



Reprinted
February 22, 2023

HOUSE BILL No. 1407

DIGEST OF HB 1407 (Updated February 21, 2023 2:46 pm - DI 119)

Citations Affected: IC 31-9; IC 31-10.5; IC 31-34.

Synopsis: Parental rights. Provides that the state of Indiana, a political subdivision or other governmental entity of the state of Indiana, a government official, or any other person acting under the color of law shall not infringe on the fundamental right of a parent to direct the upbringing, education, health care, and mental health of the parent's child without demonstrating that the infringement: (1) is required by a compelling governmental interest of the highest order as long recognized in the history and traditions of the state of Indiana; and (2) as applied to the child, is narrowly tailored and not otherwise served by a less restrictive means. Creates a right of action for violation of a
(Continued next page)

Effective: July 1, 2023.

DeVon, Jeter, Heaton, Patterson

January 17, 2023, read first time and referred to Committee on Family, Children and Human Affairs.
February 13, 2023, amended, reported — Do Pass.
February 16, 2023, read second time, ordered engrossed.
February 17, 2023, engrossed.
February 20, 2023, returned to second reading.
February 21, 2023, re-read second time, amended, ordered engrossed.

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parent's rights with respect to the upbringing, education, and health care of the parent's child. Provides that a child is not a child in need of services due to the child's parent, guardian, or custodian: (1) referring to and raising the child consistent with the child's biological sex; or (2) declining to consent to the child receiving: (A) specified medication; (B) a medical procedure the purpose of which is to alter the apparent gender or sex of the child or affirm the child's perception of the child's gender or sex in a manner inconsistent with the child's biological sex; or (C) counseling or other mental health services the purpose of which is to affirm the child's perception of the child's gender or sex if the child's perception is inconsistent with the child's biological sex. Provides that if the juvenile court finds that a child is a child in need of services because the child substantially endangers the child's own or another's health, the court shall release the child to the child's parent, guardian, or custodian and may not enter a dispositional decree ordering removal of the child, unless: (1) the court also finds that the child is a child in need of services for another reason; or (2) the parent, guardian, or custodian consents to the child being removed from the child's home. Specifies that the parental rights and responsibilities do not: (1) authorize a parent to: (A) abuse or neglect a child; or (B) make the decision to end the child's life; or (2) prohibit a court from issuing an order that is otherwise permitted by law. Makes conforming changes.



Reprinted
February 22, 2023

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.

HOUSE BILL No. 1407

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 31-9-2-13, AS AMENDED BY P.L.243-2019,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 13. (a) "Child", for purposes of IC 31-15, IC 31-16
4 (excluding IC 31-16-12.5), and IC 31-17, means a child or children of
5 both parties to the marriage. The term includes the following:
6 (1) Children born out of wedlock to the parties.
7 (2) Children born or adopted during the marriage of the parties.
8 (b) "Child", for purposes of the Uniform Interstate Family Support
9 Act under IC 31-18.5, has the meaning set forth in IC 31-18.5-1-2.
10 (c) "Child", for purposes of IC 31-19-5, includes an unborn child.
11 (d) Except as otherwise provided in this section, "child", for
12 purposes of the juvenile law and IC 31-27, means:
13 (1) a person who is less than eighteen (18) years of age;
14 (2) a person:
15 (A) who is eighteen (18), nineteen (19), or twenty (20) years
16 of age; and
17 (B) who either:

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- 1 (i) is charged with a delinquent act committed before the
- 2 person's eighteenth birthday; or
- 3 (ii) has been adjudicated a child in need of services before
- 4 the person's eighteenth birthday; or
- 5 (3) a person:
- 6 (A) who is alleged to have committed an act that would have
- 7 been murder if committed by an adult;
- 8 (B) who was less than eighteen (18) years of age at the time of
- 9 the alleged act; and
- 10 (C) who is less than twenty-one (21) years of age.
- 11 (e) "Child", for purposes of IC 31-36-3 **and IC 31-10.5**, means a
- 12 person who is less than eighteen (18) years of age.
- 13 (f) "Child", for purposes of the Interstate Compact on Juveniles
- 14 under IC 31-37-23-1, has the meaning set forth in IC 31-37-23-1.
- 15 (g) "Child", for purposes of IC 31-16-12.5, means an individual to
- 16 whom child support is owed under:
- 17 (1) a child support order issued under IC 31-14-10 or IC 31-16-6;
- 18 or
- 19 (2) any other child support order that is enforceable under
- 20 IC 31-16-12.5.
- 21 (h) "Child", for purposes of IC 31-32-5, means an individual who is
- 22 less than eighteen (18) years of age.
- 23 (i) "Child", for purposes of the Uniform Child Custody Jurisdiction
- 24 Act under IC 31-21, has the meaning set forth in IC 31-21-2-3.
- 25 (j) "Child", for purposes of IC 31-35-2-4.5, means an individual who
- 26 is:
- 27 (1) less than eighteen (18) years of age; and
- 28 (2) a delinquent child or a child in need of services.
- 29 SECTION 2. IC 31-9-2-14, AS AMENDED BY P.L.46-2016,
- 30 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 31 JULY 1, 2023]: Sec. 14. (a) "Child abuse or neglect", for purposes of
- 32 IC 31-32-11-1, IC 31-33, IC 31-34-7-4, and IC 31-39-8-4, refers to a
- 33 child described in IC 31-34-1-1 through IC 31-34-1-5 and IC 31-34-1-8
- 34 through IC 31-34-1-11, regardless of whether the child needs care,
- 35 treatment, rehabilitation, or the coercive intervention of a court.
- 36 (b) For purposes of subsection (a), the term under subsection (a)
- 37 does not refer to a child who is alleged to be a victim of a sexual
- 38 offense under IC 35-42-4-3 unless the alleged offense under
- 39 IC 35-42-4-3 involves the fondling or touching of the buttocks,
- 40 genitals, or female breasts, regardless of whether the child needs care,
- 41 treatment, rehabilitation, or the coercive intervention of a court.
- 42 (c) "Child abuse or neglect", for purposes of **IC 31-10.5 and**



