
SENATE BILL No. 598

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2; IC 31-15-10-1; IC 31-16-10-1; IC 31-17; IC 34-28-2-4.

Synopsis: Child custody. Establishes a rebuttable presumption that an award of joint legal custody and joint physical custody is in the best interests of a child in a dissolution of marriage. 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 seeking joint 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 seeking joint custody. Provides that each party is responsible for attorney's fees and costs associated with certain custody or parenting time proceedings. Requires each party to a mediation to share mediation costs equally. Repeals provisions concerning joint legal custody. Repeals a provision allowing courts to order a party to pay costs of another party in maintaining or defending certain proceedings involving custody and parenting time.

Effective: July 1, 2011.

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January 20, 2011, read first time and referred to Committee on Judiciary.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 598



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, AS AMENDED BY P.L.95-2009,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 67. "Joint legal custody", for purposes of
4 IC 31-14-13 ~~IC 31-17-2-13~~; ~~IC 31-17-2-14~~; and ~~IC 31-17-2-15~~;
5 **IC 31-17-2**, means that the persons awarded joint custody will share
6 authority and responsibility for the major decisions concerning the
7 child's upbringing, including the child's education, health care, and
8 religious training.

9 SECTION 2. IC 31-9-2-67.5 IS ADDED TO THE INDIANA CODE
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2011]: **Sec. 67.5. "Joint physical custody", for purposes of**
12 **IC 31-17-2**, means that the persons awarded joint custody will
13 share equally in the:

- 14 (1) **time with the child; and**
- 15 (2) **care and supervision of the child.**

16 SECTION 3. IC 31-15-10-1 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) **Subject to**



1 IC 31-17-7-1.5, the court periodically may order a party to pay a
2 reasonable amount for the cost to the other party of maintaining or
3 defending any proceeding under this article and for attorney's fees and
4 mediation services, including amounts for legal services provided and
5 costs incurred before the commencement of the proceedings or after
6 entry of judgment.

7 (b) The court may order the amount to be paid directly to the
8 attorney, who may enforce the order in the attorney's name.

9 SECTION 4. IC 31-16-10-1 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. Upon entering an
11 order under IC 31-16-6-1 or at any subsequent time, the court may
12 order, upon the proper showing that a person other than the person
13 awarded custody under IC 31-17-2-8 or IC 31-17-2-8.1 (or
14 IC 31-1-11.5-21 before its repeal) should receive payments, that the
15 clerk of the circuit court or the person obligated to make the payments
16 transmit those payments to any third person agreed upon by the parties
17 and approved by the court or appointed by the court, including the
18 following:

- 19 (1) A trustee.
- 20 (2) The guardian of the estate of the child.
- 21 (3) Any third person.
- 22 (4) The county office of family and children or any appropriate
23 social service agency.
- 24 (5) The state agency administering Title IV-D of the federal
25 Social Security Act (42 U.S.C. 651 through 669).
- 26 (6) The township trustee.

27 SECTION 5. IC 31-17-2-8 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. **(a) This section
29 does not apply if the court determines:**

- 30 **(1) a parent has been convicted of a crime involving domestic
31 or family violence; or**
- 32 **(2) the parent seeking an order of joint legal custody and joint
33 physical custody has knowingly and intentionally failed to
34 comply with a court's order concerning existing or prior child
35 support obligations.**

36 **(b) The court shall determine custody and enter a custody order in
37 accordance with the best interests of the child. In determining the best
38 interests of the child, there is no presumption favoring either parent.
39 The court shall consider all relevant factors, including the 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 or family violence by either
- 13 parent.
- 14 (8) Evidence that the child has been cared for by a de facto
- 15 custodian; and if the evidence is sufficient, the court shall
- 16 consider the factors described in section 8.5(b) of this chapter.

