

HOUSE BILL No. 1188

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2; IC 31-27-7.

Synopsis: Private residential facilities for children. Requires the department of child services to develop standards for the operation of residential facilities for children with emotional, behavioral, or mental health problems or disorders or problems with alcohol or substance abuse. Provides a civil penalty not to exceed five hundred thousand dollars for violations of the standards established.

Effective: July 1, 2012.

VanDenburgh

January 9, 2012, read first time and referred to Committee on Family, Children and Human Affairs.

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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 2011 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 family law and juvenile law.

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

1 SECTION 1. IC 31-9-2-77.4 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]: **Sec. 77.4 "Mechanical restraint", for purposes of**
4 **IC 33-27-7, has the meaning set forth in IC 31-27-7-3.**

5 SECTION 2. IC 31-9-2-92.1 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2012]: **Sec. 92.1. "Physical restraint", for purposes of IC 33-27-7,**
8 **has the meaning set forth in IC 31-27-7-4.**

9 SECTION 3. IC 31-27-7 IS ADDED TO THE INDIANA CODE AS
10 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2012]:

12 **Chapter 7. Protection of Children in Certain Private Residential**
13 **Environments**

14 **Sec. 1. (a) This chapter applies to programs operated by a**
15 **private entity that provide services to children, unrelated to the**
16 **owner or operator of the program, that:**

17 **(1) provide a residential environment, including:**



- 1 (A) a program with a wilderness or outdoor experience,
 2 expedition, or intervention;
 3 (B) a boot camp experience or other experience designed
 4 to simulate characteristics of basic military training or
 5 correctional regimes;
 6 (C) a therapeutic boarding school; or
 7 (D) a behavioral modification program; and
 8 (2) operate with a focus on serving children with:
 9 (A) emotional, behavioral, or mental health problems or
 10 disorders; or
 11 (B) problems with alcohol or substance abuse.
 12 (b) This chapter does not apply to:
 13 (1) facilities operated by the state;
 14 (2) hospitals licensed by the state under IC 16-21-2; and
 15 (3) foster care homes regulated under IC 31-27-4.
 16 Sec. 2. As used in this chapter, "department" refers to the
 17 department of child services established by IC 31-25-1-1.
 18 Sec. 3. (a) As used in this chapter, "mechanical restraint" means
 19 the use of:
 20 (1) a mechanical device;
 21 (2) a material; or
 22 (3) equipment;
 23 attached or adjacent to a child's body that the child cannot easily
 24 remove and that restricts the freedom of movement of all or part
 25 of the child's body or restricts normal access to the child's body.
 26 (b) The term does not include:
 27 (1) mechanical devices;
 28 (2) material; or
 29 (3) equipment;
 30 used for postural support, used during transportation, or used to
 31 improve the mobility and independent functioning of a child rather
 32 than to restrict movement.
 33 Sec. 4. As used in this chapter, "physical restraint" means
 34 physical contact between an educational provider and a child:
 35 (1) in which the child unwillingly participates; and
 36 (2) that involves the use of a manual hold to restrict freedom
 37 of movement of all or part of a child's body or to restrict
 38 normal access to the child's body.
 39 The term does not include briefly holding a child without undue
 40 force in order to calm, comfort, or prevent unsafe behavior,
 41 including running into traffic, engaging in a physical altercation,
 42 or physical contact intended to gently assist or prompt a student in

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1 performing a task or to guide or assist a student from one (1) area
2 to another.

3 **Sec. 5. The department shall adopt rules under IC 4-22-2 that**
4 **require each location of a program governed by this chapter to**
5 **meet the following minimum standards:**

6 **(1) Child abuse and neglect (as described in IC 31-9-2-14(c))**
7 **is prohibited.**

8 **(2) Disciplinary techniques or other practices that involve the**
9 **withholding of essential food, water, clothing, shelter, or**
10 **medical care necessary to maintain physical health, mental**
11 **health, and general safety are prohibited.**

12 **(3) The protection and promotion of the right of each child to**
13 **be free from physical and mechanical restraints and seclusion**
14 **are required.**

15 **(4) Acts of physical or mental abuse designed to humiliate,**
16 **degrade, or undermine a child's self-respect are prohibited.**

17 **(5) Each child at a program governed by this chapter shall**
18 **have reasonable access to a telephone and be informed of the**
19 **child's right to access for making and receiving phone calls**
20 **with as much privacy as possible.**

21 **(6) Each child shall have access to national, state, and local**
22 **child abuse reporting hotline numbers.**

23 **(7) Each staff member and volunteer at a program governed**
24 **by this chapter shall be required to become familiar with**
25 **what constitutes child abuse and neglect as defined by state**
26 **law.**

27 **(8) Each staff member and volunteer shall be required to**
28 **become familiar with child abuse and neglect reporting**
29 **procedures.**

30 **(9) Programs shall make full disclosure of staff qualifications,**
31 **roles, and responsibilities.**

32 **(10) Each staff member and volunteer shall be required to be**
33 **familiar with the signs, symptoms, and appropriate responses**
34 **associated with heatstroke, dehydration, and hypothermia.**
35 **Each staff member and volunteer must be familiar with**
36 **policies and procedures for providing medical care and**
37 **seeking emergency medical care.**

38 **(11) Each staff member and volunteer must submit to the**
39 **program the necessary information, forms, or consents**
40 **required by the department to obtain a national criminal**
41 **history background check on the applicant through the state**
42 **police department under IC 10-13-3-39. An individual may**

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not be employed or serve as a volunteer if the criminal history check reveals a felony conviction for child abuse or neglect, spousal abuse, a crime against children, or a crime involving violence, including rape, sexual assault, or homicide.

(12) Each program must have policies requiring the parent or legal guardian of a child to notify the program in writing of any medication the child is taking.

(13) Each program must notify the parent or legal guardian of a child within twenty-four (24) hours after any changes made to the child's medical treatment along with the reason for any change.

(14) Each program must have procedures in place to notify the parent or legal guardian of a child of any missed dosage or prescribed medication.

(15) Each program must have procedures to notify the parent or legal guardian of a child within forty-eight (48) hours after any:

- (A) on-site investigation of a report of child abuse or neglect;
- (B) violation of the health and safety standards for the program; or
- (C) violation of state licensing standards.

Sec. 6. (a) The department shall adopt rules under IC 4-22-2:

- (1) establishing procedures and schedules for inspection of programs covered under this chapter;
- (2) establishing civil penalties for violations of this chapter that do not exceed five hundred thousand dollars (\$500,000) per violation; and
- (3) establishing procedures for hearings and appeal of penalties assessed under this section or IC 4-21.5.

(b) Penalties collected under this section shall be deposited in the state general fund.

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