

HOUSE BILL No. 1307

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-0.4; IC 31-34; IC 31-35-2.

Synopsis: Termination of parental rights. Requires the department of child services (department) to file a petition for termination of parental rights if a child's parent accumulates a total of three instances of certain acts or omissions. Adds to the list of allegations that satisfy the requirements for a petition for termination of parental rights an allegation that a child's parent: (1) has accumulated a total of three instances of certain acts or omissions; (2) has failed to maintain consistent and meaningful contact with the child over at least the most recent 12 months; (3) has failed to provide care and support for the child for at least the most recent 12 months; or (4) is unable to adequately provide for the care and supervision of the child due to incompetence and it is unlikely that the parent will be able to adequately provide for the care of and responsibility for the child in the future. Provides that a court may find that reasonable efforts to reunify a child with the child's parent, guardian, or custodian are not required if the parent, guardian, or custodian: (1) has accumulated a total of three instances of certain acts or omissions; (2) has failed to maintain consistent and meaningful contact with the child over at least the most recent 12 months; (3) has failed to provide care and support for the child for at least the most recent 12 months; or (4) is unable to adequately provide for the care and supervision of the child due to incompetence and it is unlikely that the parent will be able to adequately provide for the care of and responsibility for the child in the future.

Effective: July 1, 2018.

McNamara

January 11, 2018, read first time and referred to Committee on Judiciary.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1307

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 31-9-2-0.4, AS AMENDED BY P.L.128-2012,
2 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 0.4. "Abandoned child", for purposes of
4 IC 31-34-21-4, **IC 31-34-21-5.6**, and ~~IC 31-35-2-6.5~~; **IC 31-35-2**,
5 means:
6 **(1)** a child who is, or who appears to be, not more than thirty (30)
7 days of age and whose parent:
8 ~~(+)~~ **(A)** has knowingly or intentionally left the child with an
9 emergency medical services provider; and
10 ~~(-)~~ **(B)** did not express an intent to return for the child; or
11 **(2) a child:**
12 **(A) who is at least twelve (12) months of age;**
13 **(B) whose parent, guardian, or custodian has failed to**
14 **contact the child, or the department concerning the child,**
15 **for a period of at least six (6) months; and**
16 **(C) whose parent's, guardian's, or custodian's location is**
17 **unknown.**



1 SECTION 2. IC 31-34-21-5.6, AS AMENDED BY P.L.46-2016,
2 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 5.6. Except as provided in subsection (c), a court
4 may make a finding described in this section at any phase of a child in
5 need of services proceeding.

6 (b) Reasonable efforts to reunify a child with the child's parent,
7 guardian, or custodian or preserve a child's family as described in
8 section 5.5 of this chapter are not required if the court finds any of the
9 following:

10 (1) A parent, guardian, or custodian of a child who is a child in
11 need of services has been convicted of:

12 (A) an offense described in IC 31-35-3-4(1)(B) or
13 IC 31-35-3-4(1)(D) through IC 31-35-3-4(1)(J) against a
14 victim who is:

15 (i) a child described in IC 31-35-3-4(2); or

16 (ii) a parent of the child; or

17 (B) a comparable offense as described in clause (A) in any
18 other state, territory, or country by a court of competent
19 jurisdiction.

20 (2) A parent, guardian, or custodian of a child who is a child in
21 need of services:

22 (A) has been convicted of:

23 (i) the murder (IC 35-42-1-1) or voluntary manslaughter
24 (IC 35-42-1-3) of a victim who is a child described in
25 IC 31-35-3-4(2)(B) or a parent of the child; or

26 (ii) a comparable offense described in item (i) in any other
27 state, territory, or country; or

28 (B) has been convicted of:

29 (i) aiding, inducing, or causing another person;

30 (ii) attempting; or

31 (iii) conspiring with another person;

32 to commit an offense described in clause (A).

33 (3) A parent, guardian, or custodian of a child who is a child in
34 need of services has been convicted of:

35 (A) battery as a Class A felony (for a crime committed before
36 July 1, 2014) or Level 2 felony (for a crime committed after
37 June 30, 2014);

38 (B) battery as a Class B felony (for a crime committed before
39 July 1, 2014) or Level 3 or Level 4 felony (for a crime
40 committed after June 30, 2014);

41 (C) battery as a Class C felony (for a crime committed before
42 July 1, 2014) or Level 5 felony (for a crime committed after