17 **There is a rebuttable presumption that an award of joint legal**
 18 **custody and joint physical custody is in the best interests of the**
 19 **child.**

20 SECTION 6. IC 31-17-2-8.1 IS ADDED TO THE INDIANA CODE
 21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 22 1, 2011]: **Sec. 8.1. If the court determines under section 8(a) of this**
 23 **chapter that section 8 of this chapter does not apply, the court shall**
 24 **determine custody and enter a custody order in accordance with**
 25 **the best interests of the child. In determining the best interests of**
 26 **the child, there is no presumption favoring either parent. The court**
 27 **shall consider all relevant factors, including the following:**

- 28 (1) The age and sex of the child.
- 29 (2) The wishes of the child's parent or parents.
- 30 (3) The wishes of the child, with more consideration given to
- 31 the child's wishes if the child is at least fourteen (14) years of
- 32 age.
- 33 (4) The interaction and interrelationship of the child with:
- 34 (A) the child's parent or parents;
- 35 (B) the child's sibling or siblings; and
- 36 (C) any other person who may significantly affect the
- 37 child's best interests.
- 38 (5) The child's adjustment to the child's:
- 39 (A) home;
- 40 (B) school; and
- 41 (C) community.
- 42 (6) The mental and physical health of all individuals involved.

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1 **(7) Evidence of a pattern of domestic or family violence by**
 2 **either parent.**
 3 **(8) Evidence that the child has been cared for by a de facto**
 4 **custodian, and if the evidence is sufficient, the court shall**
 5 **consider the factors described in section 8.5(b) of this chapter.**
 6 SECTION 7. IC 31-17-2-8.5 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8.5. (a) This section
 8 applies only if the court finds by clear and convincing evidence that the
 9 child has been cared for by a de facto custodian.
 10 (b) In addition to the factors listed in ~~section 8~~ **section 8.1** of this
 11 chapter, the court shall consider the following factors in determining
 12 custody:
 13 (1) The wishes of the child's de facto custodian.
 14 (2) The extent to which the child has been cared for, nurtured, and
 15 supported by the de facto custodian.
 16 (3) The intent of the child's parent in placing the child with the de
 17 facto custodian.
 18 (4) The circumstances under which the child was allowed to
 19 remain in the custody of the de facto custodian, including whether
 20 the child was placed with the de facto custodian to allow the
 21 parent now seeking custody to:
 22 (A) seek employment;
 23 (B) work; or
 24 (C) attend school.
 25 (c) If a court determines that a child is in the custody of a de facto
 26 custodian, the court shall make the de facto custodian a party to the
 27 proceeding.
 28 (d) The court shall award custody of the child to the child's de facto
 29 custodian if the court determines that it is in the best interests of the
 30 child.
 31 (e) If the court awards custody of the child to the child's de facto
 32 custodian, the de facto custodian is considered to have legal custody of
 33 the child under Indiana law.
 34 SECTION 8. IC 31-17-2-15, AS AMENDED BY P.L.3-2008,
 35 SECTION 237, IS AMENDED TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2011]: Sec. 15. ~~In determining whether an~~
 37 ~~award of joint legal custody~~ **(a) If a party seeks to rebut the**
 38 ~~presumption~~ **under section 13 section 8(b) of this chapter would be**
 39 ~~that an award of joint legal custody and joint physical custody is in~~
 40 ~~the best interest of the child, the court shall consider: it a matter of~~
 41 ~~primary, but not determinative, importance that the persons awarded~~
 42 ~~joint custody have agreed to an award of joint legal custody. The court~~

