
HOUSE BILL No. 1188

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-39-2-6; IC 31-9-2-133; IC 31-33; IC 35-42-6.

Synopsis: Duty to report child abuse or neglect. Moves certain statutes concerning the duty to report child abuse to Title 35 of the Indiana Code governing criminal law and procedure. Defines "victim of child abuse or neglect" for purposes of the duty to report child abuse.

Effective: July 1, 2011.

Davis, Tyler

January 10, 2011, read first time and referred to Committee on Family, Children and Human Affairs.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1188



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

1 SECTION 1. IC 16-39-2-6, AS AMENDED BY P.L.1-2007,
2 SECTION 136, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) Without the consent of the
4 patient, the patient's mental health record may only be disclosed as
5 follows:

- 6 (1) To individuals who meet the following conditions:
 - 7 (A) Are employed by:
 - 8 (i) the provider at the same facility or agency;
 - 9 (ii) a managed care provider (as defined in
 - 10 IC 12-7-2-127(b)); or
 - 11 (iii) a health care provider or mental health care provider, if
 - 12 the mental health records are needed to provide health care
 - 13 or mental health services to the patient.
 - 14 (B) Are involved in the planning, provision, and monitoring of
 - 15 services.
- 16 (2) To the extent necessary to obtain payment for services
- 17 rendered or other benefits to which the patient may be entitled, as



- 1 provided in IC 16-39-5-3.
- 2 (3) To the patient's court appointed counsel and to the Indiana
- 3 protection and advocacy services commission.
- 4 (4) For research conducted in accordance with IC 16-39-5-3 and
- 5 the rules of the division of mental health and addiction, the rules
- 6 of the division of disability and rehabilitative services, or the rules
- 7 of the provider.
- 8 (5) To the division of mental health and addiction for the purpose
- 9 of data collection, research, and monitoring managed care
- 10 providers (as defined in IC 12-7-2-127(b)) who are operating
- 11 under a contract with the division of mental health and addiction.
- 12 (6) To the extent necessary to make reports or give testimony
- 13 required by the statutes pertaining to admissions, transfers,
- 14 discharges, and guardianship proceedings.
- 15 (7) To a law enforcement agency if any of the following
- 16 conditions are met:
- 17 (A) A patient escapes from a facility to which the patient is
- 18 committed under IC 12-26.
- 19 (B) The superintendent of the facility determines that failure
- 20 to provide the information may result in bodily harm to the
- 21 patient or another individual.
- 22 (C) A patient commits or threatens to commit a crime on
- 23 facility premises or against facility personnel.
- 24 (D) A patient is in the custody of a law enforcement officer or
- 25 agency for any reason and:
- 26 (i) the information to be released is limited to medications
- 27 currently prescribed for the patient or to the patient's history
- 28 of adverse medication reactions; and
- 29 (ii) the provider determines that the release of the
- 30 medication information will assist in protecting the health,
- 31 safety, or welfare of the patient.
- 32 Mental health records released under this clause must be
- 33 maintained in confidence by the law enforcement agency
- 34 receiving them.
- 35 (8) To a coroner or medical examiner, in the performance of the
- 36 individual's duties.
- 37 (9) To a school in which the patient is enrolled if the
- 38 superintendent of the facility determines that the information will
- 39 assist the school in meeting educational needs of a person with a
- 40 disability under 20 U.S.C. 1400 et seq.
- 41 (10) To the extent necessary to satisfy reporting requirements
- 42 under the following statutes:

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- 1 (A) IC 12-10-3-10.
- 2 (B) IC 12-24-17-5.
- 3 (C) IC 16-41-2-3.
- 4 (D) IC 31-25-3-2.
- 5 ~~(E) IC 31-33-5-4.~~
- 6 ~~(F)~~ (E) IC 34-30-16-2.
- 7 **(F) IC 35-42-6-3.**
- 8 (G) IC 35-46-1-13.
- 9 (11) To the extent necessary to satisfy release of information
- 10 requirements under the following statutes:
- 11 (A) IC 12-24-11-2.
- 12 (B) IC 12-24-12-3, IC 12-24-12-4, and IC 12-24-12-6.
- 13 (C) IC 12-26-11.
- 14 (12) To another health care provider in a health care emergency.
- 15 (13) For legitimate business purposes as described in
- 16 IC 16-39-5-3.
- 17 (14) Under a court order under IC 16-39-3.
- 18 (15) With respect to records from a mental health or
- 19 developmental disability facility, to the United States Secret
- 20 Service if the following conditions are met:
- 21 (A) The request does not apply to alcohol or drug abuse
- 22 records described in 42 U.S.C. 290dd-2 unless authorized by
- 23 a court order under 42 U.S.C. 290dd-2(b)(2)(c).
- 24 (B) The request relates to the United States Secret Service's
- 25 protective responsibility and investigative authority under 18
- 26 U.S.C. 3056, 18 U.S.C. 871, or 18 U.S.C. 879.
- 27 (C) The request specifies an individual patient.
- 28 (D) The director or superintendent of the facility determines
- 29 that disclosure of the mental health record may be necessary
- 30 to protect a person under the protection of the United States
- 31 Secret Service from serious bodily injury or death.
- 32 (E) The United States Secret Service agrees to only use the
- 33 mental health record information for investigative purposes
- 34 and not disclose the information publicly.
- 35 (F) The mental health record information disclosed to the
- 36 United States Secret Service includes only:
- 37 (i) the patient's name, age, and address;
- 38 (ii) the date of the patient's admission to or discharge from
- 39 the facility; and
- 40 (iii) any information that indicates whether or not the patient
- 41 has a history of violence or presents a danger to the person
- 42 under protection.

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1 (16) To the statewide waiver ombudsman established under
 2 IC 12-11-13, in the performance of the ombudsman's duties.
 3 (b) After information is disclosed under subsection (a)(15) and if the
 4 patient is evaluated to be dangerous, the records shall be interpreted in
 5 consultation with a licensed mental health professional on the staff of
 6 the United States Secret Service.
 7 (c) A person who discloses information under subsection (a)(7) or
 8 (a)(15) in good faith is immune from civil and criminal liability.
 9 SECTION 2. IC 31-9-2-133 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 133. (a) "Victim of
 11 child abuse or neglect", for purposes of IC 31-32-11-1, ~~and IC 31-33-~~
 12 refers to a child in need of services as described in:
 13 (1) IC 31-34-1-1 through IC 31-34-1-5;
 14 (2) IC 31-34-1-10; or
 15 (3) IC 31-34-1-11.
 16 (b) The term does not include a child who is alleged to be a child in
 17 need of services if the child is alleged to be a victim of a sexual offense
 18 under IC 35-42-4-3 unless the alleged offense under IC 35-42-4-3
 19 involves the fondling or touching of the buttocks, genitals, or female
 20 breasts.
 21 SECTION 3. IC 31-33-7-4, AS AMENDED BY P.L.234-2005,
 22 SECTION 111, IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The department shall make
 24 a written report of a child who may be a victim of child abuse or
 25 neglect not later than forty-eight (48) hours after receipt of the oral
 26 report required of individuals by ~~IC 31-33-5-4~~. **IC 35-42-6-3.**
 27 (b) Written reports under this section must be made on forms
 28 supplied by the administrator. The written reports must include, if
 29 known, the following information:
 30 (1) The names and addresses of the following:
 31 (A) The child.
 32 (B) The child's parents, guardian, custodian, or other person
 33 responsible for the child's care.
 34 (2) The child's age and sex.
 35 (3) The nature and apparent extent of the child's injuries, abuse,
 36 or neglect, including any evidence of prior:
 37 (A) injuries of the child; or
 38 (B) abuse or neglect of the child or the child's siblings.
 39 (4) The name of the person allegedly responsible for causing the
 40 injury, abuse, or neglect.
 41 (5) The source of the report.
 42 (6) The person making the report and where the person can be

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- 1 reached.
- 2 (7) The actions taken by the reporting source, including the
- 3 following:
- 4 (A) Taking of photographs and x-rays.
- 5 (B) Removal or keeping of the child.
- 6 (C) Notifying the coroner.
- 7 (8) The written documentation required by IC 31-34-2-3 if a child
- 8 was taken into custody without a court order.
- 9 (9) Any other information that:
- 10 (A) the director requires by rule; or
- 11 (B) the person making the report believes might be helpful.

