 10 years of age or 11 years of age; and (2) the court finds that: (A) there is probable cause to believe the child committed an act that would be murder if committed by an adult; and (B) it is in the best interests of the child or the community that a petition be filed alleging that the child is a delinquent child. Requires a court that orders a child 10 years of age or 11 years of age to be detained in a juvenile facility to make specified written findings and conclusions.

Effective: July 1, 2019.

Pryor

January 10, 2019, read first time and referred to Committee on Courts and Criminal Code.



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. 1242

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 31-30-1-11 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 11. (a) Except as
3 provided in section 9 of this chapter, if a court having criminal
4 jurisdiction determines that a defendant is alleged to have committed
5 a crime before the defendant is eighteen (18) years of age, the court
6 shall immediately transfer the case, together with certified copies of all
7 papers, documents, and testimony, to the juvenile court. The juvenile
8 court shall proceed as if it had received a referral under IC 31-37-8.
9 (b) The court having criminal jurisdiction shall release the child on
10 the child's own recognizance or to the child's parent, guardian, or
11 custodian upon that person's written promise to bring the child before
12 the juvenile court at a specified time. However, **subject to**
13 **IC 31-37-7-2.1**, the court may order the child detained if the court finds
14 probable cause to believe that the child committed an act that would be
15 a crime if committed by an adult and that:
16 (1) the child is unlikely to appear before the juvenile court for
17 subsequent proceedings;



- 1 (2) detention is essential to protect the child or the community;
 2 (3) the parent, guardian, or custodian:
 3 (A) cannot be located; or
 4 (B) is unable or unwilling to take custody of the child; or
 5 (4) the child has a reasonable basis for requesting that ~~he or she~~
 6 **the child** not be released.

7 If the child is detained for a reason specified by subdivision (3) or (4),
 8 the child must be detained in accordance with IC 31-37-7-1.

9 (c) If the child is not released, the child shall be delivered to a place
 10 designated by the juvenile court. The court having criminal jurisdiction
 11 shall promptly notify the child's parent, guardian, or custodian and an
 12 intake officer of where the child is being held and the reasons for the
 13 child's detention.

14 (d) A child transferred to the juvenile court under this section (or
 15 IC 31-6-2-2 before its repeal) may not be released on bail.

16 SECTION 2. IC 31-37-5-3, AS AMENDED BY P.L.158-2013,
 17 SECTION 327, IS AMENDED TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) If a child is not taken into
 19 custody under an order of the court, the law enforcement officer may
 20 release the child or may release the child to the child's parent, guardian,
 21 or custodian upon the person's written promise to bring the child before
 22 the juvenile court at a time specified. Subject to subsection (c) **and**
 23 **IC 31-37-7-2.1**, the law enforcement officer may place the child in
 24 detention if the law enforcement officer reasonably believes that:

- 25 (1) the child is unlikely to appear before the juvenile court for
 26 subsequent proceedings;
 27 (2) the child has committed an act that would be murder or a
 28 Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony
 29 if committed by an adult;
 30 (3) detention is essential to protect the child or the community;
 31 (4) the parent, guardian, or custodian:
 32 (A) cannot be located; or
 33 (B) is unable or unwilling to take custody of the child; or
 34 (5) the child has a reasonable basis for requesting that the child
 35 not be released.

36 (b) If a child is detained for a reason specified in subsection (a)(4)
 37 or (a)(5), the child shall be detained under IC 31-37-7-1.

38 (c) Unless a law enforcement officer determines that detention is
 39 essential to protect a child or the community, the law enforcement
 40 officer who detains a child for a violation of the curfew law under
 41 IC 31-37-3 shall make a good faith effort to release the child to the
 42 child's parent, guardian, or custodian within a reasonable time after the



1 child is detained.

2 SECTION 3. IC 31-37-5-5, AS AMENDED BY P.L.28-2016,
3 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2019]: Sec. 5. (a) If the child was not taken into custody under
5 an order of the court, an intake officer shall investigate the reasons for
6 the child's detention. The intake officer may release the child to the
7 child's parent, guardian, or custodian upon the person's written promise
8 to bring the child before the juvenile court at a time specified and may
9 impose additional conditions upon the child, including:

- 10 (1) home detention;
11 (2) electronic monitoring;
12 (3) a curfew restriction;
13 (4) a directive to avoid contact with specified individuals until the
14 child's return to the juvenile court at a specified time;
15 (5) a directive to comply with Indiana law; or
16 (6) any other reasonable conditions on the child's actions or
17 behavior.

