

SENATE BILL No. 323

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-12-2-3; IC 31-14-13-2; IC 31-14-13-2.5; IC 31-15-4-9; IC 31-17-2-8; IC 31-17-2-13; IC 31-17-2-15.5.

Synopsis: Domestic violence considerations in domestic cases. Establishes a rebuttable presumption that a parent who has demonstrated a pattern of domestic violence may not be awarded sole or joint custody of a child. Provides that domestic violence includes physical or sexual abuse regardless of whether the abuse resulted in a criminal prosecution. Allows the presumption to be rebutted only: (1) upon evidence that the parent has successfully completed a treatment program and is not abusing alcohol or drugs; and (2) upon a showing that it is in the best interests of the child because of the conduct of the
(Continued next page)

Effective: July 1, 1998.

Simpson

January 8, 1998, read first time and referred to Committee on Judiciary.

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Digest Continued

other parent. Allows a court to order only supervised visitation, if any, with a parent who has demonstrated a pattern of domestic violence, conditioned on the parent's participation in a domestic violence treatment program. Provides that unsupervised visitation may be ordered if certain additional conditions are met. Prescribes guidelines for a court to follow in determining custody when both parents have demonstrated a pattern of domestic violence. Applies to both dissolution of marriage and paternity cases. Prohibits a court from ordering a party in a domestic relations proceeding to participate in counseling or mediation if the court finds that the other party has demonstrated a pattern of domestic violence against the party or a child of the parties.

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Introduced

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

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SENATE BILL No. 323

A BILL FOR AN ACT to amend the Indiana Code concerning family law.

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

1 SECTION 1. IC 31-12-2-3, AS ADDED BY P.L.1-1997, SECTION
2 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 1998]: Sec. 3. A judge may order either or both parties in a domestic
4 relations proceeding to:

- 5 (1) report to the domestic relations bureau;
6 (2) cooperate in counseling; and
7 (3) furnish the counselor with pertinent information in a party's
8 knowledge.

9 **However, the court may not order a party to participate in**
10 **counseling or mediation if the court finds that the other party has**
11 **demonstrated a pattern of domestic violence against the party or**
12 **a child of the parties.**

13 SECTION 2. IC 31-14-13-2, AS ADDED BY P.L.1-1997,
14 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 1998]: Sec. 2. The court shall determine custody in

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IN 323—LS 6925/DI 76+



1 accordance with the best interests of the child. In determining the
 2 child's best interests, there is not a presumption favoring either parent.
 3 The court shall consider all relevant factors, including the following:

- 4 (1) The age and sex of the child.
 5 (2) The wishes of the child's parents.
 6 (3) The wishes of the child, with more consideration given to the
 7 child's wishes if the child is at least fourteen (14) years of age.
 8 (4) The interaction and interrelationship of the child with:
 9 (A) the child's parents;
 10 (B) the child's siblings; and
 11 (C) any other person who may significantly affect the child's
 12 best interest.
 13 (5) The child's adjustment to home, school, and community.
 14 (6) The mental and physical health of all individuals involved.
 15 (7) Evidence of a pattern of domestic violence by either parent.

16 **However, there is a rebuttable presumption that a parent who**
 17 **has demonstrated a pattern of domestic violence is not entitled**
 18 **to custody of a child as described by section 2.5 of this**
 19 **chapter.**

20 SECTION 3. IC 31-14-13-2.5 IS ADDED TO THE INDIANA
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 1998]: **Sec. 2.5. (a) Except as provided in**
 23 **subsection (b), there is a rebuttable presumption that a parent who**
 24 **has demonstrated a pattern of domestic violence is not entitled to**
 25 **sole custody of a child. The presumption may be rebutted only**
 26 **upon evidence that:**

- 27 (1) the parent:
 28 (A) has successfully completed a domestic violence
 29 treatment program; and
 30 (B) is not abusing alcohol or drugs; and
 31 (2) the best interests of the child require the parent to serve as
 32 a custodial parent because of the other parent's absence,
 33 mental illness, or substance abuse, or other circumstances
 34 that affect the best interests of the child.

35 **Evidence that a parent is a victim of domestic violence is not**
 36 **grounds for denying the parent custody of the child.**

37 (b) **If the court finds that both parents have demonstrated a**
 38 **pattern of domestic violence, custody shall be awarded solely to the**
 39 **parent who is less likely to continue the pattern of domestic**
 40 **violence. If this subsection applies, the court shall order the**
 41 **custodial parent to successfully complete a domestic violence**
 42 **treatment program. If necessary to protect the welfare of the child,**



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1 custody may be temporarily awarded to a suitable third person
 2 designated by the court, if the third person will not allow access to
 3 a parent who has a pattern of domestic violence except as ordered
 4 by the court.

