

SENATE BILL No. 179

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-54.7; IC 31-16; IC 31-25-4.

Synopsis: Child support. Provides that incarceration of a parent may not be considered to be voluntary unemployment in determining an amount to be ordered for support of a child. Provides that a court may modify the child support order, or approve a proposed modification, without holding a hearing if: (1) a petition to modify a child support order based on incarceration of a party is filed; and (2) after receiving notice, no party timely files an objection or request for hearing. Requires the child support bureau (bureau), beginning July 1, 2019, to notify both parties of each party's right to request a modification of the child support order not later than fifteen (15) days after learning that an obligor in a Title IV-D case is or may be incarcerated for a period of at least one hundred eighty (180) calendar days. Requires a prosecuting attorney or private attorney entering into an agreement or a contract with the bureau to review all requests for modification of child support received from an incarcerated obligor with an open Title IV-D case and, if appropriate, file a petition for modification of child support and proposed order in the appropriate court.

Effective: July 1, 2018.

Bray

January 8, 2018, read first time and referred to Committee on Judiciary.



Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 179

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 31-9-2-54.7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2018]: **Sec. 54.7. "Incarceration", for purposes of IC 31-16 and**
4 **IC 31-25-4, means confinement of an individual on a full-time basis**
5 **in a place of detention that prohibits the individual from gainful**
6 **employment, including home detention or a municipal, county,**
7 **state, or federal prison or jail. The term does not include an**
8 **individual on parole, probation, work release, community**
9 **corrections, or any other detention alternative program that allows**
10 **the individual to be gainfully employed.**

11 SECTION 2. IC 31-16-6-1, AS AMENDED BY P.L.207-2013,
12 SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2018]: Sec. 1. (a) **Subject to subsection (f)**, in an action for
14 dissolution of marriage under IC 31-15-2, legal separation under
15 IC 31-15-3, child support under IC 31-16-2, or establishment of
16 paternity under IC 31-14, the court may order either parent or both
17 parents to pay any amount reasonable for support of a child, without



1 regard to marital misconduct, after considering all relevant factors,
2 including:

- 3 (1) the financial resources of the custodial parent;
4 (2) the standard of living the child would have enjoyed if:
5 (A) the marriage had not been dissolved;
6 (B) the separation had not been ordered; or
7 (C) in the case of a paternity action, the parents had been
8 married and remained married to each other;
9 (3) the physical or mental condition of the child and the child's
10 educational needs; and
11 (4) the financial resources and needs of the noncustodial parent.

12 (b) The court shall order that child support payments ordered under
13 this section be immediately withheld from the income of the parent
14 obligated to pay child support as provided under IC 31-16-15-0.5.

15 (c) The court shall order a custodial parent or third party under
16 IC 31-16-10-1 who receives child support to obtain an account at a
17 financial institution unless:

- 18 (1) the custodial parent or third party files a written objection
19 before a child support order is issued; and
20 (2) the court finds that good cause exists to exempt the custodial
21 parent or third party from the account requirement.

22 A custodial parent or third party ordered to obtain an account shall
23 provide the clerk of the circuit court, the state central collection unit,
24 or other person or entity acting as assignee or trustee for remittance
25 with an account number and any other information necessary to transfer
26 funds to the account.

27 (d) In accordance with its policies, a financial institution may
28 restrict or deny services to a person ordered to obtain an account under
29 this section.

30 (e) This section may not be construed to require the clerk of the
31 circuit court to remit child support payments by electronic funds
32 transfer.

33 **(f) In determining the amount to be ordered for support of a**
34 **child, incarceration of a parent may not be considered to be**
35 **voluntary unemployment.**

36 SECTION 3. IC 31-16-8-1, AS AMENDED BY P.L.103-2007,
37 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2018]: Sec. 1. (a) Provisions of an order with respect to child
39 support or an order for maintenance (ordered under IC 31-16-7-1 or
40 IC 31-1-11.5-9(c) before their repeal) may be modified or revoked.

41 (b) Except as provided in section 2 of this chapter, **and subject to**
42 **subsection (d)**, modification may be made only:



1 (1) upon a showing of changed circumstances so substantial and
 2 continuing as to make the terms unreasonable; or

3 (2) upon a showing that:

4 (A) a party has been ordered to pay an amount in child support
 5 that differs by more than twenty percent (20%) from the
 6 amount that would be ordered by applying the child support
 7 guidelines; and

8 (B) the order requested to be modified or revoked was issued
 9 at least twelve (12) months before the petition requesting
 10 modification was filed.

11 (c) Modification under this section is subject to IC 31-25-4-17(a)(6).