18 (b) If the intake officer imposes additional conditions upon the child
19 under subsection (a), the court shall hold a detention hearing under
20 IC 31-37-6 within forty-eight (48) hours of the imposition of the
21 additional conditions, excluding Saturdays, Sundays, and legal
22 holidays.

23 (c) **Subject to subsection (d) and IC 31-37-7-2.1**, the intake officer
24 may place the child in detention if the intake officer reasonably
25 believes that the child is a delinquent child and that:

- 26 (1) the child is unlikely to appear before the juvenile court for
27 subsequent proceedings;
28 (2) the child has committed an act that would be murder or a
29 Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony
30 if committed by an adult;
31 (3) detention is essential to protect the child or the community;
32 (4) the parent, guardian, or custodian:
33 (A) cannot be located; or
34 (B) is unable or unwilling to take custody of the child; or
35 (5) the child has a reasonable basis for requesting that the child
36 not be released.

37 (d) If a child is detained for a reason specified in subsection (c)(4)
38 or (c)(5), the child shall be detained under IC 31-37-7-1.

39 SECTION 4. IC 31-37-6-6, AS AMENDED BY P.L.146-2008,
40 SECTION 624, IS AMENDED TO READ AS FOLLOWS
41 [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) The juvenile court shall
42 release the child on the child's own recognizance or to the child's



1 parent, guardian, or custodian upon the person's written promise to
 2 bring the child before the court at a time specified. However, **subject**
 3 **to subsection (b) and IC 31-37-7-2.1**, the court may order the child
 4 detained if the court finds probable cause to believe the child is a
 5 delinquent child and that:

- 6 (1) the child is unlikely to appear for subsequent proceedings;
- 7 (2) detention is essential to protect the child or the community;
- 8 (3) the parent, guardian, or custodian:
 - 9 (A) cannot be located; or
 - 10 (B) is unable or unwilling to take custody of the child;
- 11 (4) return of the child to the child's home is or would be:
 - 12 (A) contrary to the best interests and welfare of the child; and
 - 13 (B) harmful to the safety or health of the child; or
- 14 (5) the child has a reasonable basis for requesting that the child
 15 not be released.

16 However, the findings under this subsection are not required if the
 17 child is ordered to be detained in the home of the child's parent,
 18 guardian, or custodian or is released subject to any condition listed in
 19 subsection (d).

20 (b) If a child is detained for a reason specified in subsection (a)(3),
 21 (a)(4), or (a)(5), the child shall be detained under IC 31-37-7-1.

22 (c) If a child is detained for a reason specified in subsection (a)(4),
 23 the court shall make written findings and conclusions that include the
 24 following:

- 25 (1) The factual basis for the finding specified in subsection (a)(4).
- 26 (2) A description of the family services available and efforts made
 27 to provide family services before removal of the child.
- 28 (3) The reasons why efforts made to provide family services did
 29 not prevent removal of the child.
- 30 (4) Whether efforts made to prevent removal of the child were
 31 reasonable.

32 (d) Whenever the court releases a child under this section, the court
 33 may impose conditions upon the child, including:

- 34 (1) home detention;
- 35 (2) electronic monitoring;
- 36 (3) a curfew restriction;
- 37 (4) a protective order;
- 38 (5) a no contact order;
- 39 (6) an order to comply with Indiana law; or
- 40 (7) an order placing any other reasonable conditions on the child's
 41 actions or behavior.

42 (e) If the juvenile court releases a child to the child's parent,



1 guardian, or custodian under this section, the court may impose
2 conditions on the child's parent, guardian, or custodian to ensure:

- 3 (1) the safety of the child's physical or mental health;
4 (2) the public's physical safety; or
5 (3) that any combination of subdivisions (1) and (2) is satisfied.

6 (f) The juvenile court shall include in any order approving or
7 requiring detention of a child or approving temporary detention of a
8 child taken into custody under IC 31-37-5 all findings and conclusions
9 required under:

- 10 (1) the applicable provisions of Title IV-E of the federal Social
11 Security Act (42 U.S.C. 670 et seq.); or
12 (2) any applicable federal regulation, including 45 CFR 1356.21;
13 as a condition of eligibility of a delinquent child for assistance under
14 Title IV-E or any other federal law.

