



January 15, 2010

SENATE BILL No. 178

DIGEST OF SB 178 (Updated January 12, 2010 2:05 pm - DI 106)

Citations Affected: IC 16-37; IC 31-14; IC 31-17.

Synopsis: Custody and parenting time matters. Provides that if a paternity affidavit is executed, the mother and the man who is identified as the father share joint legal custody of the child, the mother has primary physical custody of the child, and the man who is identified as the father has parenting time in accordance with the parenting time guidelines unless another determination is made by a court. (Current law provides that a mother has sole custody unless another custody determination is made by a court.) Provides that a noncustodial parent is entitled to reasonable parenting time rights unless a court finds by clear and convincing evidence that parenting time might endanger the child's physical health or significantly impair the child's emotional development. (This changes the standard of proof under the current law.) Provides that a paternity affidavit executed through a hospital may be completed not more than ten days after the child's birth if a parent is out of the country.

Effective: July 1, 2010.

Steele

January 5, 2010, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
January 14, 2010, amended, reported favorably — Do Pass.

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SB 178—LS 6549/DI 110+



January 15, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 178



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 16-37-2-2.1, AS AMENDED BY P.L.146-2006,
 2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2010]: Sec. 2.1. (a) A paternity affidavit may be executed as
 4 provided in this section through:
 5 (1) a hospital; or
 6 (2) a local health department.
 7 (b) Immediately before or after the birth of a child who is born out
 8 of wedlock, a person who attends or plans to attend the birth, including
 9 personnel of all public or private birthing hospitals, shall:
 10 (1) provide an opportunity for:
 11 (A) the child's mother; and
 12 (B) a man who reasonably appears to be the child's biological
 13 father;
 14 to execute an affidavit acknowledging paternity of the child; and
 15 (2) verbally explain to the individuals listed in subdivision (1) the
 16 legal effects of an executed paternity affidavit as described in
 17 subsection (g).

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1 (c) A paternity affidavit must be executed on a form provided by the
2 state department. The paternity affidavit is valid only if the affidavit is
3 executed as follows:

4 (1) If executed through a hospital, the paternity affidavit must be
5 completed not more than:

- 6 (A) seventy-two (72) hours after the child's birth; or
- 7 (B) **ten (10) business days after the child's birth if a parent**
- 8 **of the child is out of the country.**

9 (2) If executed through a local health department, the paternity
10 affidavit must be completed before the child has reached the age
11 of emancipation.

12 (d) A paternity affidavit is not valid if it is executed after the mother
13 of the child has executed a consent to adoption of the child and a
14 petition to adopt the child has been filed.

15 (e) A paternity affidavit executed under this section must contain or
16 be attached to all of the following:

17 (1) The mother's sworn statement asserting that a person
18 described in subsection (b)(1)(B) is the child's biological father.

19 (2) A statement by a person identified as the father under
20 subdivision (1) attesting to a belief that he is the child's biological
21 father.

22 (3) Written information furnished by the child support bureau of
23 the department of child services:

24 (A) explaining the effect of an executed paternity affidavit as
25 described in subsection (g); and

26 (B) describing the availability of child support enforcement
27 services.

28 (4) The Social Security number of each parent.

29 (f) A woman who knowingly or intentionally falsely names a man
30 as the child's biological father under this section commits a Class A
31 misdemeanor.

32 (g) A paternity affidavit executed under this section:

33 (1) establishes paternity;

34 (2) gives rise to parental rights and responsibilities of the person
35 described in subsection (e)(2), including:

36 (A) the right of the child's mother or the Title IV-D agency to
37 obtain a child support order against the person, which may
38 include an order requiring the provision of health insurance
39 coverage; and

40 (B) **reasonable** parenting time **rights in accordance with the**
41 **parenting time guidelines adopted by the Indiana supreme**
42 **court**, unless another determination is made by a court in a

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1 proceeding under IC 31-14-14; and
 2 (3) may be filed with a court by the department of child services.
 3 However, if a paternity affidavit is executed under this section, **unless**
 4 **another determination is made by a court in a proceeding under**
 5 **IC 31-14, the child's mother and person described in subsection**
 6 **(e)(2) share joint legal custody of the child,** the child's mother has
 7 ~~sole legal~~ **primary physical** custody of the child. ~~unless another~~
 8 ~~custody determination is made by a court in a proceeding under~~
 9 ~~IC 31-14.~~

10 (h) Notwithstanding any other law, a man who is a party to a
 11 paternity affidavit executed under this section may, within sixty (60)
 12 days of the date that a paternity affidavit is executed under this section,
 13 file an action in a court with jurisdiction over paternity to request an
 14 order for a genetic test.

15 (i) A paternity affidavit that is properly executed under this section
 16 may not be rescinded more than sixty (60) days after the paternity
 17 affidavit is executed unless a court:

18 (1) has determined that fraud, duress, or material mistake of fact
 19 existed in the execution of the paternity affidavit; and
 20 (2) at the request of a man described in subsection (h), has
 21 ordered a genetic test, and the test indicates that the man is
 22 excluded as the father of the child.

