

HOUSE BILL No. 1745

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-7-2-29; IC 12-7-2-82; IC 12-17.2; IC 12-17.4; IC 16-36-3-1.

Synopsis: Emergency closure of child care facilities. Allows the division of family and children to issue an order for emergency closure of a child care center, a child care home, a child care ministry, and a child caring institution. Provides for administrative review upon request. Requires the division to report the issuance of an order for emergency closure to the attorney general, the county office of family and children attorney, and the local prosecuting attorney. Changes references to "county department of public welfare" to "county office of family and children" to reflect the correct name of that office.

Effective: July 1, 1999.

Dickinson, Budak, Day, Linder

January 26, 1999, read first time and referred to Committee on Human Affairs.

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Introduced

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

HOUSE BILL No. 1745

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

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

- 1 SECTION 1. IC 12-7-2-29 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 29. "Child caring
3 institution" means the following:
4 (1) For purposes of IC 12-17.4:
5 (A) a residential facility that provides child care on a
6 twenty-four (24) hour basis for more than ten (10) children; or
7 (B) a residential facility with a capacity of not more than ten
8 (10) children that does not meet the residential structure
9 requirements of a group home.
10 (2) For purposes of ~~section 82(3)~~ **section 82(4)** of this chapter and
11 IC 12-26, an institution that:
12 (A) operates under a license issued under IC 12-17.4;
13 (B) provides for delivery of mental health services that are
14 appropriate to the needs of the individual; and
15 (C) complies with the rules adopted under IC 4-22-2 by the
16 division of family and children.
17 SECTION 2. IC 12-7-2-82 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 82. "Facility" means
2 the following:

3 (1) For purposes of IC 12-17-12, the meaning set forth in
4 IC 12-17-12-3.

5 (2) For purposes of IC 12-17-13, the meaning set forth in
6 IC 12-17-13-2.

7 **(3) For purposes of IC 12-17.2-2.5, the meaning set forth in**
8 **IC 12-17.2-2.5-1.**

9 ~~(4)~~ (4) For purposes of IC 12-26, a psychiatric hospital, a
10 community mental health center, another institution, a program,
11 a managed care provider, or a child caring institution:

12 (A) where a mentally ill individual can receive rehabilitative
13 treatment, or habilitation and care, in the least restrictive
14 environment suitable for the necessary care, treatment, and
15 protection of the individual and others; and

16 (B) that has adequate space and treatment staff appropriate to
17 the needs of the individual as determined by the
18 superintendent of the facility.

19 The term includes all services, programs, and centers of the
20 facility, wherever located.

21 ~~(5)~~ (5) For purposes of IC 12-15-32, the meaning set forth in
22 IC 12-15-32-1.

23 SECTION 3. IC 12-17.2-2.5 IS ADDED TO THE INDIANA CODE
24 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 1999]:

26 **Chapter 2.5. Emergency Closure of Child Care Facilities**

27 **Sec. 1. As used in this chapter, "facility" means a:**

- 28 (1) child care center;
29 (2) child care home; or
30 (3) child care ministry;

31 **that is required to be licensed or registered under this article.**

32 **Sec. 2. (a) The division may issue an order for emergency**
33 **closure of a facility if the division determines that:**

- 34 (1) the facility is not in compliance with this article, including
35 operating without the required license or registration; and
36 (2) there is reasonable cause to suspect that the:

- 37 (A) health;
38 (B) safety; or
39 (C) well-being;

40 **of a child enrolled in the facility is in imminent danger.**

41 (b) **An order for emergency closure issued under this section**
42 **must include the following information:**

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- 1 (1) The date and time of emergency closure.
- 2 (2) Each reason for emergency closure.
- 3 (3) Any condition that the facility must remedy immediately.
- 4 (4) The right of the facility to request an administrative
- 5 hearing under section 8 of this chapter.

6 Sec. 3. An order for emergency closure issued under this
7 chapter shall take effect immediately upon notice to the facility.

