
SENATE BILL No. 594

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 action. 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 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 that each party to a mediation associated with certain custody or parenting time proceedings must share mediation costs equally. Repeals provisions concerning joint legal custody. Makes conforming changes.

Effective: July 1, 2013.

Holdman

January 15, 2013, read first time and referred to Committee on Judiciary.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 594



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, 2013]: 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, 2013]: **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, 2013]: 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, AS AMENDED BY P.L.128-2012,
 10 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2013]: Sec. 1. Upon entering an order under IC 31-16-6-1 or
 12 at any subsequent time, the court may order, upon the proper showing
 13 that a person other than the person awarded custody under
 14 IC 31-17-2-8 or **IC 31-17-2-8.1** (or IC 31-1-11.5-21 before its repeal)
 15 should receive payments, that the clerk of the circuit court or the
 16 person obligated to make the payments transmit those payments to any
 17 third person agreed upon by the parties and approved by the court or
 18 appointed by the court, including the following:

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

26 SECTION 5. IC 31-17-2-8 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. **(a) This section**
 28 **does not apply if the court determines:**

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

35 **(b)** The court shall determine custody and enter a custody order in
 36 accordance with the best interests of the child. ~~In determining the best~~
 37 ~~interests of the child, there is no presumption favoring either parent.~~
 38 ~~The court shall consider all relevant factors, including the following:~~

- 39 ~~(1) The age and sex of the child.~~
- 40 ~~(2) The wishes of the child's parent or parents.~~
- 41 ~~(3) The wishes of the child, with more consideration given to the~~
 42 ~~child's wishes if the child is at least fourteen (14) years of age.~~

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- 1 (4) The interaction and interrelationship of the child with:
 2 (A) the child's parent or parents;
 3 (B) the child's sibling; and
 4 (C) any other person who may significantly affect the child's
 5 best interests.
 6 (5) The child's adjustment to the child's:
 7 (A) home;
 8 (B) school; and
 9 (C) community.
 10 (6) The mental and physical health of all individuals involved.
 11 (7) Evidence of a pattern of domestic or family violence by either
 12 parent.
 13 (8) Evidence that the child has been cared for by a de facto
 14 custodian; and if the evidence is sufficient, the court shall
 15 consider the factors described in section 8.5(b) of this chapter.
- 16 **There is a rebuttable presumption that an award of joint legal**
 17 **custody and joint physical custody is in the best interests of the**
 18 **child.**
- 19 SECTION 6. IC 31-17-2-8.1 IS ADDED TO THE INDIANA CODE
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 21 1, 2013]: **Sec. 8.1. If the court determines under section 8(a) of this**
 22 **chapter that section 8 of this chapter does not apply, the court shall**
 23 **determine custody and enter a custody order in accordance with**
 24 **the best interests of the child. In determining the best interests of**
 25 **the child, there is no presumption favoring either parent. The court**
 26 **shall consider all relevant factors, including the following:**
- 27 (1) The age and sex of the child.
 28 (2) The wishes of the child's parent or parents.
 29 (3) The wishes of the child, with more consideration given to
 30 the child's wishes if the child is at least fourteen (14) years of
 31 age.
 32 (4) The interaction and interrelationship of the child with:
 33 (A) the child's parent or parents;
 34 (B) the child's sibling or siblings; and
 35 (C) any other person who may significantly affect the
 36 child's best interests.
 37 (5) The child's adjustment to the child's:
 38 (A) home;
 39 (B) school; and
 40 (C) community.
 41 (6) The mental and physical health of all individuals involved.
 42 (7) Evidence of a pattern of domestic or family violence by

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either parent.
(8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

SECTION 7. IC 31-17-2-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8.5. (a) This section applies only if the court finds by clear and convincing evidence that the child has been cared for by a de facto custodian.

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

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

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

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

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

SECTION 8. IC 31-17-2-13 IS REPEALED [EFFECTIVE JULY 1, 2013]. ~~Sec. 13: The court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child.~~

SECTION 9. IC 31-17-2-14 IS REPEALED [EFFECTIVE JULY 1, 2013]. ~~Sec. 14: An award of joint legal custody under section 13 of this chapter does not require an equal division of physical custody of the child.~~

SECTION 10. IC 31-17-2-15, AS AMENDED BY P.L.3-2008, SECTION 237, IS AMENDED TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2013]: Sec. 15. ~~In determining whether an~~
 2 ~~award of joint legal custody~~ **(a) If a party seeks to rebut the**
 3 **presumption** under ~~section 13~~ **section 8(b)** of this chapter ~~would be~~
 4 **that an award of joint legal custody and joint physical custody is** in
 5 the best interest of the child, the court shall consider: it a matter of
 6 ~~primary, but not determinative, importance that the persons awarded~~
 7 ~~joint custody have agreed to an award of joint legal custody. The court~~
 8 ~~shall also consider:~~

