
HOUSE BILL No. 1239

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-67; IC 31-17-2.

Synopsis: Joint legal custody. Establishes a rebuttable presumption that an award of joint legal custody is in the best interest of a child. Provides exceptions for the rebuttable presumption. Requires a court, if a party seeks to rebut the presumption, to consider: (1) the fitness and suitability of each of the persons awarded joint legal custody; (2) the ability of the parents to communicate and advance the child's welfare; and (3) whether the child has established a close and beneficial relationship with both of the persons awarded joint legal custody. Repeals provision that states that joint legal custody does not require an equal division of physical custody of the child. (The introduced version of this bill was prepared by the child custody and support advisory committee.)

Effective: July 1, 2009.

Summers

January 12, 2009, read first time and referred to Committee on Family, Children and Human Affairs.

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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1239



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 31-9-2-67 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 67. "Joint legal
3 custody", for purposes of IC 31-17-2-13 ~~IC 31-17-2-14~~, and
4 IC 31-17-2-15, means that the persons awarded joint custody will share
5 authority and responsibility for the major decisions concerning the
6 child's upbringing, including the child's education, health care, and
7 religious training.

8 SECTION 2. IC 31-17-2-8 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. **(a) This section
10 does not apply if the court determines that:**

- 11 **(1) the noncustodial parent has been convicted of a crime
12 involving domestic or family violence; or**
- 13 **(2) the parent seeking an order of joint legal custody has
14 knowingly or intentionally failed to comply with a court's
15 order concerning existing or prior child support obligations.**

16 **(b)** The court shall determine custody and enter a custody order in
17 accordance with the best interests of the child. In determining the best



1 interests of the child, there is ~~no~~ **a rebuttable** presumption favoring
 2 either parent. The court shall consider all relevant factors, including the
 3 following:

- 4 (1) The age and sex of the child.
 5 (2) The wishes of the child's parent or 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 parent or parents;
 10 (B) the child's sibling; and
 11 (C) any other person who may significantly affect the child's
 12 best interests.
 13 (5) The child's adjustment to the child's:
 14 (A) home;
 15 (B) school; and
 16 (C) community.
 17 (6) The mental and physical health of all individuals involved.
 18 (7) Evidence of a pattern of domestic or family violence by either
 19 parent.
 20 (8) Evidence that the child has been cared for by a de facto
 21 custodian; and if the evidence is sufficient, the court shall
 22 consider the factors described in section 8.5(b) of this chapter.

23 **that an award of joint legal custody is in the best interests of the**
 24 **child.**

25 SECTION 3. IC 31-17-2-8.1 IS ADDED TO THE INDIANA CODE
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 27 1, 2009]: **Sec. 8.1. If the court determines under section 8(a) of this**
 28 **chapter that section 8 of this chapter does not apply, the court shall**
 29 **determine custody and enter a custody order in accordance with**
 30 **the best interests of the child. In determining the best interests of**
 31 **the child, there is no presumption favoring either parent. The court**
 32 **shall consider all relevant factors, including the following:**

- 33 (1) The age and sex of the child.
 34 (2) The wishes of the child's parent or parents.
 35 (3) The wishes of the child, with more consideration given to
 36 the child's wishes if the child is at least fourteen (14) years of
 37 age.
 38 (4) The interaction and interrelationship of the child with:
 39 (A) the child's parent or parents;
 40 (B) the child's sibling; and
 41 (C) any other person who may significantly affect the
 42 child's best interests.

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- 1 **(5) The child's adjustment to the child's:**
- 2 **(A) home;**
- 3 **(B) school; and**
- 4 **(C) community.**
- 5 **(6) The mental and physical health of all individuals involved.**
- 6 **(7) Evidence of a pattern of domestic or family violence by**
- 7 **either parent.**
- 8 **(8) Evidence that the child has been cared for by a de facto**
- 9 **custodian, and if the evidence is sufficient, the court shall**
- 10 **consider the factors described in section 8.5(b) of this chapter.**

11 SECTION 4. IC 31-17-2-8.5 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.5. (a) This section
 13 applies only if the court finds by clear and convincing evidence that the
 14 child has been cared for by a de facto custodian.

