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# HOUSE BILL No. 1025

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 31-9-2-67; IC 31-14-13; IC 31-17-2.

**Synopsis:** Joint legal custody. Establishes a rebuttable presumption that an award of joint legal custody is in the best interest of the child. Requires a court, if a party seeks to rebut the presumption, to consider: (1) the fitness and suitability of each of the persons who would be awarded joint legal custody; (2) the ability of the persons who would be awarded joint legal custody to communicate and cooperate in advancing the child's welfare; and (3) whether the child has established a close and beneficial relationship with both of the persons who would be awarded joint legal custody. Repeals certain provisions governing the award of joint legal custody that are being superseded by this bill.

**Effective:** July 1, 2013.

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## Pond, Bacon

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January 7, 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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## HOUSE BILL No. 1025



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, means  
5 that the persons awarded joint custody will share authority and  
6 responsibility for the major decisions concerning the child's  
7 upbringing, including the child's:

- 8 (1) education;
- 9 (2) health care; and
- 10 (3) religious training.

11 **However, the term does not include an award of physical custody**  
12 **of the child.**

13 SECTION 2. IC 31-14-13-2 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. The court shall  
15 determine custody in accordance with the best interests of the child.  
16 **Except as provided in section 2.2 of this chapter**, in determining the  
17 child's best interests, there is not a presumption favoring either parent.



1 The court shall consider all relevant factors, including the following:

- 2 (1) The age and sex of the child.  
 3 (2) The wishes of the child's parents.  
 4 (3) The wishes of the child, with more consideration given to the  
 5 child's wishes if the child is at least fourteen (14) years of age.  
 6 (4) The interaction and interrelationship of the child with:  
 7 (A) the child's parents;  
 8 (B) the child's siblings; and  
 9 (C) any other person who may significantly affect the child's  
 10 best interest.  
 11 (5) The child's adjustment to home, school, and community.  
 12 (6) The mental and physical health of all individuals involved.  
 13 (7) Evidence of a pattern of domestic or family violence by either  
 14 parent.  
 15 (8) Evidence that the child has been cared for by a de facto  
 16 custodian, and if the evidence is sufficient, the court shall  
 17 consider the factors described in section 2.5(b) of this chapter.

18 SECTION 3. IC 31-14-13-2.2 IS ADDED TO THE INDIANA  
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 20 [EFFECTIVE JULY 1, 2013]: **Sec. 2.2. There is a rebuttable  
 21 presumption that an award of joint legal custody is in the best  
 22 interest of the child.**

23 SECTION 4. IC 31-14-13-2.3 IS REPEALED [EFFECTIVE JULY  
 24 1, 2013]. ~~Sec. 2.3: (a) In a proceeding to which this chapter applies, the  
 25 court may award legal custody of a child jointly if the court finds that  
 26 an award of joint legal custody would be in the best interest of the  
 27 child.~~

28 ~~(b) An award of joint legal custody under this section does not  
 29 require an equal division of physical custody of the child.~~

30 ~~(c) In determining whether an award of joint legal custody under  
 31 this section would be in the best interest of the child, the court shall  
 32 consider it a matter of primary, but not determinative, importance that  
 33 the persons awarded joint legal custody have agreed to an award of  
 34 joint legal custody. The court shall also consider:~~

- 35 ~~(1) the fitness and suitability of each of the persons awarded joint  
 36 legal custody;  
 37 (2) whether the persons awarded joint legal custody are willing  
 38 and able to communicate and cooperate in advancing the child's  
 39 welfare;  
 40 (3) the wishes of the child, with more consideration given to the  
 41 child's wishes if the child is at least fourteen (14) years of age;  
 42 (4) whether the child has established a close and beneficial~~

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1 relationship with both of the persons awarded joint legal custody;  
 2 (5) whether the persons awarded joint legal custody:  
 3 (A) live in close proximity to each other; and  
 4 (B) plan to continue to do so;  
 5 (6) the nature of the physical and emotional environment in the  
 6 home of each of the persons awarded joint legal custody; and  
 7 (7) whether there is a pattern of domestic or family violence.