8 Sec. 4. A facility may not operate during the time that an order
9 for emergency closure is in effect.

10 Sec. 5. (a) The facility may request an informal meeting with the
11 division within five (5) days after the order for emergency closure
12 is issued.

13 (b) The division shall grant a request made under subsection (a).

14 Sec. 6. An order for emergency closure issued under this
15 chapter remains in effect until the earliest of the following:

- 16 (1) The facility takes the action required by the division to
17 address the reason for emergency closure.
- 18 (2) The division determines through an investigation that the
19 required reasonable cause no longer exists.
- 20 (3) Fourteen (14) days after the date of issuance of the order.

21 Sec. 7. After issuing an order for emergency closure of a facility
22 under this chapter, the division shall:

- 23 (1) require a plan of corrective action for emergency
24 protection of the children; and
- 25 (2) assist in obtaining appropriate child care for any child
26 who had been enrolled in the facility.

27 Sec. 8. (a) Subject to the requirements of this section, the
28 division shall provide an administrative hearing concerning the
29 issuance of an order for emergency closure.

30 (b) The facility must make a written request for an
31 administrative hearing under this section within ten (10) days after
32 the date the division issued the order for emergency closure. This
33 request must be made separately from a request for an informal
34 meeting under section 5 of this chapter.

35 (c) The division shall hold an administrative hearing within ten
36 (10) days after receiving a written request under subsection (b).

37 (d) The division shall issue a decision not more than ten (10)
38 days after the conclusion of the hearing.

39 SECTION 4. IC 12-17.2-4-29 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 29. (a) The division
41 shall investigate a report of an unlicensed child care center and report
42 the division's findings to the attorney general and to the county

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1 ~~department of public welfare~~ **office of family and children** attorney
 2 and the prosecuting attorney in the county where the child care center
 3 is located. **The division shall also report the issuance of an order for**
 4 **emergency closure of a child care center under IC 12-17.2-2.5 to**
 5 **the attorney general and to the county office of family and children**
 6 **attorney and the prosecuting attorney in the county where the**
 7 **child care center is located.**

8 (b) The attorney general or the county ~~department of public welfare~~
 9 **office of family and children** attorney may do the following:

10 (1) Seek the issuance of a search warrant to assist in the
 11 investigation.

12 (2) File an action for injunctive relief to stop the operation of a
 13 child care center if there is reasonable cause to believe that:

14 (A) the child care center is operating without a license
 15 required under this article; or

16 (B) a licensee's noncompliance with this article and the rules
 17 adopted under this article creates an imminent danger of
 18 serious bodily injury to a child or an imminent danger to the
 19 health of a child.

20 (3) Seek in a civil action a civil penalty not to exceed one hundred
 21 dollars (\$100) a day for each day a child care center is operating
 22 without a license required under this article.

23 (c) The division may provide for the removal of children from child
 24 care centers described in subsection (b).

25 (d) An opportunity for an informal meeting with the division shall
 26 be available after the injunctive relief is ordered.

27 (e) The civil penalties collected under this section shall be deposited
 28 in the child care fund.

29 (f) Section 34 of this chapter does not apply to the civil penalties
 30 imposed under this section.

31 SECTION 5. IC 12-17.2-5-29 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 29. (a) The division
 33 shall investigate a report of an unlicensed child care home and report
 34 the division's findings to the attorney general and to the county
 35 ~~department of public welfare~~ **office of family and children** attorney
 36 and the prosecuting attorney in the county where the child care home
 37 is located. **The division shall also report the issuance of an order for**
 38 **emergency closure of a child care home under IC 12-17.2-2.5 to the**
 39 **attorney general and to the county office of family and children**
 40 **attorney and the prosecuting attorney in the county where the**
 41 **child care home is located.**