15 (b) In addition to the factors listed in ~~section 8~~ **section 8.1** of this
 16 chapter, the court shall consider the following factors in determining
 17 custody:

- 18 (1) The wishes of the child's de facto custodian.
- 19 (2) The extent to which the child has been cared for, nurtured, and
- 20 supported by the de facto custodian.
- 21 (3) The intent of the child's parent in placing the child with the de
- 22 facto custodian.
- 23 (4) The circumstances under which the child was allowed to
- 24 remain in the custody of the de facto custodian, including whether
- 25 the child was placed with the de facto custodian to allow the
- 26 parent now seeking custody to:
- 27 (A) seek employment;
- 28 (B) work; or
- 29 (C) attend school.

30 (c) If a court determines that a child is in the custody of a de facto
 31 custodian, the court shall make the de facto custodian a party to the
 32 proceeding.

33 (d) The court shall award custody of the child to the child's de facto
 34 custodian if the court determines that it is in the best interests of the
 35 child.

36 (e) If the court awards custody of the child to the child's de facto
 37 custodian, the de facto custodian is considered to have legal custody of
 38 the child under Indiana law.

39 SECTION 5. IC 31-17-2-13 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. ~~The court may~~
 41 ~~award legal custody of a child jointly if the court finds that an award of~~
 42 ~~joint legal custody would be~~ **There is a rebuttable presumption that**

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1 **an award of joint legal custody is** in the best interest of the child.

2 SECTION 6. IC 31-17-2-15, AS AMENDED BY P.L.3-2008,
3 SECTION 237, IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2009]: Sec. 15. ~~In determining whether an~~
5 ~~award of joint legal custody~~ **If a party seeks to rebut the**
6 **presumption** under section 13 of this chapter ~~would be that an award~~
7 **of joint legal custody is** in the best interest of the child, the court shall
8 consider: ~~it a matter of primary, but not determinative, importance that~~
9 ~~the persons awarded joint custody have agreed to an award of joint~~
10 ~~legal custody. The court shall also consider:~~

11 (1) the fitness and suitability of each of the persons **who would**
12 **be awarded joint legal custody;**

13 (2) whether the persons **who would be** awarded joint legal
14 custody are ~~willing and~~ able to communicate and cooperate in
15 advancing the child's welfare; **and**

16 ~~(3) the wishes of the child, with more consideration given to the~~
17 ~~child's wishes if the child is at least fourteen (14) years of age;~~

18 ~~(4) (3) whether the child has established a close and beneficial~~
19 ~~relationship with both of the persons who would be awarded joint~~
20 ~~legal custody.~~

21 ~~(5) whether the persons awarded joint custody:~~

22 ~~(A) live in close proximity to each other; and~~

23 ~~(B) plan to continue to do so; and~~

24 ~~(6) the nature of the physical and emotional environment in the~~
25 ~~home of each of the persons awarded joint custody.~~

26 SECTION 7. IC 31-17-2-21 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 21. (a) The court may
28 not modify a child custody order unless:

29 (1) the modification is in the best interests of the child; and

30 (2) there is a substantial change in one (1) or more of the factors
31 that the court may consider under ~~section 8~~ **section 8.1 of this**
32 **chapter** and, if applicable, section 8.5 of this chapter.

33 (b) In making its determination, the court shall consider the factors
34 listed under ~~section 8~~ **section 8.1** of this chapter.

35 (c) The court shall not hear evidence on a matter occurring before
36 the last custody proceeding between the parties unless the matter
37 relates to a change in the factors relating to the best interests of the
38 child as described by ~~section 8~~ **section 8.1 of this chapter** and, if
39 applicable, section 8.5 of this chapter.

40 SECTION 8. IC 31-17-2-22 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 22. An intentional
42 violation by a custodial parent of an injunction or a temporary

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1 restraining order issued under IC 31-17-4-4 or IC 31-17-4-5 (or
2 IC 31-1-11.5-26 before its repeal) may be considered a relevant factor
3 under ~~section 8~~ **section 8.1** of this chapter that the court must consider
4 in a proceeding for a custody modification under section 21 of this
5 chapter.

6 SECTION 9. IC 31-17-2-14 IS REPEALED [EFFECTIVE JULY 1,
7 2009].

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