CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 178

Citations Affected: IC 16-37-2-2.1; IC 31-14-13-1.

Synopsis: Paternity affidavits. Conference committee report for ESB 178. Requires a paternity affidavit to contain: (1) a provision that allows the mother and the man identified as the father to agree to share joint legal custody of the child; (2) a statement explaining joint legal custody; (3) a provision stating that if the parties do not agree to share joint legal custody, the mother has sole legal custody; (4) a provision stating that even if the parties agree to share joint legal custody, the mother has primary physical custody; (5) a provision stating that an agreement to share joint legal custody is void unless the result of a genetic test performed by an accredited laboratory: (A) indicates that the man identified as the child's biological father is the child's biological father; and (B) is submitted to a local health officer not later than 60 days after the child's birth; and (6) a statement with signature lines that affirms that the child's mother or the person identified as the child's father, if less than 18 years of age, has had an opportunity to consult with an adult chosen by that individual. Provides that the man who is identified as the father has parenting time in accordance with the parenting time guidelines. Provides that, if a paternity affidavit is executed, the mother has primary physical custody of the child. Requires that an action to establish custody or parenting time brought by a party who has agreed in a paternity affidavit to share joint legal custody be tried de novo. Requires that a paternity affidavit be presented separately to the child's mother and the man who reasonably appears to be the child's biological father before it is signed. Provides that an agreement in the paternity affidavit to share joint legal custody is void if: (1) a genetic test performed by an accredited laboratory indicates that the man identified as the child's biological father is not the biological father of the child; or (2) the man fails to submit the genetic test results to a local health officer not later than 60 days after the date of the child's birth. Provides that an individual who: (1) is the child's mother or a man identified as the child's biological father; and (2) is less than 18 years of age; must be given the opportunity to consult with an adult chosen by the individual regarding the contents of the paternity affidavit before signing the affidavit. **(This conference committee report does the following: (1) Provides that the agreement to joint legal custody is void if a genetic test performed by an accredited laboratory indicates the man is not the biological father of the child or if the man fails to submit the results of the genetic test indicating the man is the child's biological father to a local health official not later than 60 days after the**

birth of the child. (The current provision in the bill provides that the paternity affidavit is void if the genetic test indicates the man is not the father or if the man fails to submit the results of the genetic test within 30 days after the birth of the child.) (2) Provides that an individual who is under 18 years of age must have an opportunity to consult with any adult chosen by the individual. (The current provision in the bill provides that the individual must have an opportunity to consult with a parent or guardian.) (3) Provides that a signed paternity affidavit is voidable if the individual does not have the opportunity to consult with an adult chosen by the individual. (The current provision in the bill provides that the paternity affidavit is void if the consultation does not occur.) (4) Requires a paternity affidavit to contain a statement with signature lines that affirms an individual who is less than 18 years of age has had an opportunity to consult with an adult chosen by the individual. Removes a provision 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.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 178 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 16-37-2-2.1, AS AMENDED BY P.L.146-2006, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2.1. (a) A paternity affidavit may be executed as provided in this section through:

(1) a hospital; or

(2) a local health department.

(b) Immediately before or after the birth of a child who is born out of wedlock, a person who attends or plans to attend the birth, including personnel of all public or private birthing hospitals, shall:

(1) provide an opportunity for:

(A) the child's mother; and

(B) a man who reasonably appears to be the child's biological father;

to execute an affidavit acknowledging paternity of the child; and

(2) verbally explain to the individuals listed in subdivision (1) the legal effects of an executed paternity affidavit as described in subsection ~~(g).~~ **(h).**

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

(1) If executed through a hospital, the paternity affidavit must be

completed not more than seventy-two (72) hours after the child's birth.

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

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

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

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

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

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

(A) explaining the effect of an executed paternity affidavit as described in subsection ~~(g);~~ **(h);** and

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

(4) The Social Security number of each parent.

