

Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1029

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:

SECTION 1. IC 31-9-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. (a) "Child", for purposes of IC 31-15, IC 31-16 (**excluding IC 31-16-12.5**), and IC 31-17, means a child or children of both parties to the marriage. The term includes the following:

- (1) Children born out of wedlock to the parties.
- (2) Children born or adopted during the marriage of the parties.
- (b) "Child", for purposes of the Uniform Interstate Family Support Act under IC 31-18, has the meaning set forth in IC 31-18-1-2.
- (c) "Child", for purposes of IC 31-19-5, includes an unborn child.
- (d) "Child", for purposes of the juvenile law, means:
 - (1) a person who is less than eighteen (18) years of age;
 - (2) a person:
 - (A) who is eighteen (18), nineteen (19), or twenty (20) years of age; and
 - (B) who either:
 - (i) is charged with a delinquent act committed before the person's eighteenth birthday; or
 - (ii) has been adjudicated a child in need of services before the person's eighteenth birthday; or
 - (3) a person:
 - (A) who is alleged to have committed an act that would have

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been murder if committed by an adult; and
(B) who was less than eighteen (18) years of age at the time of the alleged act.

(e) "Child", for purposes of the Interstate Compact on Juveniles under IC 31-37-23-1, has the meaning set forth in IC 31-37-23-1.

(f) "Child", for purposes of IC 31-16-12.5, means an individual to whom child support is owed under:

- (1) a child support order issued under IC 31-14-10 or IC 31-16-6; or**
- (2) any other child support order that is enforceable under IC 31-16-12.5.**

SECTION 2. IC 31-9-2-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 30. "Custodial parent", for purposes of IC 31-14-13-8, IC 31-14-15, **IC 31-16-12.5**, IC 31-17-2-22, and IC 31-17-4, means the parent who has been awarded physical custody of a child by a court.

SECTION 3. IC 31-14-12-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 2.5. (a) This section does not apply to a support order entered in a Title IV-D case.**

(b) A custodial parent may, under IC 31-16-12.5, seek a setoff of the state income tax refund of a child support obligor against whom a child support order was entered under IC 31-14-11.

SECTION 4. IC 31-16-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 12.5. Seizure of State Income Tax Refunds for Delinquent Child Support

Sec. 1. This chapter does not apply to a support order entered in a Title IV-D case.

Sec. 2. (a) A custodial parent may file a petition for a setoff of child support from a state income tax refund payable to a child support obligor in:

- (1) the court that entered the original child support order; or**
- (2) a court of competent jurisdiction located in the county of residence of the custodial parent.**

(b) The petition must be verified and must include all of the following:

- (1) The full name of:**
 - (A) the obligor;**
 - (B) the custodial parent; and**
 - (C) each child to whom the obligor owes child support.**

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(2) An averment that:

(A) the obligor's aggregate child support arrearage on the date the petition is filed is at least one thousand five hundred dollars (\$1,500); and

(B) the obligor has intentionally violated the terms of the most recent child support order.

(3) An indication of whether the custodial parent:

(A) has received or is receiving assistance under the Title IV-A program; or

(B) has assigned child support payments under IC 12-14-7-1;

during the period of time for which child support is owed by the obligor.

(c) The court shall notify the child support bureau of the division of family and children of the pendency of an action under this chapter if the petition:

(1) indicates under subsection (b)(3)(A) that the custodial parent has received or is receiving assistance; or

(2) indicates under subsection (b)(3)(B) that an assignment has occurred.

(d) The state has a right to intervene as a party in a hearing under this chapter if the custodial parent has received or is receiving assistance as described in subsection (b)(3)(A) or if an assignment as described in subsection (b)(3)(B) has occurred.

Sec. 3. A custodial parent may not bring an action under this chapter with respect to an obligor's state income tax refund for a calendar year if the child support bureau has initiated an action under IC 6-8.1-9.5 to set off the obligor's tax refund for that calendar year.

Sec. 4. (a) A court that receives a petition under section 1 of this chapter shall send an order requiring the department of state revenue to determine the obligor's eligibility for a state income tax refund, whether the obligor filed a joint state income tax return, and if the obligor filed a joint state income tax return, the name and address of the individual with whom the obligor filed the joint state income tax return, if the court preliminarily determines that probable cause exists to believe that the obligor named in the petition:

(1) was at least one thousand five hundred dollars (\$1,500) in arrears on child support payments at the time the custodial parent filed the petition under section 2 of this chapter; and

(2) has intentionally violated the terms of the most recent

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support order.

(b) The department of state revenue, upon receiving an order under subsection (a), shall notify the court whether the obligor named in the order:

- (1) is eligible for a state income tax refund; and
- (2) has filed a joint state income tax return, and if the obligor has filed a joint state income tax return, the name and address of the individual with whom the obligor filed the joint state income tax return.

Sec. 5. (a) If the court receives notification under section 4(b) of this chapter that the obligor is eligible for a state income tax refund, the court shall set the matter for a hearing at least thirty (30) days after the date that the court receives notification under section 4(b) of this chapter.

(b) If the court sets the matter for a hearing under subsection (a), the court must send notice of the hearing by certified mail, return receipt requested, to the most recent address of the obligor. The notice must include the date of the hearing and a copy of the petition filed under section 2 of this chapter.

(c) If the court receives notification under section 4(b) of this chapter that the obligor filed a joint state income tax return, the court shall send a notice to the individual with whom the obligor filed a joint state income tax return by certified mail, return receipt requested, and inform the individual:

- (1) of the hearing date;
- (2) that the court may order the individual's and obligor's joint state income tax refund to be intercepted for the obligor's past due child support payments; and
- (3) that the individual may petition the court or provide testimony at the hearing that the individual believes that part of the individual's and obligor's joint state income tax refund should not be intercepted for the obligor's child support and should be paid to the individual.

Sec. 6. (a) The court shall issue a final order for a state income tax refund setoff following a hearing under this chapter if the court determines by clear and convincing evidence that the obligor named in the petition:

- (1) is at least one thousand five hundred dollars (\$1,500) in arrears on child support payments; and
- (2) has intentionally violated the terms of the most recent child support order applying to the obligor.

(b) The final order must include the amount of child support

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arrearage that the department of state revenue shall withhold from the obligor's state income tax refund and the obligor's Social Security number.

(c) In order for the setoff to take effect with respect to a state income tax refund, the final order of the court must be received by the department of state revenue before November 1 of the taxable year for which the tax refund is payable.

Sec. 7. (a) The department of state revenue shall submit the refund amount set forth in the final order to the clerk of the circuit court for distribution.

(b) If the custodial parent:

(1) has received or is receiving assistance under the Title IV-A program; or

(2) has assigned child support payments under IC 12-14-7-1; during the period of time for which child support is owed by the obligor, the court shall determine whether a portion of the refund must be distributed to the state under subsection (c).

(c) If the court determines that an amount is owed to the state under subsection (b), the court shall order the clerk of the circuit court to distribute the refund:

(1) to the state in an amount determined by the court; and

(2) to the custodial parent in any amount remaining after distribution under subdivision (1).

Sec. 8. A final order issued under section 6 of this chapter may include interest charges in an amount determined under IC 31-14-12-1 or IC 31-16-12-2.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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