8 SECTION 5. IC 31-14-13-2.4 IS ADDED TO THE INDIANA  
 9 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 10 [EFFECTIVE JULY 1, 2013]: **Sec. 2.4. If a party seeks to rebut the**  
 11 **presumption under section 2.2 of this chapter that an award of**  
 12 **joint legal custody is in the best interest of the child, the court shall**  
 13 **consider:**

- 14 (1) the fitness and suitability of each of the persons who would  
 15 be awarded joint legal custody;  
 16 (2) whether the persons who would be awarded joint legal  
 17 custody are able to communicate and cooperate in advancing  
 18 the child's welfare; and  
 19 (3) whether the child has established a close and beneficial  
 20 relationship with both of the persons who would be awarded  
 21 joint legal custody.

22 SECTION 6. IC 31-17-2-8 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. The court shall  
 24 determine custody and enter a custody order in accordance with the  
 25 best interests of the child. **Except as provided in section 13 of this**  
 26 **chapter**, in determining the best interests of the child there is no  
 27 presumption favoring either parent. The court shall consider all  
 28 relevant factors, including the following:

- 29 (1) The age and sex of the child.  
 30 (2) The wishes of the child's parent or parents.  
 31 (3) The wishes of the child, with more consideration given to the  
 32 child's wishes if the child is at least fourteen (14) years of 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; and  
 36 (C) any other person who may significantly affect the child's  
 37 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 either  
2 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 31-17-2-13 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 13. ~~The court may~~  
8 ~~award legal custody of a child jointly if the court finds that an award of~~  
9 ~~joint legal custody would be~~ **There is a rebuttable presumption that**  
10 **an award of joint legal custody is** in the best interest of the child.
- 11 SECTION 8. IC 31-17-2-14 IS REPEALED [EFFECTIVE JULY 1,  
12 2013]. Sec. ~~14~~. ~~An award of joint legal custody under section 13 of this~~  
13 ~~chapter does not require an equal division of physical custody of the~~  
14 ~~child.~~
- 15 SECTION 9. IC 31-17-2-15, AS AMENDED BY P.L.3-2008,  
16 SECTION 237, IS AMENDED TO READ AS FOLLOWS  
17 [EFFECTIVE JULY 1, 2013]: Sec. 15. ~~In determining whether an~~  
18 ~~award of joint legal custody~~ **If a party seeks to rebut the**  
19 **presumption** under section 13 of this chapter ~~would be that an award~~  
20 **of joint legal custody is** in the best interest of the child, the court shall  
21 consider: ~~it a matter of primary, but not determinative, importance that~~  
22 ~~the persons awarded joint custody have agreed to an award of joint~~  
23 ~~legal custody. The court shall also consider:~~
- 24 (1) the fitness and suitability of each of the persons **who would**  
25 **be** awarded joint legal custody;
- 26 (2) whether the persons **who would be** awarded joint legal  
27 custody are ~~willing and~~ able to communicate and cooperate in  
28 advancing the child's welfare; **and**
- 29 (3) ~~the wishes of the child, with more consideration given to the~~  
30 ~~child's wishes if the child is at least fourteen (14) years of age;~~
- 31 (4) ~~(3)~~ whether the child has established a close and beneficial  
32 relationship with both of the persons **who would be** awarded joint  
33 legal custody.
- 34 (5) whether the persons awarded joint custody:  
35 (A) live in close proximity to each other; and  
36 (B) plan to continue to do so; and
- 37 (6) the nature of the physical and emotional environment in the  
38 home of each of the persons awarded joint custody.
- 39 SECTION 10. IC 31-17-2-17 IS AMENDED TO READ AS  
40 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 17. (a) Except:  
41 (1) as otherwise:  
42 (A) agreed by the parties in writing at the time of the custody

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1                   order; or  
2                   **(B) provided in an order by the court;** and  
3                   (2) as provided in subsection (b);  
4                   the custodian may determine the child's upbringing, including the  
5                   child's education, health care, and religious training.  
6                   (b) If the court finds after motion by a noncustodial parent that, in  
7                   the absence of a specific limitation of the custodian's authority, the  
8                   child's:  
9                   (1) physical health would be endangered; or  
10                  (2) emotional development would be significantly impaired;  
11                  the court may specifically limit the custodian's authority.

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