IC 31-34-2.3, refers to acts or omissions by a person against a child as described in IC 31-34-1-1 through IC 31-34-1-11, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.

SECTION 3. IC 31-10.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

ARTICLE 10.5. PARENTAL RIGHTS AND RESPONSIBILITIES

Chapter 1. Definitions

Sec. 1. Except as otherwise provided, the definitions in this chapter apply throughout this article.

Sec. 2. "Parent" means, with regard to a child:

- (1) a biological parent of the child;
- (2) an adoptive parent of the child; or
- (3) a legal guardian of the child.

Chapter 2. Rights of Parents

Sec. 1. (a) The state of Indiana, a political subdivision or other governmental entity of the state of Indiana, a government official, or any other person acting under the color of law shall not infringe on the fundamental right of a parent to direct the upbringing, education, health care, and mental health of the parent's child without demonstrating that the infringement:

- (1) is required by a compelling governmental interest of the highest order as long recognized in the history and traditions of the state of Indiana; and
- (2) as applied to the parent and the child, is narrowly tailored and not otherwise served by a less restrictive means.

(b) Unless those rights have been legally waived or legally terminated, parents have inalienable rights that are more comprehensive than those described in subsection (a). Subsection (a):

- (1) does not prescribe all rights of parents; and
- (2) does not preempt or foreclose claims or remedies in support of parental rights that are available under the Constitution of the United States, the Constitution of the State of Indiana, or the statutes and common law of the state of Indiana.

(c) This section does not:

- (1) authorize a parent to:
 - (A) abuse or neglect a child (as described in IC 31-9-2-14);
- or



- (B) make the decision to end the child's life; or
- (2) prohibit a court from issuing an order that is otherwise permitted by law.

Sec. 2. (a) A parent:

- (1) may bring an action for a violation of this chapter; and
- (2) may raise this chapter as a defense in any judicial or administrative proceeding regardless of whether the proceeding is brought by or in the name of the state of Indiana, a private person, or any other party.

(b) Notwithstanding any other provision of law:

- (1) an action under this section may be commenced; and
- (2) a court may grant relief in an action commenced under this section;

regardless of whether the person commencing the action has sought or exhausted administrative remedies available to the person.

(c) A court may grant to a person who successfully asserts a claim or defense under this section:

- (1) declaratory relief;
- (2) injunctive relief;
- (3) compensatory damages;
- (4) reasonable attorney's fees and costs; and
- (5) any other relief the court considers appropriate.

SECTION 4. IC 31-34-1-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 17. A child is not a child in need of services under any section of this chapter due to the child's parent, guardian, or custodian:**

- (1) referring to and raising the child consistent with the child's biological sex;
- (2) declining to consent to the child receiving:
 - (A) puberty blocking medication;
 - (B) supraphysiologic doses of testosterone or estrogen; or
 - (C) any surgical procedure the purpose of which is to:
 - (i) alter the apparent gender or sex of the child in a manner inconsistent with the child's biological sex; or
 - (ii) affirm the child's perception of the child's gender or sex, if the child's perception is inconsistent with the child's biological sex; or
- (3) declining to consent to the child receiving counseling or other mental health services for the purpose of affirming the child's perception of the child's gender or sex, if the child's



perception is inconsistent with the child's biological sex.

