



February 21, 2012

ENGROSSED SENATE BILL No. 190

DIGEST OF SB 190 (Updated February 20, 2012 4:34 pm - DI 107)

Citations Affected: IC 31-9; IC 31-17; IC 31-35; noncode.

Synopsis: Termination of parent-child relationship. Allows a parent who is the victim of an act of rape from which a child was conceived to file a petition to terminate the child's parent-child relationship with the alleged perpetrator. Requires a court to terminate the parent-child relationship if the court finds: (1) by clear and convincing evidence that the alleged perpetrator committed an act of rape against the parent who has filed the petition to terminate the parent-child relationship and that the child was conceived as a result of the act of rape; and (2) terminating the parent-child relationship would be in the best interest of the child. Requires the legislative council to assign the child custody and support advisory committee the task of reviewing and studying the termination of the parent-child relationship of an individual who committed an act of rape.

Effective: July 1, 2012.

**Charbonneau, Bray, Steele,
Randolph, Eckerty, Alting, Becker,
Miller**

(HOUSE SPONSORS — KUBACKI, ELLSPERMANN, RIECKEN)

January 4, 2012, read first time and referred to Committee on Judiciary.
January 26, 2012, amended, reported favorably — Do Pass.
January 30, 2012, read second time, ordered engrossed. Engrossed.
January 31, 2012, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 9, 2012, read first time and referred to Committee on Judiciary.
February 21, 2012, amended, reported — Do Pass.

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ES 190—LS 6542/DI 110+



February 21, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 190

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 31-9-2-0.9 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]: **Sec. 0.9. "Act of rape", for purposes of IC 31-35-3.5,**
4 **means an act described under:**

5 (1) IC 35-42-4-1; or

6 (2) IC 35-42-4-3(a).

7 SECTION 2. IC 31-17-6-1, AS AMENDED BY P.L.133-2008,
8 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2012]: Sec. 1. A court, in a proceeding under IC 31-17-2,
10 IC 31-17-4, this chapter, IC 31-17-7, ~~or~~ IC 31-28-5, **or IC 31-35-3.5,**
11 may appoint a guardian ad litem, a court appointed special advocate,
12 or both, for a child at any time.

13 SECTION 3. IC 31-35-3.5 IS ADDED TO THE INDIANA CODE
14 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2012]:

16 **Chapter 3.5. Termination of Parent-Child Relationship of an**
17 **Individual Who Committed an Act of Rape**

ES 190—LS 6542/DI 110+



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Sec. 1. Proceedings under this chapter are governed by the procedures prescribed by:

- (1) IC 31-32-1, IC 31-32-4 through IC 31-32-10, and IC 31-32-12 through IC 31-32-15;**
- (2) IC 31-34; and**
- (3) IC 31-37;**

but are distinct from proceedings under IC 31-34 and IC 31-37.

Sec. 2. The probate court has concurrent original jurisdiction with the juvenile court in proceedings on a petition to terminate the parent-child relationship under this chapter.

Sec. 3. If a child was conceived as a result of an act of rape, the parent who is the victim of the act of rape may file a petition with the juvenile or probate court to terminate the child's parent-child relationship with the alleged perpetrator of the act of rape.

Sec. 4. A verified petition filed under section 3 of this chapter must:

- (1) be entitled "In the Matter of the Termination of the Parent-Child Relationship of _____, a child, and _____, the parent"; and**

(2) allege:

- (A) that the alleged perpetrator committed an act of rape against the parent who has filed the petition to terminate the parent-child relationship;**
- (B) that the child was conceived as a result of the act of rape described under clause (A); and**
- (C) that termination of the parent-child relationship of the alleged perpetrator with the child is in the best interests of the child.**

Sec. 5. A showing by clear and convincing evidence that:

- (1) the alleged perpetrator committed an act of rape against a parent described in section 4(2)(A) of this chapter; and**
- (2) the child was conceived as a result of the act of rape;**

is prima facie evidence that there is a reasonable probability that continuation of the parent-child relationship with the alleged perpetrator is not in the best interests of the child.

Sec. 6. (a) The court shall terminate the parent-child relationship if the court finds:

- (1) by clear and convincing evidence, that the allegations in a petition described in section 4(2)(A) and 4(2)(B) of this chapter are true; and**
- (2) that termination of the parent-child relationship is in the best interests of the child.**

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1 **(b) If the court does not find:**
2 **(1) by clear and convincing evidence, that the allegations in a**
3 **petition described in section 4(2)(A) and 4(2)(B) of this**
4 **chapter are true; and**
5 **(2) that termination of the parent-child relationship is in the**
6 **best interests of the child;**
7 **the court shall dismiss the petition.**
8 **Sec. 7. The court may appoint:**
9 **(1) a guardian ad litem;**
10 **(2) a court appointed special advocate; or**
11 **(3) both a guardian ad litem and a court appointed special**
12 **advocate;**
13 **for a child in a proceeding under this chapter as provided under**
14 **IC 31-17-6-1.**
15 SECTION 4. [EFFECTIVE JULY 1, 2012] **(a) As used in this**
16 **SECTION, "committee" refers to the child custody and support**
17 **advisory committee established by IC 33-24-11-1.**
18 **(b) The legislative council shall assign the committee the task of**
19 **reviewing and studying IC 31-35-3.5.**
20 **(c) The committee shall issue a report to the legislative council**
21 **containing the committee's findings and recommendations,**
22 **including any recommended legislation concerning the assigned**
23 **topic, not later than November 1, 2012.**
24 **(d) This SECTION expires December 31, 2012.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 190, 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 1, line 3, delete "IC 31-35-3.5," and insert "**IC 31-13-4**,".