12 SECTION 4. IC 31-33-7-7, AS AMENDED BY P.L.131-2009,
 13 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2011]: Sec. 7. (a) When a law enforcement agency receives
 15 an initial report under ~~IC 31-33-5-4~~ IC 35-42-6-3 that a child may be
 16 a victim of child abuse or neglect, the law enforcement agency shall:

- 17 (1) immediately communicate the report to the department,
- 18 whether or not the law enforcement agency has reason to believe
- 19 there exists an imminent danger to the child's health or welfare;
- 20 and
- 21 (2) conduct an immediate, onsite assessment of the report along
- 22 with the department whenever the law enforcement agency has
- 23 reason to believe that an offense has been committed.

24 (b) In all cases, the law enforcement agency shall forward any
 25 information, including copies of assessment reports, on incidents of
 26 cases in which a child may be a victim of child abuse or neglect,
 27 whether or not obtained under this article, to:

- 28 (1) the department; and
- 29 (2) the juvenile court under IC 31-34-7.

30 SECTION 5. IC 35-42-6 IS ADDED TO THE INDIANA CODE AS
 31 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2011]:

33 **Chapter 6. Reporting Child Abuse**

34 **Sec. 1. As used in this chapter, "child" means a person who is**
 35 **less than eighteen (18) years of age.**

36 **Sec. 2. As used in this chapter, "victim of child abuse or neglect"**
 37 **means:**

- 38 (1) a child whose physical or mental condition is seriously
- 39 impaired or seriously endangered as a result, refusal, or
- 40 neglect of the child's parent, guardian, or custodian to supply
- 41 the child with necessary food, clothing, shelter, medical care,
- 42 education, or supervision;

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- 1 (2) a child whose physical or mental health is seriously
- 2 endangered due to an injury by the act or omission of the
- 3 child's parent, guardian, or custodian;
- 4 (3) a child who is the victim of an offense under:
- 5 (A) IC 35-42-4-1;
- 6 (B) IC 35-42-4-2;
- 7 (C) IC 35-42-4-3, if the child molestation included the
- 8 fondling or touching of the buttocks, genitals, or female
- 9 breasts;
- 10 (D) IC 35-42-4-4;
- 11 (E) IC 35-42-4-7;
- 12 (F) IC 35-42-4-9;
- 13 (G) IC 35-45-4-1;
- 14 (H) IC 35-45-4-2;
- 15 (I) IC 35-46-1-3; or
- 16 (J) the law of another jurisdiction, including a military
- 17 court, that is substantially equivalent to any of the offenses
- 18 listed in clauses (A) through (I);
- 19 (4) a child whose parent, guardian, or custodian allowed the
- 20 child to participate in an obscene performance under
- 21 IC 35-49-2-2 or IC 35-49-3-2;
- 22 (5) a child whose parent, guardian, or custodian allowed the
- 23 child to commit a sex offense prohibited by IC 35-45-4;
- 24 (6) a child who was born with:
- 25 (A) fetal alcohol syndrome; or
- 26 (B) any amount, including a trace amount, of a controlled
- 27 substance or a legend drug in the child's body;
- 28 (7) except as provided in IC 31-34-1-12 and IC 31-34-1-13, a
- 29 child who:
- 30 (A) has an injury;
- 31 (B) has abnormal physical or psychological development;
- 32 or
- 33 (C) is at a substantial risk of a life threatening condition;
- 34 that occurred or substantially occurred because the child's
- 35 mother used alcohol, a controlled substance, or a legend drug
- 36 during pregnancy;
- 37 (8) a child who was placed in a situation that endangered the
- 38 child's life or health;
- 39 (9) a child who was abandoned or cruelly confined; or
- 40 (10) a child who has been deprived of education.
- 41 **Sec. 3. A person who has a reason to believe that a child may be**
- 42 **a victim of child abuse or neglect shall immediately make a verbal**

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report to:

- (1) the department of child services; or**
- (2) a local law enforcement agency.**

Sec. 4. (a) If an individual is required to make a report under section 3 of this chapter in the individual's capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, the individual shall immediately notify the individual in charge of the institution, school, facility, or agency, or the designated agent of the individual in charge of the institution, school, facility, or agency.

(b) An individual notified under subsection (a) shall report or cause a report to be made.

Sec. 5. (a) A person who knowingly fails to make a report required by section 3 of this chapter commits a Class B misdemeanor.

(b) A person who knowingly fails to make a report required by section 4 of this chapter commits a Class B misdemeanor. This penalty is in addition to the penalty imposed by subsection (a).

SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2011]: IC 31-33-5; IC 31-33-22-1.

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