
HOUSE BILL No. 1446

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-33.

Synopsis: DCS investigation of sexual abuse cases. Permits the department of child services (DCS) to determine that a report of suspected child abuse or neglect is not substantiated if: (1) the incident of suspected child abuse or neglect involves acts that would constitute sexual misconduct with a minor; (2) the Romeo and Juliet defense to sexual misconduct with a minor applies; and (3) the prosecuting attorney does not charge the person with sexual misconduct with a minor. Specifies that an administrative hearing officer may consider Romeo and Juliet evidence in determining whether a substantiated report of child abuse or neglect should be expunged from the child protection index.

Effective: July 1, 2011.

Cheatham

January 18, 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. 1446



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 31-33-8-7.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]: **Sec. 7.5. If:**
4 (1) **a suspected incident of child abuse or neglect involves a**
5 **person at least eighteen (18) years of age who performs or**
6 **submits to consensual sexual intercourse or deviate sexual**
7 **conduct with a child at least fourteen (14) years of age but less**
8 **than sixteen (16) years of age;**
9 (2) **the department determines that the defense under**
10 **IC 35-42-4-9(e) applies to the person allegedly responsible for**
11 **the incident of child abuse or neglect; and**
12 (3) **the person allegedly responsible for the incident of child**
13 **abuse or neglect is not charged with sexual misconduct with**
14 **a minor (IC 35-42-4-9);**
15 **the department may determine that the report of child abuse or**
16 **neglect is not substantiated.**
17 SECTION 2. IC 31-33-26-9, AS ADDED BY P.L.138-2007,



1 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2011]: Sec. 9. (a) Except as provided in sections 11 and 12 of
3 this chapter, the department shall conduct an administrative hearing
4 upon a request made under section 8 of this chapter.

5 (b) At the administrative hearing, the department must prove by a
6 preponderance of credible evidence that the perpetrator is responsible
7 for the child's abuse or neglect.

8 (c) During an administrative hearing under this section, the
9 administrative hearing officer shall consider hearsay evidence to be
10 competent evidence and may not exclude hearsay based on the
11 technical rules of evidence. However, a determination may not be
12 based solely on evidence that is hearsay.

13 **(d) If relevant evidence is presented at the hearing, the**
14 **administrative hearing officer may consider whether**
15 **IC 31-33-8-7.5 applies.**

16 ~~(d)~~ (e) If the department fails to carry the burden of proof under
17 subsection (b), the department shall amend or expunge the report as
18 ordered by the administrative hearing officer within the period
19 provided under section 15 of this chapter.

20 ~~(e)~~ (f) The department shall maintain the confidentiality of an abuse
21 or a neglect report during the administrative process.

22 ~~(f)~~ (g) The administrative hearing shall be closed.

23 ~~(g)~~ (h) The administrative files shall be closed and not disclosed to
24 the public.

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