42 (b) The attorney general or the county ~~department of public welfare~~

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- 1 **office of family and children** attorney may do the following:
- 2 (1) Seek the issuance of a search warrant to assist in the
- 3 investigation.
- 4 (2) File an action for injunctive relief to stop the operation of a
- 5 child care home if there is reasonable cause to believe that:
- 6 (A) the child care home is operating without a license required
- 7 under this article; or
- 8 (B) a licensee's noncompliance with this article and the rules
- 9 adopted under this article creates an imminent danger of
- 10 serious bodily injury to a child or an imminent danger to the
- 11 health of a child.
- 12 (3) Seek in a civil action a civil penalty not to exceed one hundred
- 13 dollars (\$100) a day for each day a child care home is operating
- 14 without a license required under this article.
- 15 (c) The division may provide for the removal of children from child
- 16 care homes described in subsection (b).
- 17 (d) An opportunity for an informal meeting with the division shall
- 18 be available after the injunctive relief is ordered.
- 19 (e) The civil penalties collected under this section shall be deposited
- 20 in the child care fund.
- 21 (f) Section 34 of this chapter does not apply to the civil penalties
- 22 imposed under this section.
- 23 SECTION 6. IC 12-17.2-6-1 IS AMENDED TO READ AS
- 24 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) **Except as**
- 25 **provided in subsection (b)**, a child care ministry is exempt from
- 26 licensure under this article if the child care ministry complies with this
- 27 chapter. However, a child care ministry may apply for licensure.
- 28 (b) **If a child care ministry:**
- 29 (1) **is closed under an order for emergency closure issued**
- 30 **under IC 12-17.2-2.5; or**
- 31 (2) **operates out of compliance with this chapter for more than**
- 32 **one (1) quarter;**
- 33 **the child care ministry must obtain a license.**
- 34 (c) If a license is issued to ~~the~~ a child care ministry, the child care
- 35 ministry shall comply with state laws and rules governing licensure of
- 36 the type of facility that the ministry operates.
- 37 SECTION 7. IC 12-17.2-6-16 IS ADDED TO THE INDIANA
- 38 CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 16. (a) The division shall**
- 39 **investigate a report of an unlicensed or unregistered child care**
- 40 **ministry and report the division's findings to the attorney general**
- 41 **and to the county office of family and children attorney and the**
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1 prosecuting attorney in the county where the child care ministry is
2 located. The division shall also report the issuance of an order for
3 emergency closure of a child care ministry under IC 12-17.2-2.5 to
4 the attorney general and to the county office of family and children
5 attorney and the prosecuting attorney in the county where the
6 child care ministry is located.

7 (b) The attorney general or the county office of family and
8 children attorney may do the following:

9 (1) Seek the issuance of a search warrant to assist in the
10 investigation.

11 (2) File an action for injunctive relief to stop the operation of
12 a child care ministry if there is reasonable cause to believe
13 that:

14 (A) the child care ministry is operating without a license or
15 registration required under this article; or

16 (B) a licensee's or registered child care ministry's
17 noncompliance with this article and the rules adopted
18 under this article creates an imminent danger of serious
19 bodily injury to a child or an imminent danger to the
20 health of a child.

21 (3) Seek in a civil action a civil penalty not to exceed one
22 hundred dollars (\$100) a day for each day a child care
23 ministry is operating without a license or registration
24 required under this article.

25 (c) The division may provide for the removal of children from
26 child care ministries described in subsection (b).

27 (d) An opportunity for an informal meeting with the division
28 shall be available after the injunctive relief is ordered.

29 (e) The civil penalties collected under this section shall be
30 deposited in the child care fund.