9 (1) the fitness and suitability of each of the persons **who would**
 10 **be awarded joint legal custody and joint physical custody;**

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

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

16 ~~(4) (3) whether the child has established a close and beneficial~~
 17 ~~relationship with both of the persons who would be awarded joint~~
 18 **legal custody and joint physical custody.**

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

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

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

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

24 **(b) If only an award of joint physical custody has been rebutted**
 25 **under this section, there is still a rebuttable presumption that an**
 26 **award of joint legal custody is in the best interests of the child.**

27 SECTION 11. IC 31-17-2-17 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 17. (a) Except:

29 (1) as otherwise:

30 **(A)** agreed by the parties in writing at the time of the custody
 31 order; **or**

32 **(B) provided in an order by the court;** and

33 (2) as provided in subsection (b);

34 the custodian may determine the child's upbringing, including the
 35 child's education, health care, and religious training.

36 (b) If the court finds after motion by a noncustodial parent that, in
 37 the absence of a specific limitation of the custodian's authority, the
 38 child's:

39 (1) physical health would be endangered; or

40 (2) emotional development would be significantly impaired;

41 the court may specifically limit the custodian's authority.

42 SECTION 12. IC 31-17-2-21 IS AMENDED TO READ AS



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1 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 21. (a) The court may
2 not modify a child custody order unless:

- 3 (1) the modification is in the best interests of the child; and
4 (2) there is a substantial change in one (1) or more of the factors
5 that the court may consider under ~~section 8~~ **section 8.1 of this**
6 **chapter** and, if applicable, section 8.5 of this chapter.

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

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

14 SECTION 13. IC 31-17-2-22 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 22. An intentional
16 violation by a custodial parent of an injunction or a temporary
17 restraining order issued under IC 31-17-4-4 or IC 31-17-4-5 (or
18 IC 31-1-11.5-26 before its repeal) may be considered a relevant factor
19 under ~~section 8~~ **section 8.1** of this chapter that the court must consider
20 in a proceeding for a custody modification under section 21 of this
21 chapter.

22 SECTION 14. IC 31-17-4-3, AS AMENDED BY P.L.68-2005,
23 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2013]: Sec. 3. (a) In any action filed to enforce or ~~modify~~ an
25 order granting or denying parenting time rights, a court may award:

- 26 (1) reasonable attorney's fees;
27 (2) court costs; and
28 (3) other reasonable expenses of litigation.

29 (b) In determining whether to award reasonable attorney's fees,
30 court costs, and other reasonable expenses of litigation, the court may
31 consider among other factors:

- 32 (1) whether the petitioner substantially prevailed and whether the
33 court found that the respondent knowingly or intentionally
34 violated an order granting or denying rights; and
35 (2) whether the respondent substantially prevailed and the court
36 found that the action was frivolous or vexatious.

37 SECTION 15. IC 31-17-7-1 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) **Except as**
39 **provided under section 1.5 of this chapter**, the court periodically may
40 order a party to pay a reasonable amount for the cost to the other party
41 of maintaining or defending any proceeding under IC 31-17-2,
42 IC 31-17-4, IC 31-17-6, or this chapter and for attorney's fees, ~~and~~

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1 mediation services, including amounts for legal services provided and
 2 costs incurred before the commencement of the proceedings or after
 3 entry of judgment.

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

6 SECTION 16. IC 31-17-7-1.5 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2013]: **Sec. 1.5. (a) Except as provided in**
 9 **IC 31-17-2.2-1 and IC 31-17-4-8, each party is responsible for the**
 10 **party's own costs and attorney's fees in maintaining or defending**
 11 **a proceeding to modify custody or parenting time under this**
 12 **article.**

13 (b) **Each party to a mediation related to a proceeding under**
 14 **IC 31-17-2, IC 31-17-4, IC 31-17-6, or this chapter shall share**
 15 **equally in mediation costs.**

16 SECTION 17. IC 34-28-2-4, AS AMENDED BY P.L.61-2010,
 17 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2013]: Sec. 4. (a) Proof of the publication required in this
 19 chapter is made by filing a copy of the published notice, verified by the
 20 affidavit of a disinterested person, and when proof of publication is
 21 made, the court shall, subject to the limitations imposed by subsections
 22 (b), (c), and (d), proceed to hear the petition and make an order and
 23 decree the court determines is just and reasonable.

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

- 27 (1) the filing of proof of publication of the notice required under
 28 subsection (a); or
 29 (2) the service of the petition upon the parents or guardian of the
 30 minor child.

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

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

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

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

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1 of a parent of a minor child who:
2 (1) has been making support payments and fulfilling other duties
3 in accordance with a decree issued under IC 31-15, IC 31-16, or
4 IC 31-17 (or IC 31-1-11.5 before its repeal); and
5 (2) objects to the proposed name change of the child.
6 (e) In the case of a person required to give notice under section 3(c)
7 of this chapter, the petitioner must certify to the court that the petitioner
8 has complied with the notice requirements of that subsection.

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