15 (g) Inclusion in a juvenile court order of language approved and
16 recommended by the judicial conference of Indiana, in relation to:

- 17 (1) removal from the child's home; or
18 (2) detention;

19 of a child who is alleged to be, or adjudicated as, a delinquent child
20 constitutes compliance with subsection (f).

21 SECTION 5. IC 31-37-7-2 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. A child alleged to be
23 a delinquent child under IC 31-37-1 may be held in either of the
24 following:

- 25 (1) A secure facility for not more than six (6) hours upon arrest
26 for the limited purposes of:
27 (A) identification;
28 (B) processing;
29 (C) interrogation;
30 (D) transfer to a juvenile detention facility; or
31 (E) release to parents.

32 If the child is detained in a secure facility, the child shall be
33 restricted to an area of the facility in which the child has not more
34 than haphazard or incidental sight or sound contact with persons
35 charged with, imprisoned for, or incarcerated for crimes.

- 36 (2) A juvenile detention facility, **except as provided by section**
37 **2.1 of this chapter.**

38 SECTION 6. IC 31-37-7-2.1 IS ADDED TO THE INDIANA CODE
39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
40 1, 2019]: **Sec. 2.1. (a) Except as provided in subsection (b), a child**
41 **who is less than twelve (12) years of age may not be held in a**
42 **juvenile detention facility.**



1 **(b) A child who is ten (10) or eleven (11) years of age may be**
 2 **held in a juvenile detention facility if a court finds that:**

3 **(1) there is probable cause to believe the child committed an**
 4 **act that would be murder (IC 35-42-1-1) if committed by an**
 5 **adult; and**

6 **(2) it is in the best interests of the child or the community that**
 7 **a petition be filed alleging that the child is a delinquent child.**

8 **(c) If a child is held in a juvenile facility under subsection (b),**
 9 **the court shall make written findings and conclusions that include**
 10 **the following:**

11 **(1) The factual basis for the finding specified in subsection (b).**

12 **(2) A description of the family services available and efforts**
 13 **made to provide family services before removal of the child.**

14 **(3) The reasons why efforts made to provide family services**
 15 **did not prevent removal of the child.**

16 **(4) Whether efforts made to prevent removal of the child were**
 17 **reasonable.**

18 SECTION 7. IC 31-37-7-3 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. **Subject to section**
 20 **2.1 of this chapter**, a child alleged to be a delinquent child because of
 21 an act under IC 31-37-2-2 may be held in a juvenile detention facility
 22 for:

23 (1) not more than twenty-four (24) hours before; and

24 (2) not more than twenty-four (24) hours immediately after;

25 the initial court appearance, not including Saturdays, Sundays, and
 26 nonjudicial days.

27 SECTION 8. IC 31-37-19-1, AS AMENDED BY P.L.85-2017,
 28 SECTION 105, IS AMENDED TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) Subject to section 6.5 of this
 30 chapter **and IC 31-37-7-2.1**, if a child is a delinquent child under
 31 IC 31-37-2, the juvenile court may enter one (1) or more of the
 32 following dispositional decrees:

33 (1) Order supervision of the child by the probation department.

34 (2) Order the child to receive outpatient treatment:

35 (A) at a social service agency or a psychological, a psychiatric,
 36 a medical, or an educational facility; or

37 (B) from an individual practitioner.

38 (3) Remove the child from the child's home and place the child in
 39 another home or a shelter care facility, child caring institution,
 40 group home, or secure private facility. Placement under this
 41 subdivision includes authorization to control and discipline the
 42 child.