31 SECTION 8. IC 12-17.4-3-31 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 31. (a) The division
33 shall investigate a report of an unlicensed child caring institution and
34 report the division's findings to the attorney general and to the county
35 department of public welfare attorney and the prosecuting attorney in
36 the county where the institution is located. **The division shall also
37 report the issuance of an order for emergency closure of a child
38 caring institution under IC 12-17.4-3.5 to the attorney general and
39 to the county office of family and children attorney and the
40 prosecuting attorney in the county where the child caring
41 institution is located.**

42 (b) The attorney general or the county department of public welfare

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- 1 attorney may do the following:
- 2 (1) Seek the issuance of a search warrant to assist in the
- 3 investigation.
- 4 (2) File an action for injunctive relief to stop the operation of a
- 5 child caring institution if there is reasonable cause to believe that
- 6 the child caring institution is operating without a license required
- 7 under this article.
- 8 (3) Seek in a civil action a civil penalty not to exceed one hundred
- 9 dollars (\$100) a day for each day a child caring institution is
- 10 operating without a license required under this article.
- 11 (c) An opportunity for an informal meeting with the division shall
- 12 be available after the injunctive relief is ordered.
- 13 (d) The civil penalties collected under this section shall be deposited
- 14 in the child care fund.
- 15 SECTION 9. IC 12-17.4-3.5 IS ADDED TO THE INDIANA CODE
- 16 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 17 JULY 1, 1999]:
- 18 **Chapter 3.5. Emergency Closure of Child Caring Institutions**
- 19 **Sec. 1. (a) The division may issue an order for emergency**
- 20 **closure of a child caring institution if the division determines that:**
- 21 **(1) the child caring institution is not in compliance with this**
- 22 **article, including operating without the required license; and**
- 23 **(2) there is reasonable cause to suspect that the:**
- 24 **(A) health;**
- 25 **(B) safety; or**
- 26 **(C) well-being;**
- 27 **of a child residing in the child caring institution is in imminent**
- 28 **danger.**
- 29 **(b) An order for emergency closure issued under this section**
- 30 **must include the following information:**
- 31 **(1) The date and time of emergency closure.**
- 32 **(2) Each reason for emergency closure.**
- 33 **(3) Any condition that the child caring institution must**
- 34 **remedy immediately.**
- 35 **(4) The right of the child caring institution to request an**
- 36 **administrative hearing under section 7 of this chapter.**
- 37 **Sec. 2. An order for emergency closure issued under this**
- 38 **chapter takes effect immediately upon notice to the child caring**
- 39 **institution.**
- 40 **Sec. 3. A child caring institution may not operate during the**
- 41 **time that an order for emergency closure is in effect.**
- 42 **Sec. 4. (a) The child caring institution may request an informal**



1 meeting with the division within five (5) days after the order for
2 emergency is issued.

3 (b) The division shall grant a request made under subsection (a).

4 **Sec. 5. An order for emergency closure issued under this**
5 **chapter remains in effect until the earliest of the following:**

6 (1) The child caring institution takes the action required by
7 the division to address the reason for emergency closure.

8 (2) The division determines through an investigation that the
9 required reasonable cause no longer exists.

10 (3) Fourteen (14) days after the date of issuance of the order.

11 **Sec. 6. After issuing an order for emergency closure of a child**
12 **caring institution under this chapter, the division shall:**

13 (1) require a plan of corrective action for emergency
14 protection of the children; and

15 (2) assist in obtaining appropriate child care for any child
16 who had been residing at the child caring institution.

17 **Sec. 7. (a) Subject to the requirements of this section, the**
18 **division shall provide an administrative hearing concerning the**
19 **decision to issue an order for emergency closure.**

20 (b) The child caring institution must make a written request for
21 an administrative hearing under this section within ten (10) days
22 after the date the division issued the order for emergency closure.
23 This request must be made separately from a request for an
24 informal meeting under section 4 of this chapter.

25 (c) The division shall hold an administrative hearing within ten
26 (10) days after receiving a written request under subsection (b).

27 (d) The division shall issue a decision not more than ten (10)
28 days after the conclusion of the hearing.

29 SECTION 10. IC 16-36-3-1 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. As used in this
31 chapter, "appropriate facility" has the meaning set forth in
32 ~~IC 12-7-2-82(3)~~; IC 12-7-2-82(4).

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