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- 1 shall also consider:
- 2 (1) the fitness and suitability of each of the persons **who would**
- 3 **be awarded joint legal custody and joint physical custody;**
- 4 (2) whether the persons **who would be** awarded joint legal
- 5 custody **and joint physical custody** are ~~willing~~ and able to
- 6 communicate and cooperate in advancing the child's welfare; **and**
- 7 ~~(3) the wishes of the child; with more consideration given to the~~
- 8 ~~child's wishes if the child is at least fourteen (14) years of age;~~
- 9 ~~(4) (3)~~ whether the child has established a close and beneficial
- 10 relationship with both of the persons **who would be** awarded joint
- 11 **legal custody and joint physical custody.**
- 12 ~~(5) whether the persons awarded joint custody:~~
- 13 ~~(A) live in close proximity to each other; and~~
- 14 ~~(B) plan to continue to do so; and~~
- 15 (6) the nature of the physical and emotional environment in the
- 16 home of each of the persons awarded joint custody.
- 17 **(b) If only an award of joint physical custody has been rebutted**
- 18 **under this section, there is still a rebuttable presumption that an**
- 19 **award of joint legal custody is in the best interests of the child.**
- 20 SECTION 9. IC 31-17-2-21 IS AMENDED TO READ AS
- 21 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 21. (a) The court may
- 22 not modify a child custody order unless:
- 23 (1) the modification is in the best interests of the child; and
- 24 (2) there is a substantial change in one (1) or more of the factors
- 25 that the court may consider under ~~section 8~~ **section 8.1 of this**
- 26 **chapter** and, if applicable, section 8.5 of this chapter.
- 27 (b) In making its determination, the court shall consider the factors
- 28 listed under ~~section 8~~ **section 8.1** of this chapter.
- 29 (c) The court shall not hear evidence on a matter occurring before
- 30 the last custody proceeding between the parties unless the matter
- 31 relates to a change in the factors relating to the best interests of the
- 32 child as described by ~~section 8~~ **section 8.1 of this chapter** and, if
- 33 applicable, section 8.5 of this chapter.
- 34 SECTION 10. IC 31-17-2-22 IS AMENDED TO READ AS
- 35 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 22. An intentional
- 36 violation by a custodial parent of an injunction or a temporary
- 37 restraining order issued under IC 31-17-4-4 or IC 31-17-4-5 (or
- 38 IC 31-1-11.5-26 before its repeal) may be considered a relevant factor
- 39 under ~~section 8~~ **section 8.1** of this chapter that the court must consider
- 40 in a proceeding for a custody modification under section 21 of this
- 41 chapter.
- 42 SECTION 11. IC 31-17-7-1.5 IS ADDED TO THE INDIANA

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1 CODE AS A NEW SECTION TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2011]: **Sec. 1.5. (a) Except as provided in**
3 **IC 31-17-2.2-1, IC 31-17-4-3, and IC 31-17-4-8, each party is**
4 **responsible for the party's own costs and attorney's fees in**
5 **maintaining or defending a proceeding under this article.**

6 **(b) Each party to a mediation shall share equally in mediation**
7 **costs.**

8 SECTION 12. IC 34-28-2-4, AS AMENDED BY P.L.61-2010,
9 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2011]: Sec. 4. (a) Proof of the publication required in this
11 chapter is made by filing a copy of the published notice, verified by the
12 affidavit of a disinterested person, and when proof of publication is
13 made, the court shall, subject to the limitations imposed by subsections
14 (b), (c), and (d), proceed to hear the petition and make an order and
15 decree the court determines is just and reasonable.

16 (b) In the case of a petition described in section 2(b) of this chapter,
17 the court may not hear the petition and issue a final decree until after
18 thirty (30) days from the later of:

- 19 (1) the filing of proof of publication of the notice required under
20 subsection (a); or
- 21 (2) the service of the petition upon the parents or guardian of the
22 minor child.

23 (c) In the case of a petition described in section 2(b) of this chapter,
24 the court shall set a date for a hearing on the petition if:

- 25 (1) written objections have been filed; or
- 26 (2) either parent or the guardian of the minor child has refused or
27 failed to give written consent as described in section 2(b) of this
28 chapter.

29 The court shall require that appropriate notice of the hearing be given
30 to the parent or guardian of the minor child or to any person who has
31 filed written objections.

32 (d) In deciding on a petition to change the name of a minor child,
33 the court shall be guided by the best interest of the child rule under
34 ~~IC 31-17-2-8~~. **IC 31-17-2-8.1**. However, there is a presumption in favor
35 of a parent of a minor child who:

- 36 (1) has been making support payments and fulfilling other duties
37 in accordance with a decree issued under IC 31-15, IC 31-16, or
38 IC 31-17 (or IC 31-1-11.5 before its repeal); and
- 39 (2) objects to the proposed name change of the child.

40 (e) In the case of a person required to give notice under section 3(c)
41 of this chapter, the petitioner must certify to the court that the petitioner
42 has complied with the notice requirements of that subsection.

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1 SECTION 13. THE FOLLOWING ARE REPEALED [EFFECTIVE
2 JULY 1, 2011]: IC 31-17-2-13; IC 31-17-2-14; IC 31-17-7-1.

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