Page 1, delete lines 7 through 17, begin a new paragraph and insert:
 "SECTION 2. IC 31-13-4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 4. Child Conceived as a Result of an Act of Rape

Sec. 1. (a) This section does not apply if the biological parents of a child were married at the time the child was conceived.

(b) If:

(1) an individual who:

(A) is the biological parent of a child; or

(B) alleges to be the biological parent of a child;

seeks custody, parenting time, or contact with the child; and

(2) the court finds by clear and convincing evidence that:

(A) the child was conceived as the result of an act of rape; and

(B) the individual described under subdivision (1) was the perpetrator of the act of rape;

the court shall deny the individual custody, parenting time, and contact with the child.

(c) If a court denies an individual custody, parenting time, and contact with a child under this section, a court may not require the individual to pay child support for the child.

Sec. 2. (a) The court may order a party to pay to the prevailing party a reasonable amount for:

(1) the cost of maintaining an action under this chapter; and

(2) attorney's fees, including amounts for legal services provided and costs incurred, before the commencement of the proceedings or after entry of judgment.

(b) The court may order the amount under subsection (a) to be

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paid directly to the attorney of the prevailing party, who may enforce the order in the attorney's name."

Delete pages 2 through 3.

and when so amended that said bill do pass.

(Reference is to SB 190 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 190, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 3, delete "IC 31-13-4," and insert "**IC 31-35-3.5**,"

Page 1, delete lines 7 through 17, begin a new paragraph and insert: "SECTION 2. IC 31-17-6-1, AS AMENDED BY P.L.133-2008, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. A court, in a proceeding under IC 31-17-2, IC 31-17-4, this chapter, IC 31-17-7, ~~or~~ IC 31-28-5, **or IC 31-35-3.5**, may appoint a guardian ad litem, a court appointed special advocate, or both, for a child at any time.

SECTION 3. IC 31-35-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 3.5. Termination of Parent-Child Relationship of an Individual Who Committed an Act of Rape

Sec. 1. Proceedings under this chapter are governed by the procedures prescribed by:

- (1) IC 31-32-1, IC 31-32-4 through IC 31-32-10, and IC 31-32-12 through IC 31-32-15;**
- (2) IC 31-34; and**
- (3) IC 31-37;**

but are distinct from proceedings under IC 31-34 and IC 31-37.

Sec. 2. The probate court has concurrent original jurisdiction with the juvenile court in proceedings on a petition to terminate the parent-child relationship under this chapter.

Sec. 3. If a child was conceived as a result of an act of rape, the parent who is the victim of the act of rape may file a petition with



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the juvenile or probate court to terminate the child's parent-child relationship with the alleged perpetrator of the act of rape.

Sec. 4. A verified petition filed under section 3 of this chapter must:

(1) be entitled "In the Matter of the Termination of the Parent-Child Relationship of _____, a child, and _____, the parent"; and

(2) allege:

(A) that the alleged perpetrator committed an act of rape against the parent who has filed the petition to terminate the parent-child relationship;

(B) that the child was conceived as a result of the act of rape described under clause (A); and

(C) that termination of the parent-child relationship of the alleged perpetrator with the child is in the best interests of the child.

Sec. 5. A showing by clear and convincing evidence that:

(1) the alleged perpetrator committed an act of rape against a parent described in section 4(2)(A) of this chapter; and

(2) the child was conceived as a result of the act of rape;

is prima facie evidence that there is a reasonable probability that continuation of the parent-child relationship with the alleged perpetrator is not in the best interests of the child.

Sec. 6. (a) The court shall terminate the parent-child relationship if the court finds:

(1) by clear and convincing evidence, that the allegations in a petition described in section 4(2)(A) and 4(2)(B) of this chapter are true; and

(2) that termination of the parent-child relationship is in the best interests of the child.

(b) If the court does not find:

(1) by clear and convincing evidence, that the allegations in a petition described in section 4(2)(A) and 4(2)(B) of this chapter are true; and

(2) that termination of the parent-child relationship is in the best interests of the child;

the court shall dismiss the petition.

Sec. 7. The court may appoint:

(1) a guardian ad litem;

(2) a court appointed special advocate; or

(3) both a guardian ad litem and a court appointed special advocate;

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for a child in a proceeding under this chapter as provided under IC 31-17-6-1.

SECTION 4. [EFFECTIVE JULY 1, 2012] (a) As used in this SECTION, "committee" refers to the child custody and support advisory committee established by IC 33-24-11-1.

(b) The legislative council shall assign the committee the task of reviewing and studying IC 31-35-3.5.

(c) The committee shall issue a report to the legislative council containing the committee's findings and recommendations, including any recommended legislation concerning the assigned topic, not later than November 1, 2012.

(d) This SECTION expires December 31, 2012."

Delete page 2.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 190 as printed January 27, 2012.)

FOLEY, Chair

Committee Vote: yeas 9, nays 3.

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