

Members

Sen. Brent Steele, Chairperson
Sen. Joseph Zakas
Sen. Greg Taylor
Sen. Lonnie Randolph
Rep. Kathy Kreag Richardson
Rep. Greg Steuerwald
Rep. B. Patrick Bauer
Rep. John Bartlett
Chief Justice Brent Dickson
Judge Tom Felts
Commissioner Therese Brown
Christa Coffey
Jerome Prince



COMMISSION ON COURTS

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Mark Goodpaster, Fiscal Analyst for the
Commission
Timothy Tyler, Attorney for the Commission

Authority: IC 33-23-10

MEETING MINUTES¹

Meeting Date: September 12, 2013
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Brent Steele, Chairperson; Sen. Joseph Zakas; Sen. Greg Taylor; Sen. Lonnie Randolph; Rep. Kathy Kreag Richardson; Rep. John Bartlett; Chief Justice Brent Dickson; Judge Tom Felts; Commissioner Therese Brown; Jerome Prince.

Members Absent: Rep. Greg Steuerwald; Rep. B. Patrick Bauer; Christa Coffey.

Senator Steele convened the second meeting of the Commission on Courts at 10:08 a.m.

After an introduction of members, Senator Steele announced that the Commission will meet three additional times during this interim:

On September 24th at 10 a.m., the Commission will examine the following issues:

- (1) The need for at least one psychiatrist for insanity hearings
- (2) The licensing of court reporters.

On October 8th at 10 a.m., issues concerning judgment dockets in Indiana will be considered.

The final meeting will be on October 21 at 1 p.m.

Senator Steele announced that at today's meeting the Commission would hear about confidentiality issues in juvenile paternity cases.

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.

Confidentiality Issues in Juvenile Paternity Cases

Tom Frohman, an attorney who works for Indiana Legal Services and practices family law in Bloomington, spoke about the logistical problems for parties who are involved in juvenile paternity cases. These types of cases involve children who have unmarried parents and to whom child support, custody, and parenting time must be decided. He compared the cases under juvenile paternity to cases involving the same issues for children who have married parents who are in the process of divorcing.

Since all juvenile cases are considered confidential by state law, parties in a juvenile paternity case have a difficult time getting access to any files, orders, or schedules related to the case unless they can appear in the courthouse and convince court staff that they are actually representing a party in the case. In contrast, cases involving the same issues in which children of a married couple who is divorcing are all public record.

The confidentiality of these cases makes it difficult for both attorneys representing the parties to obtain information in a timely manner. None of the information related to the case can be found on any of the online directories maintained by Dox-Pop or Odyssey. Because of this, attorneys representing paying clients will have to charge additional fees to their clients to recover the added costs of going to the courthouse to find relevant information on the case. Attorneys who wish to represent indigent clients pro-bono may be reluctant to do so because of the added time that it will take them to obtain any relevant information in the courthouse files instead of online.

Mr. Frohman presented the Commission with some suggested language for the Commission members to consider (Exhibit A).

Melissa Avery, who chairs the Indiana State Bar Association's Family Law Section, told the Commission members that she also supports this proposed change in statute. She indicated that in the vast majority of the domestic relations cases the only people who are interested in what is contained in the court files are the parties in the case.

She stated that the State Bar Association surveyed 23 states concerning the status of juvenile paternity issues. She indicated that 13 states have open records, 8 have closed cases, and 2 have hybrids.

Marion County Superior Court Issues

Judges David Certo, Heather Welch, and Marc Rothenberg, all of the Marion County Superior Court, discussed the following issues with the Commission members.

Traffic Infractions – IC 34-28-5-4 allows the Marion County Superior Courts to assess an additional \$35 fine for traffic infractions. Proceeds from these fees are deposited into a special fund in Marion County to pay for both the county's guardian ad litem program and to supplement the salaries of court commissioners (IC 34-28-5-5(e)). The judges indicated that because fewer traffic infractions are being assessed, revenue collected from traffic infractions has declined. The reduced revenue has made it difficult to supplement the pay of court commissioners and to fund the Guardian Ad Litem Fund.