12 **(d) Incarceration may constitute a change in circumstances so**
 13 **substantial and continuing as to make terms of an order**
 14 **unreasonable.**

15 SECTION 4. IC 31-16-8-4 IS ADDED TO THE INDIANA CODE
 16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 2018]: **Sec. 4. If:**

18 **(1) a petition to modify a child support order based on**
 19 **incarceration of a party is filed; and**

20 **(2) after receiving notice, no party timely files an objection or**
 21 **request for hearing;**

22 **the court may modify the child support order, or approve a**
 23 **proposed modification, without holding a hearing.**

24 SECTION 5. IC 31-25-4-13.1, AS AMENDED BY P.L.206-2015,
 25 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2018]: Sec. 13.1. (a) This section applies after December 31,
 27 2006.

28 (b) The bureau shall make the agreements necessary for the
 29 effective administration of the plan with local governmental officials
 30 within Indiana. The bureau shall contract with:

31 (1) a prosecuting attorney;

32 (2) a private attorney or private entity if the bureau determines
 33 that a reasonable contract cannot be entered into with a
 34 prosecuting attorney and the determination is approved by at least
 35 two-thirds (2/3) of the interim study committee on public health,
 36 behavioral health, and human services established by
 37 IC 2-5-1.3-4; or

38 (3) a collection agency licensed under IC 25-11 to collect
 39 arrearages on child support orders under which collections have
 40 not been made on arrearages for at least two (2) years;
 41 in each judicial circuit to undertake activities required to be performed
 42 under Title IV-D of the federal Social Security Act (42 U.S.C. 651),



1 including establishment of paternity, establishment, enforcement, and
2 modification of child support orders, activities under the Uniform
3 Reciprocal Enforcement of Support Act (IC 31-2-1, before its repeal)
4 or the Uniform Interstate Family Support Act (IC 31-18.5, or IC 31-1.5
5 before its repeal), and if the contract is with a prosecuting attorney,
6 prosecutions of welfare fraud.

7 (c) The hiring of a private attorney or private entity by an agreement
8 or a contract made under this section is not subject to the approval of
9 the attorney general under IC 4-6-5-3. An agreement or a contract made
10 under this section is not subject to IC 4-13-2-14.3 or IC 5-22.

11 (d) Subject to section 14.1 of this chapter, a prosecuting attorney
12 with which the bureau contracts under subsection (b):

13 (1) may contract with a collection agency licensed under IC 25-11
14 to provide child support enforcement services; and

15 (2) shall contract with a collection agency licensed under
16 IC 25-11 to collect arrearages on child support orders under
17 which collections have not been made on arrearages for at least
18 two (2) years.

19 (e) A prosecuting attorney or private attorney entering into an
20 agreement or a contract with the bureau under this section enters into
21 an attorney-client relationship with the state to represent the interests
22 of the state in the effective administration of the plan and not the
23 interests of any other person. An attorney-client relationship is not
24 created with any other person by reason of an agreement or contract
25 with the bureau.

26 (f) At the time that an application for child support services is made,
27 the applicant must be informed that:

28 (1) an attorney who provides services for the child support bureau
29 is the attorney for the state and is not providing legal
30 representation to the applicant; and

31 (2) communications made by the applicant to the attorney and the
32 advice given by the attorney to the applicant are not confidential
33 communications protected by the privilege provided under
34 IC 34-46-3-1.

35 (g) A prosecuting attorney or private attorney who contracts or
36 agrees under this section to undertake activities required to be
37 performed under Title IV-D is not required to mediate, resolve, or
38 litigate a dispute between the parties relating to:

39 (1) the amount of parenting time or parenting time credit; or

40 (2) the assignment of the right to claim a child as a dependent for
41 federal and state tax purposes.

42 (h) An agreement made under subsection (b) must contain



1 requirements stipulating service levels a prosecuting attorney or private
 2 entity is expected to meet. The bureau shall disburse incentive money
 3 based on whether a prosecuting attorney or private entity meets service
 4 levels stipulated in an agreement made under subsection (b).

5 **(i) Beginning July 1, 2019, an agreement made under subsection**
 6 **(b) must contain provisions that a prosecuting attorney or private**
 7 **attorney:**

8 **(1) shall review all requests for modification of child support**
 9 **received from an incarcerated obligor with an open Title**
 10 **IV-D case and, if appropriate, file a:**

11 **(A) petition for modification of child support; and**

12 **(B) proposed order;**

13 **in the appropriate court; and**

14 **(2) may file a petition for modification of child support**
 15 **without having received a request for modification from a**
 16 **party with an open Title IV-D case as the attorney considers**
 17 **appropriate.**

18 SECTION 6. IC 31-25-4-17, AS AMENDED BY P.L.183-2017,
 19 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2018]: Sec. 17. (a) The bureau shall do the following:

21 (1) Collect support payments when the payments have been
 22 assigned to the state by the application for assistance under Title
 23 IV-A.