SECTION 5. IC 31-34-5-3, AS AMENDED BY P.L.146-2008, SECTION 580, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) **Subject to subsection (b),** the juvenile court shall release the child to the child's parent, guardian, or custodian. However, the court may order the child detained if the court makes written findings of fact upon the record of probable cause to believe that the child is a child in need of services and that:

- (1) detention is necessary to protect the child;
- (2) the child is unlikely to appear before the juvenile court for subsequent proceedings;
- (3) the child has a reasonable basis for requesting that the child not be released;
- (4) the parent, guardian, or custodian:
 - (A) cannot be located; or
 - (B) is unable or unwilling to take custody of the child; or
- (5) consideration for the safety of the child precludes the use of family services to prevent removal of the child.

(b) If the juvenile court makes written findings of fact upon the record of probable cause to believe that the child is a child in need of services under IC 31-34-1-6, the court shall release the child to the child's parent, guardian, or custodian unless the:

- (1) juvenile court also makes a written finding of fact upon the record of probable cause to believe that the child is a child in need of services under another section of IC 31-34-1; or**
- (2) parent, guardian, or custodian consents to the child being removed from the child's home.**

~~(b)~~ **(c)** The juvenile court shall include in any order approving or requiring detention of a child all findings and conclusions required under:

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

~~(c)~~ **(d)** Inclusion in a juvenile court order of language approved and recommended by the judicial conference of Indiana, in relation to:

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

of a child who is alleged to be, or adjudicated as, a child in need of services constitutes compliance with subsection ~~(b)~~: **(c)**.

SECTION 6. IC 31-34-20-1, AS AMENDED BY P.L.172-2022,



SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Subject to this section and section 1.5 of this chapter, if a child is a child in need of services, the juvenile court may enter one (1) or more of the following dispositional decrees:

- (1) Order supervision of the child by the department.
- (2) Order the child to receive outpatient treatment:
 - (A) at a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or
 - (B) from an individual practitioner.
- (3) Remove the child from the child's home and authorize the department to place the child in another home, shelter care facility, child caring institution, group home, or secure private facility. Placement under this subdivision includes authorization to control and discipline the child.
- (4) Award wardship of the child to the department for supervision, care, and placement.
- (5) Partially or completely emancipate the child under section 6 of this chapter.
- (6) Order the child's parent, guardian, or custodian to complete services recommended by the department and approved by the court under IC 31-34-18 and IC 31-34-19, which may include services described in section 3(a) of this chapter.
- (7) Order a person who is a party to refrain from direct or indirect contact with the child.
- (8) Order a perpetrator of child abuse or neglect to refrain from returning to the child's residence.

(b) A juvenile court may not place a child in a home or facility that is located outside Indiana unless:

- (1) the placement is recommended or approved by the director of the department or the director's designee; or
- (2) the juvenile court makes written findings based on clear and convincing evidence that:
 - (A) the out-of-state placement is appropriate because there is not an equivalent facility with adequate services located in Indiana;
 - (B) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship; or
 - (C) the location of the home or facility is within a distance not greater than fifty (50) miles from the county of residence of the child.

(c) **If the juvenile court finds the child to be a child in need of services under IC 31-34-1-6, the court may not enter a dispositional**



1 decree ordering removal of a child from the home of the child's
2 parent, guardian, or custodian unless the:

3 (1) juvenile court also finds the child is a child in need of
4 services under another section of IC 31-34-1; or

5 (2) parent, guardian, or custodian consents to the child being
6 removed from the child's home.

7 ~~(c)~~ (d) If a dispositional decree under this section:

8 (1) orders or approves removal of a child from the child's home or
9 awards wardship of the child to the department; and

10 (2) is the first juvenile court order in the child in need of services
11 proceeding that authorizes or approves removal of the child from
12 the child's parent, guardian, or custodian;

13 the juvenile court shall include in the decree the appropriate findings
14 and conclusions described in IC 31-34-5-3(b), ~~and~~ IC 31-34-5-3(c),
15 and IC 31-34-5-3(d).



COMMITTEE REPORT

Mr. Speaker: Your Committee on Family, Children and Human Affairs, to which was referred House Bill 1407, 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 2, between lines 28 and 29, begin a new paragraph and insert:

"SECTION 1. IC 31-9-2-14, AS AMENDED BY P.L.46-2016, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 14. (a) "Child abuse or neglect", for purposes of IC 31-32-11-1, IC 31-33, IC 31-34-7-4, and IC 31-39-8-4, refers to a child described in IC 31-34-1-1 through IC 31-34-1-5 and IC 31-34-1-8 through IC 31-34-1-11, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.

(b) For purposes of subsection (a), the term under subsection (a) does not refer to a child who is alleged to be a victim of a sexual offense under IC 35-42-4-3 unless the alleged offense under IC 35-42-4-3 involves the fondling or touching of the buttocks, genitals, or female breasts, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.

(c) "Child abuse or neglect", for purposes of **IC 31-10.5 and** IC 31-34-2.3, refers to acts or omissions by a person against a child as described in IC 31-34-1-1 through IC 31-34-1-11, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court."