5 (c) Except as provided in subsection (b), the court may order
 6 only supervised child visitation, if any, with a parent who has
 7 demonstrated a pattern of domestic violence, conditioned upon the
 8 parent's participation in a domestic violence treatment program.
 9 However, the court may order unsupervised child visitation with
 10 the parent if:

11 (1) the parent:

12 (A) has successfully completed a domestic violence
 13 treatment program;

14 (B) is not abusing alcohol or drugs; and

15 (C) poses no danger to the child; and

16 (2) the unsupervised visitation is in the child's best interests.

17 SECTION 4. IC 31-15-4-9, AS ADDED BY P.L.1-1997, SECTION
 18 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 19 1998]: Sec. 9. The court may require the parties to seek counseling for
 20 themselves or for a child of the parties under such terms and conditions
 21 that the court considers appropriate if:

22 (1) either party makes a motion for counseling in an effort to
 23 improve conditions of their marriage;

24 (2) a party, the child of the parties, the child's guardian ad litem
 25 or court appointed special advocate, or the court makes a motion
 26 for counseling for the child; or

27 (3) the court makes a motion for counseling for parties who are
 28 the parents of a child less than eighteen (18) years of age.

29 **However, the court may not order a party to participate in**
 30 **counseling if the court finds that the other party has demonstrated**
 31 **a pattern of domestic violence against the party or a child of the**
 32 **parties.**

33 SECTION 5. IC 31-17-2-8, AS ADDED BY P.L.1-1997, SECTION
 34 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 35 1998]: Sec. 8. The court shall determine custody and enter a custody
 36 order in accordance with the best interests of the child. In determining
 37 the best interests of the child, there is no presumption favoring either
 38 parent. The court shall consider all relevant factors, including the
 39 following:

40 (1) The age and sex of the child.

41 (2) The wishes of the child's parent or parents.

42 (3) The wishes of the child, with more consideration given to the

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1 child's wishes if the child is at least fourteen (14) years of age.

2 (4) The interaction and interrelationship of the child with:

3 (A) the child's parent or parents;

4 (B) the child's sibling; and

5 (C) any other person who may significantly affect the child's
6 best interests.

7 (5) The child's adjustment to the child's:

8 (A) home;

9 (B) school; and

10 (C) community.

11 (6) The mental and physical health of all individuals involved.

12 (7) Evidence of a pattern of domestic violence by either parent.

13 **However, there is a rebuttable presumption that a parent who**
14 **has demonstrated a pattern of domestic violence is not entitled**
15 **to custody of a child as described by section 15.5 of this**
16 **chapter.**

17 SECTION 6. IC 31-17-2-13, AS ADDED BY P.L.1-1997,
18 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 1998]: Sec. 13. **Subject to section 15.5 of this chapter,** the
20 court may award legal custody of a child jointly if the court finds that
21 an award of joint legal custody would be in the best interest of the
22 child.

23 SECTION 7. IC 31-17-2-15.5 IS ADDED TO THE INDIANA
24 CODE AS A NEW SECTION TO READ AS FOLLOWS
25 [EFFECTIVE JULY 1, 1998]: **Sec. 15.5. (a) Except as provided in**
26 **subsection (b), there is a rebuttable presumption that a parent who**
27 **has demonstrated a pattern of domestic violence is not entitled to**
28 **sole or joint custody of a child. The presumption may be rebutted**
29 **only upon evidence that:**

30 (1) the parent:

31 (A) has successfully completed a domestic violence
32 treatment program; and

33 (B) is not abusing alcohol or drugs; and

34 (2) the best interests of the child require the parent to serve as
35 a custodial parent because of the other parent's absence,
36 mental illness, or substance abuse, or other circumstances
37 that affect the best interests of the child.

38 Evidence that a parent is a victim of domestic violence is not
39 grounds for denying the parent custody of a child.

40 (b) If the court finds that both parents have demonstrated a
41 pattern of domestic violence, custody shall be awarded solely to the
42 parent who is less likely to continue the pattern of domestic

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1 violence. If this subsection applies, the court shall order the
2 custodial parent to successfully complete a domestic violence
3 treatment program. If necessary to protect the welfare of the child,
4 custody may be temporarily awarded to a suitable third person
5 designated by the court, if the third person will not allow access to
6 a parent who has a pattern of domestic violence except as ordered
7 by the court.

8 (c) Except as provided in subsection (b), the court may order
9 only supervised child visitation, if any, with a parent who has
10 demonstrated a pattern of domestic violence, conditioned upon the
11 parent's participation in a domestic violence treatment program.
12 However, the court may order unsupervised child visitation with
13 the parent if:

14 (1) the parent:

15 (A) has successfully completed a domestic violence
16 treatment program;

17 (B) is not abusing alcohol or drugs; and

18 (C) poses no danger to the child; and

19 (2) the unsupervised visitation is in the child's best interests.

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