- 1 June 30, 2014);
 2 (D) aggravated battery (IC 35-42-2-1.5);
 3 (E) criminal recklessness (IC 35-42-2-2) as a Class C felony
 4 (for a crime committed before July 1, 2014) or a Level 5
 5 felony (for a crime committed after June 30, 2014);
 6 (F) neglect of a dependent (IC 35-46-1-4) as a Class B felony
 7 (for a crime committed before July 1, 2014) or a Level 1 or
 8 Level 3 felony (for a crime committed after June 30, 2014);
 9 (G) promotion of human trafficking, promotion of human
 10 trafficking of a minor, sexual trafficking of a minor, or human
 11 trafficking (IC 35-42-3.5-1) as a felony; or
 12 (H) a comparable offense described in clauses (A) through (G)
 13 under federal law or in another state, territory, or country;
 14 against a child described in IC 31-35-3-4(2)(B).
 15 (4) The parental rights of a parent with respect to a biological or
 16 adoptive sibling of a child who is a child in need of services have
 17 been involuntarily terminated by a court under:
 18 (A) IC 31-35-2 (involuntary termination involving a
 19 delinquent child or a child in need of services);
 20 (B) IC 31-35-3 (involuntary termination involving a
 21 individual convicted of a criminal offense); or
 22 (C) any comparable law described in clause (A) or (B) in any
 23 other state, territory, or country.
 24 (5) The child is an abandoned infant **or abandoned child**,
 25 provided that the court:
 26 (A) has appointed a guardian ad litem or court appointed
 27 special advocate for the child; and
 28 (B) after receiving a written report and recommendation from
 29 the guardian ad litem or court appointed special advocate, and
 30 after a hearing, finds that reasonable efforts to locate the
 31 child's parents or reunify the child's family would not be in the
 32 best interests of the child.
 33 **(6) A parent, guardian, or custodian of a child who is a child**
 34 **in need of services accumulates a total of three (3) instances**
 35 **of one (1) or more, in any combination, of the following:**
 36 **(A) A conviction of a misdemeanor or felony offense.**
 37 **(B) Misses consecutive hearings in the child in need of**
 38 **services proceeding.**
 39 **(C) Misses consecutive appointments for services required**
 40 **in the child in need of services proceeding.**
 41 **(D) Misses consecutive scheduled visits with the child who**
 42 **is the child in need of services.**



- 1 **(E) Misses or refuses to submit consecutive drug screen**
 2 **tests required in the child in need of services proceeding.**
 3 **(F) Submits with positive results consecutive drug screen**
 4 **tests required in the child in need of services proceeding.**
 5 **(G) Two (2) arrests.**
 6 **(7) A parent, guardian, or custodian of a child who is a child**
 7 **in need of services has failed to maintain consistent and**
 8 **meaningful contact with the child over at least the most recent**
 9 **twelve (12) months.**
 10 **(8) A parent, guardian, or custodian who has the ability to**
 11 **provide care and support for a child who is a child in need of**
 12 **services has failed to provide care and support for the child**
 13 **for at least the most recent twelve (12) months.**
 14 **(9) A parent, guardian, or custodian of a child who is a child**
 15 **in need of services is unable to adequately provide for the care**
 16 **and supervision of the child due to incompetence and it is**
 17 **unlikely that the parent, guardian, or custodian will be able to**
 18 **adequately provide for the care of and responsibility for the**
 19 **child in the future.**
 20 (c) During or at any time after the first periodic case review under
 21 IC 31-34-21-2 of a child in need of services proceeding, if the court
 22 finds that a parent, guardian, or custodian of the child has been charged
 23 with an offense described in subsection (b)(3) and is awaiting trial, the
 24 court may make a finding that reasonable efforts to reunify the child
 25 with the child's parent, guardian, or custodian or preserve the child's
 26 family as described in section 5.5 of this chapter may be suspended
 27 pending the disposition of the parent's, guardian's, or custodian's
 28 criminal charge.
 29 SECTION 3. IC 31-34-23-5 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 2018]: **Sec. 5. (a) This section applies if a parent, guardian, or**
 32 **custodian of a child who is a child in need of services accumulates**
 33 **a total of three (3) instances of one (1) or more, in any combination,**
 34 **of the following:**
 35 **(1) A conviction of a misdemeanor or felony offense.**
 36 **(2) Misses consecutive hearings in the child in need of services**
 37 **proceeding.**
 38 **(3) Misses consecutive appointments for services required in**
 39 **the child in need of services proceeding.**
 40 **(4) Misses consecutive scheduled visits with the child who is**
 41 **the child in need of services.**
 42 **(5) Misses or refuses to submit consecutive drug screen tests**



1 **required in the child in need of services proceeding.**

2 **(6) Submits with positive results consecutive drug screen tests**
 3 **required in the child in need of services proceeding.**

4 **(7) Two (2) arrests.**

5 **(b) The attorney for the department shall file a motion to**
 6 **suspend visitation with the parent, guardian, or custodian.**

7 **(c) The court shall hold a hearing on a motion to suspend**
 8 **visitation filed under this section.**

9 SECTION 4. IC 31-35-2-4, AS AMENDED BY P.L.42-2017,
 10 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2018]: 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.

17 (3) The child's guardian ad litem.