23 (j) Unless good cause is shown, a court shall not suspend the legal
 24 responsibilities under subsection (g)(2)(A) of a party to the executed
 25 paternity affidavit during a challenge to the affidavit.

26 (k) The court may not set aside the paternity affidavit unless a
 27 genetic test ordered under subsection (h) or (i) excludes the person who
 28 executed the paternity affidavit as the child's biological father.

29 (l) If a paternity affidavit is not executed under subsection (b), the
 30 hospital where the birth occurs or a person in attendance at the birth
 31 shall inform the child's mother of services available for establishing
 32 paternity.

33 (m) Except as provided in this section, if a man has executed a
 34 paternity affidavit in accordance with this section, the executed
 35 paternity affidavit conclusively establishes the man as the legal father
 36 of a child without any further proceedings by a court.

37 SECTION 2. IC 31-14-13-1 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. A biological mother
 39 of a child born out of wedlock has sole legal custody of the child,
 40 **except as provided under IC 16-37-2-2.1, and** unless a statute or
 41 court order provides otherwise under the following:
 42 (1) IC 12-26 (involuntary commitment of a child).

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- 1 (2) IC 29-3 (guardianship and protective proceedings under the
- 2 probate code).
- 3 (3) IC 31-14 (custody of a child born outside of a marriage).
- 4 (4) IC 31-34 (child in need of services).
- 5 (5) IC 31-37 (delinquent child).
- 6 (6) IC 35-46 (offenses against the family).
- 7 (7) IC 35-50 (criminal sentences).
- 8 (8) An order by a court that has jurisdiction over the child.

9 SECTION 3. IC 31-14-14-1, AS AMENDED BY P.L.95-2009,
 10 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2010]: Sec. 1. (a) A noncustodial parent is entitled to
 12 reasonable parenting time rights unless the court finds **by clear and**
 13 **convincing evidence**, after a hearing, that parenting time might:

- 14 (1) endanger the child's physical health and well-being; or
- 15 (2) significantly impair the child's emotional development.
- 16 (b) The court may interview the child in chambers to assist the court
- 17 in determining the child's perception of whether parenting time by the
- 18 noncustodial parent might endanger the child's physical health or
- 19 significantly impair the child's emotional development.

20 (c) In a hearing under subsection (a), there is a rebuttable
 21 presumption that a person who has been convicted of:

- 22 (1) child molesting (IC 35-42-4-3); or
- 23 (2) child exploitation (IC 35-42-4-4(b));
- 24 might endanger the child's physical health and well-being or
- 25 significantly impair the child's emotional development.

26 (d) If a court grants parenting time rights to a person who has been
 27 convicted of:

- 28 (1) child molesting (IC 35-42-4-3); or
- 29 (2) child exploitation (IC 35-42-4-4(b));
- 30 there is a rebuttable presumption that the parenting time with the child
- 31 must be supervised.

32 (e) The court may permit counsel to be present at the interview. If
 33 counsel is present:

- 34 (1) a record may be made of the interview; and
- 35 (2) the interview may be made part of the record for purposes of
- 36 appeal.

37 SECTION 4. IC 31-17-4-1, AS AMENDED BY P.L.68-2005,
 38 SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2010]: Sec. 1. (a) A parent not granted custody of the child is
 40 entitled to reasonable parenting time rights unless the court finds **by**
 41 **clear and convincing evidence**, after a hearing, that parenting time by
 42 the noncustodial parent might endanger the child's physical health or

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1 significantly impair the child's emotional development.
2 (b) The court may interview the child in chambers to assist the court
3 in determining the child's perception of whether parenting time by the
4 noncustodial parent might endanger the child's physical health or
5 significantly impair the child's emotional development.
6 (c) The court may permit counsel to be present at the interview. If
7 counsel is present:
8 (1) a record may be made of the interview; and
9 (2) the interview may be made part of the record for purposes of
10 appeal.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 178, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 5, after "than" insert ":

(A)".

Page 2, line 6, delete "." and insert "; or

(B) ten (10) business days after the child's birth if a parent of the child is out of the country."

Page 2, line 38, strike "reasonable".

Page 2, line 38, strike "rights" and insert "**in accordance with the parenting time guidelines adopted by the Indiana supreme court,"**.

Page 3, line 4, delete ", and the person" and insert ".".

Page 3, delete lines 5 through 6.

Page 3, line 7, delete "court."

Page 3, between lines 35 and 36, begin a new paragraph and insert: "SECTION 2. IC 31-14-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. A biological mother of a child born out of wedlock has sole legal custody of the child, **except as provided under IC 16-37-2-2.1, and** unless a statute or court order provides otherwise under the following:

- (1) IC 12-26 (involuntary commitment of a child).
- (2) IC 29-3 (guardianship and protective proceedings under the probate code).
- (3) IC 31-14 (custody of a child born outside of a marriage).
- (4) IC 31-34 (child in need of services).
- (5) IC 31-37 (delinquent child).
- (6) IC 35-46 (offenses against the family).
- (7) IC 35-50 (criminal sentences).
- (8) An order by a court that has jurisdiction over the child."

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 178 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 5, Nays 4.

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