Members

Rep. Randall Frye, Chairperson
Rep. Phyllis Pond
Rep. Vanessa Summers
Rep. John Day
Sen. Brent Steele
Sen. Susan Glick
Sen. Karen Tallian
Sen. Greg Taylor
Peter Nugent
Magistrate Kimberly D. Mattingly
Kathryn Hillebrands Burroughs
Bruce Pennamped

CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

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Bill Brumbach, Fiscal Analyst for the Committee

Authority: IC 33-24-11-1

MEETING MINUTES[1]

Meeting Date:	**August 22, 2012**
Meeting Time:	**10:00 A.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 233**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**1**

Members Present: **Rep. Randall Frye, Chairperson; Rep. Phyllis Pond; Rep. Vanessa Summers; Sen. Susan Glick; Sen. Karen Tallian; Peter Nugent; Kathryn Hillebrands Burroughs; Bruce Pennamped.**

Members Absent: **Rep. John Day; Sen. Brent Steele; Sen. Greg Taylor; Magistrate Kimberly D. Mattingly.**

Representative Frye called the meeting of the Committee to order at 10:07 a.m.

Equal access to school information for custodial and noncustodial parents

Representative Pond testified that a constituent expressed concerns to her that IC 20-33-7-2 (requiring that custodial and noncustodial parents receive equal access to certain school information) was not being followed. Representative Pond contacted the school in question and determined that the constituent's concerns were the result of a misunderstanding and requested that the Committee take no action on this issue.

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[1] These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at http://www.in.gov/legislative Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for hard copies.

SB 190-2012

Representative Frye introduced SB 190 (dealing with the parental rights of a rapist with respect to a child who is the result of the rape) and noted that the Legislative Council had assigned this topic to the Committee.

Legislative Services Agency Attorney Andrew Hedges distributed a copy of the introduced version of the bill (Exhibit 1). Mr. Hedges testified that discussions of SB 190 during the 2012 session largely concerned five issues:

(1) What evidence of rape should be required: a criminal conviction or clear and convincing evidence?
(2) Should the rapist be required to pay child support, or is it better if there is no connection between the parents?
(3) Is the appropriate remedy allowing the parent to file for termination of the rapist's parental rights; or is it to deny the rapist custody and parenting time rights?
(4) Should there be an exception for spousal rape? Should the exception be mandatory or discretionary?
(5) Should a court be required to find it is in the best interests of the child before terminating parental rights/denying custody and visitation?

Senator Glick testified that termination of parental rights was a good policy and that she believed that child support should not be required because it would tie the rapist to the custodial parent. She expressed concern over the criminal conviction requirement because of cases where rape may have been reduced to a lesser charge.

Senator Tallian and Representative Summers testified that removing the discretion of the court was often a bad idea. Representative Summers also believed that child support from the rapist was not a good idea unless the custodial parent's anonymity or privacy could be maintained.

Laymember Bruce Pennamped testified that it would be difficult for the custodial parent to remain anonymous regardless of child support.

Laymember Peter Nugent and Senator Tallian suggested the issue addressed in SB 190 was very limited - perhaps involving one case - and could be addressed using current law.

Representative McMillin, testifying as a witness, stated that this legislation was perhaps not necessary and that he could not imagine that a court would grant a rapist parental rights. He also expressed concern that the bill could be misused in custody disputes.

Representative Pond testified that she was also concerned about custody disputes, and hoped that they could be avoided if the court had enough discretion.

Mr. Pennamped explained that courts have discretion concerning custody and parenting time, but that courts cannot terminate parental rights.

Representative Frye stated that Senator Charbonneau told him that he was worried about unreported rapes. Representative Frye has concerns about false reports if there is not a conviction, however.

Laymember Kathryn Hillebrands Burroughs noted that child support was for the benefit of the child and that the mother was not permitted to refuse it. Senator Tallian stated that the mother was not required to seek paternity, except in a Title IV-D case. Mr. Nugent stated

that current law seems to provide sufficient remedies, except perhaps in IV-D cases.

Following a discussion, the Committee recommended 7-1 that the General Assembly not enact a bill similar to SB 190-2012 because existing remedies are adequate to address the problem.

SEA 18-2012

Senator Tallian informed the Committee that a group of attorneys in her district had pointed to certain inconsistencies in SEA 18-2012 (reducing the age of emancipation to 19 for child support purposes). Senator Tallian requested that the Chairman set an additional meeting to consider this issue. Representative Frye agreed to set another meeting, with the date to be determined later.

Representative Frye adjourned the meeting at 11:10 a.m.

CCSAC #1
8/22/12

Exhibit 1

SENATE BILL No. 190

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-0.9; IC 31-17-6-1; IC 31-35-3.5.

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.

Effective: July 1, 2012.

Charbonneau

January 4, 2012, read first time and referred to Committee on Judiciary.

Introduced

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.

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:

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

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

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

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

Sec. 4. The 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;

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