24 (2) Assist in obtaining a support order, including an order for
 25 health insurance coverage under:

26 (A) IC 27-8-23; or

27 (B) IC 31-16-6-4;

28 when there is no existing order and assistance is sought.

29 (3) Assist in establishing paternity for children born out of
 30 wedlock.

31 (4) Implement immediate income withholding in any Title IV-D
 32 case, in accordance with 42 U.S.C. 666(a) and (b), without an
 33 order issued by a court or an administrative agency.

34 (5) Enforce intrastate and interstate support orders using high
 35 volume automated enforcement features.

36 (6) Use a simplified procedure for the review and adjustment of
 37 support orders as set forth in 42 U.S.C. 666(a)(10).

38 (7) In any Title IV-D case, petition:

39 (A) a court to:

40 (i) establish paternity for a child born out of wedlock; and

41 (ii) establish a support order, including an order for health
 42 insurance coverage under IC 27-8-23 or IC 31-16-6-4; and



1 (B) a court to establish or modify a support order, including an
 2 order for health insurance coverage under IC 27-8-23,
 3 IC 31-14-11-3 (before its repeal), or IC 31-16-6-4, if:

- 4 (i) there is no existing support order; or
 5 (ii) the existing order does not include a provision for
 6 private health insurance.

7 **(8) Beginning July 1, 2019, not later than fifteen (15) days**
 8 **after learning that an obligor in a Title IV-D case is or may be**
 9 **incarcerated for a period of at least one hundred eighty (180)**
 10 **calendar days, notify both parties of each party's right to**
 11 **request a modification of the child support order.**

12 (b) Whenever the bureau collects support payments on behalf of an
 13 individual who is no longer a member of a household that receives
 14 Title IV-A cash payments, the collected support payments (except
 15 collections made through a federal tax refund offset) shall be promptly
 16 distributed in the following order:

- 17 (1) Payment to the recipient of the court ordered support
 18 obligation for the month that the support payment is received.
 19 (2) Payment to the recipient of the support payment arrearages
 20 that have accrued during any period when the recipient was not a
 21 member of a household receiving Title IV-A assistance.
 22 (3) Payment to the state in an amount not to exceed the lesser of:
 23 (A) the total amount of past public assistance paid to the
 24 recipient's family; or
 25 (B) the amount assigned to the state by the recipient under
 26 IC 12-14-7-1.
 27 (4) Payment of support payment arrearages owed to the recipient.
 28 (5) Payment of any other support payments payable to the
 29 recipient.

30 (c) Whenever the bureau receives a payment through a federal tax
 31 refund offset on behalf of an individual who has received or is
 32 receiving Title IV-A assistance, the child support payment shall be
 33 distributed as follows:

- 34 (1) To the state, an amount not to exceed the lesser of:
 35 (A) the total amount of past public assistance paid to the
 36 individual's family; or
 37 (B) the amount assigned to the state by the individual under
 38 IC 12-14-7-1.
 39 (2) To the individual, any amounts remaining after the
 40 distribution under subdivision (1).

41 (d) Except as provided in section 19.5 of this chapter, whenever the
 42 bureau collects a child support payment from any source on behalf of



1 an individual who has never received Title IV-A assistance, the bureau
2 shall forward all money collected to the individual.

3 (e) Whenever the bureau receives a child support payment on behalf
4 of an individual who currently receives a Title IV-A cash payment or
5 an individual whose cash payment was recouped, the child support
6 payment shall be distributed as follows:

7 (1) To the state, an amount not to exceed the lesser of:

8 (A) the total amount of past public assistance paid to the
9 individual's family; or

10 (B) the amount assigned to the state by the individual under
11 IC 12-14-7-1.

12 (2) To the individual, any amounts remaining after the
13 distribution under subdivision (1).

14 (f) Unless otherwise required by federal law, not more than
15 seventy-five (75) days after a written request by a recipient, the bureau
16 shall provide an accounting report to the recipient that identifies the
17 bureau's claim to a child support payment or arrearage.

18 (g) The bureau, the department of child services, and the department
19 of state revenue may not charge a custodial parent a fee to seek or
20 receive a payment through a state tax refund offset.

21 (h) When the payment of support has been assigned to the state by
22 the application of assistance under Title IV-A or Title IV-E, the Title
23 IV-D agency shall:

24 (1) first provide notice to the obligee and the obligor that the
25 payment of support has been assigned to the state; and

26 (2) direct the clerk of court or the state central collection unit to
27 forward the child support payment directly to the Title IV-D
28 agency without further notice of the court.

29 (i) A payment directed to the Title IV-D agency under subsection
30 (h) shall be disbursed in accordance with federal regulations governing
31 the Title IV-D program.