(f) A paternity affidavit executed under this section must contain all of the following:

(1) A statement:

(A) that, if the mother and the person described in subsection (e)(2) check the box located next to this statement and sign on the signature lines described in subdivision (2), the mother and the person described in subsection (e)(2) agree to share joint legal custody of the child; and

(B) that joint legal custody means that the persons sharing joint legal custody:

(i) share authority and responsibility for the major decisions concerning the child's upbringing, including the child's education, health care, and religious training; and

(ii) have equal access to the child's school and medical records.

(2) Two (2) signature lines located below the statements described in subdivision (1).

(3) A statement that, if the mother and the person described in subsection (e)(2) do not agree to share joint legal custody, the mother has sole legal custody unless another determination is made by a court in a proceeding under IC 31-14.

(4) A statement that even if the mother and the person described in subsection (e)(2) share joint legal custody, the mother has primary physical custody of the child unless another determination is made by a court in a proceeding under IC 31-14.

(5) A statement that, if the mother and the person described in subsection (e)(2) agree to share joint legal custody as described under subdivision (1)(A), the agreement to share joint legal custody is void unless the result of a genetic test performed by an accredited laboratory:

(A) indicates that the person described in subsection (e)(2) is the child's biological father; and

(B) is submitted to a local health officer not later than sixty (60) days after the child's birth.

(6) A statement with signature lines that affirms that an individual described in subsection (r) has had an opportunity to consult with an adult chosen by the individual.

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

~~(g)~~ **(h)** A paternity affidavit executed under this section:

(1) establishes paternity;

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

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

(B) ~~reasonable~~ parenting time ~~rights~~ **in accordance with the parenting time guidelines adopted by the Indiana supreme court,** unless another determination is made by a court in a proceeding under IC 31-14-14; and

(3) may be filed with a court by the department of child services.

However, if a paternity affidavit is executed under this section, **unless another determination is made by a court in a proceeding under IC 31-14 or the child's mother and the person described in subsection (e)(2) agree to share joint legal custody of the child as described in subsection (f),** the child's mother has sole legal **and primary physical** custody of the child. ~~unless another custody determination is made by a court in a proceeding under IC 31-14.~~

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

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

(1) has determined that fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit; and

(2) at the request of a man described in subsection ~~(h),~~ **(i),** has ordered a genetic test, and the test indicates that the man is excluded as the father of the child.

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

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

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

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

(o) If both the mother and the person described in subsection (e)(2) check the box and sign as described in subsection (f)(1)(A), the mother and the person described in subsection (e)(2):

(1) share joint legal custody of the child; and

(2) have equal access to the child's school and medical records.

An action to establish custody or parenting time of a party who has agreed under subsection (f) to share joint legal custody shall be tried de novo.

(p) Before a paternity affidavit executed under this section is signed, it must be presented separately to:

(1) the child's mother; and

(2) the man who reasonably appears to be the child's biological father;

so that the child's mother may review the affidavit alone and without the presence of the man who reasonably appears to be the child's biological father, and so that the man who reasonably appears to be the child's biological father may review the affidavit alone and without the presence of the child's mother. A signed paternity affidavit is voidable if the requirements of this subsection are not satisfied.

(q) An agreement to share joint legal custody described under subsection (f) is void if either of the following applies:

(1) A genetic test performed by an accredited laboratory indicates a person described in subsection (e)(2) is not the biological father of the child.

(2) A person described in subsection (e)(2) fails to submit:

(A) to a local health officer; and

(B) not later than sixty (60) days after the date of the child's birth;

the results of a genetic test performed by an accredited laboratory that indicates the person is the biological father of the child.

(r) An individual who is:

(1) a:

(A) child's mother; or

(B) person identified as the father under subsection (e)(1); and

(2) less than eighteen (18) years of age;

must have an opportunity to consult with any adult chosen by the individual regarding the contents of a paternity affidavit before signing the paternity affidavit under this section. A signed paternity affidavit is voidable if the individual does not have the opportunity to consult with an adult chosen by the individual.

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 in 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

(Reference is to ESB 178 as reprinted February 24, 2010.)

Conference Committee Report
on
Engrossed Senate Bill 178

Signed by:

Senator Steele Chairperson	Representative VanDenburgh
Senator Lanane	Representative Noe
Senate Conferees	**House Conferees**