Court Commissioners and Magistrates – Currently, magistrates are paid \$106,995 and are paid out of the state's General Fund. Marion County's 26 court commissioners are also paid the same amount, but are paid by Marion County. A portion of the commissioners' salaries is paid out of the Marion County General Fund, and the balance is paid from the special fund with the traffic infractions as the revenue source. Since the salary of the magistrates is increased each year based on the salaries of judges, the amount needed from the special

fund to supplement the salaries of the commissioners keeps increasing. Because the number of traffic infractions has declined, it is more difficult for the courts to continue supplementing the salaries of the commissioners through this special fund. The judges of Marion County Superior Courts will be requesting that either some or all court commissioners in Marion County be converted to magistrates during the 2015 General Assembly.

Guardian Ad Litem Issues – The Guardian Ad Litem program, which is used to find volunteers to represent children in abuse and neglect cases, is an estimated \$800,000 below its current budget. If commissioners are converted into magistrates, then the declining revenue in the special fund can be used to pay for the guardian ad litem program.

The Effect of HEA 1006 (2013) – Marion County has already reduced the number of probation officers on its payroll. Depending on whether the courts suspend more sentences and place more offenders on probation, the courts may need to increase the number of probation officers it employs.

Senator Steele told the Commission members that if they have any suggestions for the October 21st meeting to send them promptly to Tim Tyler or to him.

The meeting was adjourned at 11:50 a.m.

CURRENT STATUTES WITH PROPOSED
LEGISLATIVE CHANGES IN BOLD

IC 31-39-1

Chapter 1. Confidentiality of Juvenile Court Records

IC 31-39-1-1

Application of chapter

Sec. 1. (a) This chapter applies to all records of the juvenile court except the following:

(1) Records involving an adult charged with a crime or criminal contempt of court.

(2) Records involving a pregnant minor or her physician seeking a waiver of the requirement under IC 35-1-58.5-2.5 (before its repeal) or IC 16-34-2-4 that a physician who performs an abortion on an unemancipated minor first obtain the written consent of the minor's parent or guardian.

(3) Records involving proceedings as to paternity, custody, parenting time, child support and related issues as to a child born to parents who are not married to each other.

(b) The legal records subject to this chapter include the following:

(1) Chronological case summaries.

(2) Index entries.

(3) Summonses.

(4) Warrants.

(5) Petitions.

(6) Orders.

(7) Motions.

(8) Decrees.

As added by P.L.1-1997, SEC.22.

IC 31-39-1-2

Confidentiality and access to juvenile court records

Sec. 2. All juvenile court records subject to this chapter are confidential and are available only in accordance with IC 31-39-2. The court shall take appropriate actions to protect juvenile court records governed by this chapter from unauthorized disclosure.

As added by P.L.1-1997, SEC.22.

IC 31-39-2

Chapter 2. Persons Entitled to Access to Juvenile Court Records

IC 31-39-2-1

Application of chapter

Sec. 1. (a) This chapter applies to all records of the juvenile court except the following:

- (1) Records involving an adult charged with a crime or criminal contempt of court.
- (2) Records involving a pregnant minor or her physician seeking a waiver of the requirement under IC 35-1-58.5-2.5 (before its repeal) or IC 16-34-2-4 that a physician who performs an abortion on an unemancipated minor first obtain the written consent of the minor's parent or guardian.

(3) Records involving proceedings as to paternity, custody, parenting time, child support and related issues as to a child born to parents who are not married to each other."

(b) The legal records subject to this chapter include the following:

- (1) Chronological case summaries.
- (2) Index summaries.
- (3) Summonses.
- (4) Warrants.
- (5) Petitions.
- (6) Orders.
- (7) Motions.
- (8) Decrees.

As added by P.L.1-1997, SEC.22.

CORRESPONDING ADMINISTRATIVE RULE CHANGE

(requiring action by Indiana Supreme Court)

Administrative Rule 9(G), Court Records Excluded From Public Access.

(1) Case records. The following information in case records is excluded from public access and is confidential:

(a) Information that is excluded from public access pursuant to federal law;

(b) Information that is excluded from public access as declared confidential by Indiana statute or other court rule, including without limitation:

.
. .
.

(vi) Records of juvenile proceedings as declared confidential by Ind. Code § 31-39-1-2, except those specifically open under statute; **[NOTE: would not have to be changed because “paternity” cases would no longer be confidential under that statute]**

(vii) All paternity records created after July 1, 1941 as declared confidential by Ind. Code §§ 31-14-11-15, 31-19-5-23, 31-39-1-1 and 31-39-1-2; **[NOTE: should be deleted for clarity sake]**