Page 3, between lines 20 and 21, begin a new paragraph and insert:

"(c) This section does not:

(1) authorize a parent to:

(A) abuse or neglect a child (as described in IC 31-9-2-14);
or

(B) make the decision to end the child's life; or

(2) prohibit a court from issuing an order that is otherwise permitted by law."

Page 4, delete lines 22 through 42, begin a new paragraph and insert:

"SECTION 4. IC 31-34-5-3, AS AMENDED BY P.L.146-2008, SECTION 580, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) **Subject to subsection (b)**, the juvenile court shall release the child to the child's parent, guardian, or custodian. However, the court may order the child detained if the court makes written findings of fact upon the record of probable cause to believe that the child is a child in need of services and that:



- (1) detention is necessary to protect the child;
- (2) the child is unlikely to appear before the juvenile court for subsequent proceedings;
- (3) the child has a reasonable basis for requesting that the child not be released;
- (4) the parent, guardian, or custodian:
 - (A) cannot be located; or
 - (B) is unable or unwilling to take custody of the child; or
- (5) consideration for the safety of the child precludes the use of family services to prevent removal of the child.

(b) If the juvenile court makes written findings of fact upon the record of probable cause to believe that the child is a child in need of services under IC 31-34-1-6, the court shall release the child to the child's parent, guardian, or custodian unless the:

- (1) juvenile court also makes a written finding of fact upon the record of probable cause to believe that the child is a child in need of services under another section of IC 31-34-1; or**
- (2) parent, guardian, or custodian consents to the child being removed from the child's home.**

~~(b)~~ (c) The juvenile court shall include in any order approving or requiring detention of a child all findings and conclusions required under:

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

~~(c)~~ (d) Inclusion in a juvenile court order of language approved and recommended by the judicial conference of Indiana, in relation to:

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

of a child who is alleged to be, or adjudicated as, a child in need of services constitutes compliance with subsection ~~(b)~~: (c).

SECTION 5. IC 31-34-20-1, AS AMENDED BY P.L.172-2022, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Subject to this section and section 1.5 of this chapter, if a child is a child in need of services, the juvenile court may enter one (1) or more of the following dispositional decrees:

- (1) Order supervision of the child by the department.
- (2) Order the child to receive outpatient treatment:
 - (A) at a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or



- (B) from an individual practitioner.
- (3) Remove the child from the child's home and authorize the department to place the child in another home, shelter care facility, child caring institution, group home, or secure private facility. Placement under this subdivision includes authorization to control and discipline the child.
- (4) Award wardship of the child to the department for supervision, care, and placement.
- (5) Partially or completely emancipate the child under section 6 of this chapter.
- (6) Order the child's parent, guardian, or custodian to complete services recommended by the department and approved by the court under IC 31-34-18 and IC 31-34-19, which may include services described in section 3(a) of this chapter.
- (7) Order a person who is a party to refrain from direct or indirect contact with the child.
- (8) Order a perpetrator of child abuse or neglect to refrain from returning to the child's residence.
- (b) A juvenile court may not place a child in a home or facility that is located outside Indiana unless:
 - (1) the placement is recommended or approved by the director of the department or the director's designee; or
 - (2) the juvenile court makes written findings based on clear and convincing evidence that:
 - (A) the out-of-state placement is appropriate because there is not an equivalent facility with adequate services located in Indiana;
 - (B) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship; or
 - (C) the location of the home or facility is within a distance not greater than fifty (50) miles from the county of residence of the child.
- (c) If the juvenile court finds the child to be a child in need of services under IC 31-34-1-6, the court may not enter a dispositional decree ordering removal of a child from the home of the child's parent, guardian, or custodian unless the:**
 - (1) juvenile court also finds the child is a child in need of services under another section of IC 31-34-1; or**
 - (2) parent, guardian, or custodian consents to the child being removed from the child's home.**
- ~~(c)~~ **(d)** If a dispositional decree under this section:
 - (1) orders or approves removal of a child from the child's home or



awards wardship of the child to the department; and
 (2) is the first juvenile court order in the child in need of services
 proceeding that authorizes or approves removal of the child from
 the child's parent, guardian, or custodian;
 the juvenile court shall include in the decree the appropriate findings
 and conclusions described in IC 31-34-5-3(b), ~~and~~ IC 31-34-5-3(c),
and IC 31-34-5-3(d).".

Delete page 5.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1407 as introduced.)

DEVON

Committee Vote: yeas 9, nays 4.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1407 be returned to the second
 reading calendar forthwith for the purpose of amendment.

DEVON

HOUSE MOTION

Mr. Speaker: I move that House Bill 1407 be amended to read as
 follows:

Page 4, delete lines 24 through 26.

(Reference is to HB 1407 as printed February 13, 2023.)

JETER