- 1 (4) Award wardship to a:
 2 (A) person, other than the department; or
 3 (B) shelter care facility.
 4 (5) Partially or completely emancipate the child under section 27
 5 of this chapter.
 6 (6) Order:
 7 (A) the child; or
 8 (B) the child's parent, guardian, or custodian;
 9 to receive family services.
 10 (7) Order a person who is a party to refrain from direct or indirect
 11 contact with the child.
 12 (b) If the child is removed from the child's home and placed in a
 13 foster family home or another facility, the juvenile court shall:
 14 (1) approve a permanency plan for the child;
 15 (2) find whether or not reasonable efforts were made to prevent
 16 or eliminate the need for the removal;
 17 (3) designate responsibility for the placement and care of the child
 18 with the probation department; and
 19 (4) find whether it:
 20 (A) serves the best interests of the child to be removed; and
 21 (B) would be contrary to the health and welfare of the child for
 22 the child to remain in the home.
 23 (c) If a dispositional decree under this section:
 24 (1) orders or approves removal of a child from the child's home or
 25 awards wardship of the child to a:
 26 (A) person other than the department; or
 27 (B) shelter care facility; and
 28 (2) is the first court order in the delinquent child proceeding that
 29 authorizes or approves removal of the child from the child's
 30 parent, guardian, or custodian;
 31 the court shall include in the decree the appropriate findings and
 32 conclusions described in IC 31-37-6-6(f) and IC 31-37-6-6(g).
 33 (d) If the juvenile court orders supervision of the child by the
 34 probation department under subsection (a)(1), the child or the child's
 35 parent, guardian, or custodian is responsible for any costs resulting
 36 from the participation in a rehabilitative service or educational class
 37 provided by the probation department. Any costs collected for services
 38 provided by the probation department shall be deposited in the county
 39 supplemental juvenile probation services fund.
 40 SECTION 9. IC 31-37-19-6, AS AMENDED BY P.L.146-2008,
 41 SECTION 651, IS AMENDED TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) This section applies if a child



- 1 is a delinquent child under IC 31-37-1.
- 2 (b) Except as provided in section 10 of this chapter and subject to
- 3 section 6.5 of this chapter **and IC 31-37-7-2.1**, the juvenile court may:
- 4 (1) enter any dispositional decree specified in section 5 of this
- 5 chapter; and
- 6 (2) take any of the following actions:
- 7 (A) Award wardship to:
- 8 (i) the department of correction for housing in a correctional
- 9 facility for children; or
- 10 (ii) a community based correctional facility for children.
- 11 Wardship under this subdivision does not include the right to
- 12 consent to the child's adoption.
- 13 (B) If the child is **at least twelve (12) years of age but** less
- 14 than seventeen (17) years of age, order confinement in a
- 15 juvenile detention facility for not more than the lesser of:
- 16 (i) ninety (90) days; or
- 17 (ii) the maximum term of imprisonment that could have
- 18 been imposed on the child if the child had been convicted as
- 19 an adult offender for the act that the child committed under
- 20 IC 31-37-1 (or IC 31-6-4-1(b)(1) before its repeal).
- 21 (C) If the child is at least seventeen (17) years of age, order
- 22 confinement in a juvenile detention facility for not more than
- 23 the lesser of:
- 24 (i) one hundred twenty (120) days; or
- 25 (ii) the maximum term of imprisonment that could have
- 26 been imposed on the child if the child had been convicted as
- 27 an adult offender for the act that the child committed under
- 28 IC 31-37-1 (or IC 31-6-4-1(b)(1) before its repeal).
- 29 (D) Remove the child from the child's home and place the
- 30 child in another home or shelter care facility. Placement under
- 31 this subdivision includes authorization to control and
- 32 discipline the child.
- 33 (E) Award wardship to a:
- 34 (i) person, other than the department; or
- 35 (ii) shelter care facility.
- 36 Wardship under this subdivision does not include the right to
- 37 consent to the child's adoption.
- 38 (F) Place the child in a secure private facility for children
- 39 licensed under the laws of a state. Placement under this
- 40 subdivision includes authorization to control and discipline the
- 41 child.
- 42 (G) Order a person who is a respondent in a proceeding under



1 IC 31-37-16 (before its repeal) or IC 34-26-5 to refrain from
2 direct or indirect contact with the child.
3 (c) If a dispositional decree under this section:
4 (1) orders or approves removal of a child from the child's home,
5 or awards wardship of the child to a:
6 (A) person, other than the department; or
7 (B) shelter care facility; and
8 (2) is the first court order in the delinquent child proceeding that
9 authorizes or approves removal of the child from the child's
10 parent, guardian, or custodian;
11 the juvenile court shall include in the decree the appropriate findings
12 and conclusions described in IC 31-37-6-6(f) and IC 31-37-6-6(g).
13 SECTION 10. IC 35-38-1-22 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 22. A court that
15 imposes a sentence for conviction of a misdemeanor upon a person
16 who is less than eighteen (18) years of age may, **subject to**
17 **IC 31-37-7-2.1**, enter an order requiring that the convicted person
18 serve the sentence in a juvenile detention facility established under
19 IC 31-31-8 (or IC 31-6-9-5 before its repeal). However, before an order
20 may be entered under this section, the court must secure the written
21 approval of the judge of the juvenile court allowing the detention of the
22 person in the juvenile detention facility.