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

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

22 (2) The petition must allege:

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

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

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

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

38 (iv) **The parent of a child who is a child in need of**
 39 **services has accumulated a total of three (3) instances of**
 40 **one (1) or more, in any combination, of the acts or**
 41 **omissions described in IC 31-34-21-5.6(b)(6).**

42 (v) **The parent of a child who is a child in need of services**



- 1 **has failed to maintain consistent and meaningful contact**
 2 **with the child over at least the most recent twelve (12)**
 3 **months.**
 4 **(vi) The parent of a child who has the ability to provide**
 5 **care and support for a child who is a child in need of**
 6 **services has failed to provide care and support for the**
 7 **child for at least the most recent twelve (12) months.**
 8 **(vii) The parent of a child who is a child in need of**
 9 **services is unable to adequately provide for the care and**
 10 **supervision of the child due to incompetence and it is**
 11 **unlikely that the parent will be able to adequately**
 12 **provide for the care of and responsibility for the child in**
 13 **the future.**
 14 (B) that one (1) of the following is true:
 15 (i) There is a reasonable probability that the conditions that
 16 resulted in the child's removal or the reasons for placement
 17 outside the home of the parents will not be remedied.
 18 (ii) There is a reasonable probability that the continuation of
 19 the parent-child relationship poses a threat to the well-being
 20 of the child.
 21 (iii) The child has, on two (2) separate occasions, been
 22 adjudicated a child in need of services;
 23 (C) that termination is in the best interests of the child; and
 24 (D) that there is a satisfactory plan for the care and treatment
 25 of the child.
 26 (3) If the department intends to file a motion to dismiss under
 27 section 4.5 of this chapter, the petition must indicate whether at
 28 least one (1) of the factors listed in section 4.5(d)(1) through
 29 4.5(d)(3) of this chapter applies and specify each factor that
 30 would apply as the basis for filing a motion to dismiss the
 31 petition.
 32 (c) At the time the petitioner files the verified petition described in
 33 subsection (b) with the juvenile or probate court, the petitioner shall
 34 also file a:
 35 (1) copy of the order approving the permanency plan under
 36 IC 31-34-21-7 for the child; or
 37 (2) permanency plan for the child as described by
 38 IC 31-34-21-7.5.
 39 SECTION 5. IC 31-35-2-4.5, AS AMENDED BY P.L.5-2015,
 40 SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2018]: Sec. 4.5. (a) This section applies if:
 42 (1) a court has made a finding under IC 31-34-21-5.6 that



1 reasonable efforts for family preservation or reunification with
 2 respect to a child in need of services are not required; ~~or~~

3 (2) a child in need of services or a delinquent child:

4 (A) has been placed in:

5 (i) a foster family home, child caring institution, or group
 6 home licensed under IC 31-27; or

7 (ii) the home of a relative (as defined in IC 31-9-2-107(c));
 8 as directed by a court in a child in need of services proceeding
 9 under IC 31-34 or a delinquency action under IC 31-37; and

10 (B) has been removed from a parent and has been under the
 11 supervision of the department or county probation department
 12 for not less than fifteen (15) months of the most recent
 13 twenty-two (22) months, beginning with the date the child is
 14 removed from the home as a result of the child being alleged
 15 to be a child in need of services or a delinquent child; or

16 **(3) a parent of a child who is a child in need of services**
 17 **accumulates a total of three (3) instances of one (1) or more,**
 18 **in any combination, of the following:**

19 **(A) A conviction of a misdemeanor or felony offense.**

20 **(B) Misses consecutive hearings in the child in need of**
 21 **services proceeding.**

22 **(C) Misses consecutive appointments for services required**
 23 **in the child in need of services proceeding.**

24 **(D) Misses consecutive scheduled visits with the child who**
 25 **is the child in need of services.**

26 **(E) Misses or refuses to submit consecutive drug screen**
 27 **tests required in the child in need of services proceeding.**

28 **(F) Submits with positive results consecutive drug screen**
 29 **tests required in the child in need of services proceeding.**

30 **(G) Two (2) arrests.**

31 (b) A person described in section 4(a) of this chapter shall:

32 (1) file a petition to terminate the parent-child relationship under
 33 section 4 of this chapter; and

34 (2) request that the petition be set for hearing.

35 (c) If a petition under subsection (b) is filed by the child's court
 36 appointed special advocate or guardian ad litem, the department shall
 37 be joined as a party to the petition.

38 (d) A person described in section 4(a) of this chapter may file a
 39 motion to dismiss the petition to terminate the parent-child relationship
 40 if any of the following circumstances apply:

41 (1) That the current case plan prepared by or under the
 42 supervision of the department or the probation department under



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

9 (2) That:

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

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

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

21 (3) That:

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

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

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

32 The motion to dismiss shall specify which of the allegations described
 33 in subdivisions (1) through (3) apply to the motion. If the court finds
 34 that any of the allegations described in subdivisions (1) through (3) are
 35 true, as established by a preponderance of the evidence, the court shall
 36 dismiss the petition to terminate the parent-child relationship.

