

Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1369

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:

SECTION 1. IC 31-9-2-0.9, AS ADDED BY P.L.64-2016, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 0.9. "Act of rape", for purposes of IC 31-35-3.5, means an act described in:

(1) IC 35-42-4-1; or

(2) ~~IC 35-42-4-3(a)~~ that:

(A) is committed by using or threatening the use of deadly force or while armed with a deadly weapon;

(B) results in serious bodily injury; or

(C) is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge;

(2) IC 35-42-4-3; or

(3) IC 35-42-4-9.

SECTION 2. IC 31-10-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. For purposes of IC 31-19, IC 31-28, IC 31-34, and IC 31-35, the department or a court shall consider ensuring the child's safety to be the most important consideration

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in the determination of a child's best interests under this title.

SECTION 3. IC 31-34-12-4.5, AS AMENDED BY P.L.71-2018, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.5. (a) There is a rebuttable presumption that a child is a child in need of services if the state establishes that the child lives in the same household as an adult who:

- (1) committed an offense described in IC 31-34-1-2, IC 31-34-1-3, or IC 31-34-1-3.5 against a child and the offense resulted in a conviction or a judgment under IC 31-34-11-2; **or**
- (2) has been charged with an offense described in IC 31-34-1-2, IC 31-34-1-3, or IC 31-34-1-3.5 against a child and is awaiting trial; **or**
- (3) was a perpetrator of a child fatality or near fatality as described by IC 31-33-18-1.5.**

(b) The following may not be used as grounds to rebut the presumption under subsection (a):

- (1) The child who is the victim of the offense described in IC 31-34-1-2 or IC 31-34-1-3 is not genetically related to the adult who committed the act, but the child presumed to be the child in need of services under this section is genetically related to the adult who committed the act.
- (2) The child who is the victim of the offense described in IC 31-34-1-2 or IC 31-34-1-3 differs in age from the child presumed to be the child in need of services under this section.

(c) This section does not affect the ability to take a child into custody or emergency custody under IC 31-34-2 if the act of taking the child into custody or emergency custody is not based upon a presumption established under this section. However, if the presumption established under this section is the sole basis for taking a child into custody or emergency custody under IC 31-34-2, the court first must find cause to take the child into custody or emergency custody following a hearing in which the parent, guardian, or custodian of the child is accorded the rights described in IC 31-34-4-6(a)(2) through IC 31-34-4-6(a)(5).

SECTION 4. IC 31-35-2-4, AS AMENDED BY P.L.258-2019, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A petition to terminate the parent-child relationship involving a **child adjudicated as a delinquent child or a** child in need of services may be signed and filed with the juvenile or probate court by any of the following:

- (1) The attorney for the department.
- (2) The child's court appointed special advocate.

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- (3) The child's guardian ad litem.
- (b) ~~The A petition must meet the following requirements: filed under subsection (a)~~
- ~~(1) The petition must be entitled "In the Matter of the Termination of the Parent-Child Relationship of _____, a child, and _____, the child's parent (or parents)".~~
- ~~(2) The (c) A petition filed under subsection (a) must allege:~~
- ~~(1) the existence of one (1) or more of the circumstances described in subsection (d);~~
- ~~(2) that there is a satisfactory plan for care and treatment of the child; and~~
- ~~(3) that termination of the parent-child relationship is in the child's best interests.~~
- ~~(d) A petition filed under subsection (a) must allege the existence of one (1) or more of the following circumstances:~~
- ~~(A) (1) That one (1) of the following is true:~~
- ~~(i) The child has been removed from the parent for at least six (6) months under a dispositional decree;~~
- ~~(ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.~~
- ~~(iii) (2) That:~~
- ~~(A) the child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child; and~~
- ~~(B) that one (1) of the following is true: despite the department's reasonable efforts to preserve and reunify the child's family under IC 31-34-21-5.5, the parent has been unable to remedy the circumstances that resulted in the child being placed in care outside the parent's home.~~
- ~~(i) (3) That there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.~~
- ~~(ii) (4) That there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being, safety, physical health, or life of the child.~~
- ~~(iii) (5) That the child has, on two (2) separate occasions, been~~



adjudicated a child in need of services.

~~(C)~~ that termination is in the best interests of the child; and

~~(D)~~ that there is a satisfactory plan for the care and treatment of the child;

(6) That:

(A) at least ninety (90) days have passed since the filing of the petition alleging that the child is a child in need of services; and

(B) the identity or location of the parent is unknown despite reasonable efforts having been made to identify or locate the parent.

(7) That the parent:

(A) failed to substantially comply with the child's dispositional decree for a period of at least twelve (12) months following the child's:

(i) removal from the parent's home under IC 31-34-2; or

(ii) adjudication as a child in need of services;

whichever occurred earlier, unless the parent's failure to substantially comply with the child's dispositional decree was due to the failure of the department to make reasonable efforts to preserve and reunify the child's family under IC 31-34-21-5.5; or

(B) is unlikely or unable to substantially comply with the child's dispositional decree.

(8) That the parent is incarcerated and one (1) or more of the following is true:

(A) The parent is expected to remain incarcerated for a significant portion of the remaining time during which the child is less than eighteen (18) years of age.

(B) The parent is a sexually violent predator (as defined by IC 35-38-1-7.5).

(9) That the parent:

(A) has a history of extensive, abusive, and chronic use of alcohol or a controlled substance that renders the parent incapable of caring for the child; and

(B) has refused or failed to complete available treatment for the alcohol or controlled substance use during the two (2) year period immediately preceding the filing date of the petition under subsection (a).

(10) That:

(A) a test administered at the child's birth that indicated that the child's blood, urine, or meconium contained any



amount of alcohol or a controlled substance, or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the child; and

(B) the parent:

- (i) is the biological mother of at least one (1) other child who was adjudicated a child in need of services after a finding of harm to the child's health or welfare due to exposure to alcohol or a controlled substance; and
- (ii) had the opportunity to participate in substance abuse treatment following the finding under item (i).

(11) That the child was conceived as a result of:

- (A) an offense under IC 35-42-3.5 (human and sexual trafficking);
- (B) rape (IC 35-42-4-1);
- (C) child molestation (IC 35-42-4-3);
- (D) sexual misconduct with a minor (IC 35-42-4-9); or
- (E) an offense committed in another jurisdiction the elements of which are substantially similar to the elements of an offense described in clause (A), (B), (C), or (D);

committed by the biological parent of the child whose parent-child relationship with the child is the subject of the petition.

(12) That the parent is required to register as a sex or violent offender under IC 11-8-8.

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

~~(e)~~ (f) At the time the petitioner files ~~the verified~~ a petition ~~described in subsection (b) under this section~~ with the juvenile or probate court, the petitioner shall also file a:

- (1) copy of the order approving the permanency plan under IC 31-34-21-7 for the child; or
- (2) permanency plan for the child as described by IC 31-34-21-7.5.

SECTION 5. An emergency is declared for this act.

