

SENATE BILL No. 195

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-14; IC 31-15; IC 31-17.

Synopsis: Custody, parenting time, and visitation proceedings. Requires a court in a custody, parenting time, or visitation proceeding to: (1) determine the wishes of the child who is the subject of the proceeding by conducting an in chambers interview with the child; and (2) consider the wishes of the child in making the court's determination. Provides that a court shall appoint an available guardian ad litem or court appointed special advocate, or both, to represent the interests of a child in a custody or parenting time proceeding.

Effective: July 1, 2019.

Kruse

January 3, 2019, read first time and referred to Committee on Judiciary.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 195

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 31-14-13-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. The court shall
3 determine custody in accordance with the best interests of the child. In
4 determining the child's best interests, there is not a presumption
5 favoring either parent. The court shall consider all relevant factors,
6 including the following:
7 (1) The age and sex of the child.
8 (2) The wishes of the child's parents.
9 (3) The wishes of the child **as determined under section 3 of**
10 **this chapter**, with more consideration given to the child's wishes
11 if the child is at least fourteen (14) years of age.
12 (4) The interaction and interrelationship of the child with:
13 (A) the child's parents;
14 (B) the child's siblings; and
15 (C) any other person who may significantly affect the child's
16 best interest.
17 (5) The child's adjustment to home, school, and community.



(6) The mental and physical health of all individuals involved.

(7) Evidence of a pattern of domestic or family violence by 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 2.5(b) of this chapter.

SECTION 2. IC 31-14-13-2.3, AS ADDED BY P.L.95-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2.3. (a) In a proceeding to which this chapter applies, 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.

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

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

(1) the fitness and suitability of each of the persons awarded joint legal custody;

(2) whether the persons awarded joint legal custody are willing and able to communicate and cooperate in advancing the child's welfare;

(3) the wishes of the child **as determined under section 3 of this chapter**, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age;

(4) whether the child has established a close and beneficial relationship with both of the persons awarded joint legal custody;

(5) whether the persons awarded joint legal custody:

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

(B) plan to continue to do so;

(6) the nature of the physical and emotional environment in the home of each of the persons awarded joint legal custody; and

(7) whether there is a pattern of domestic or family violence.

SECTION 3. IC 31-14-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) The court ~~may~~ **shall** interview the child in chambers, **in an age appropriate manner as determined by the court**, to ascertain the child's wishes.

(b) The court may permit counsel to be present at the interview.

(c) If counsel is present at the interview, a record may be made of the interview and made part of the record for purposes of appeal.



SECTION 4. IC 31-14-14-1, AS AMENDED BY P.L.13-2016, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) A noncustodial parent is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time might:

- (1) endanger the child's physical health and well-being; or
- (2) significantly impair the child's emotional development.

(b) The court ~~may~~ **shall** interview the child in chambers, **in an age appropriate manner as determined by the court**, to assist the court in determining the child's perception of whether parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

(c) In a hearing under subsection (a), there is a rebuttable presumption that a person who has been convicted of:

- (1) child molesting (IC 35-42-4-3); or
- (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));

might endanger the child's physical health and well-being or significantly impair the child's emotional development.

(d) If a court grants parenting time rights to a person who has been convicted of:

- (1) child molesting (IC 35-42-4-3); or
- (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));

there is a rebuttable presumption that the parenting time with the child must be supervised.

(e) The court may permit counsel to be present at the interview. If counsel is present:

- (1) a record may be made of the interview; and
- (2) the interview may be made part of the record for purposes of appeal.

SECTION 5. IC 31-15-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) The court shall immediately schedule a preliminary hearing upon the filing of a petition for:

- (1) temporary child support; or
- (2) temporary custody of a child entitled to support.

(b) **In determining whether to grant or deny a petition for temporary custody of a child entitled to support, the court shall consider the wishes of the child who is the subject of the petition. The court shall interview the child in chambers, in an age appropriate manner as determined by the court, to ascertain the child's wishes.**

SECTION 6. IC 31-15-6-1 IS AMENDED TO READ AS



FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. A court in a proceeding under this article ~~may~~ **shall** appoint **an available:**

- (1) ~~a~~ guardian ad litem; **or**
- (2) ~~a~~ court appointed special advocate; ~~or~~
- (3) ~~both;~~

or both, for a child at any time involved in the proceeding.

SECTION 7. IC 31-17-2-8, AS AMENDED BY P.L.194-2017, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child **as determined under section 9 of this chapter**, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child's parent or parents;
 - (B) the child's sibling; and
 - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
 - (A) home;
 - (B) school; and
 - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by 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.
- (9) A designation in a power of attorney of:
 - (A) the child's parent; or
 - (B) a person found to be a de facto custodian of the child.

SECTION 8. IC 31-17-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) The court ~~may~~ **shall** interview the child in chambers, **in an age appropriate manner as determined by the court**, to ascertain the child's wishes.

(b) The court may permit counsel to be present at the interview. If counsel is present:



- (1) a record may be made of the interview; and
- (2) the interview may be made part of the record for purposes of appeal.

SECTION 9. IC 31-17-2-15, AS AMENDED BY P.L.3-2008, SECTION 237, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 15. In determining whether an award of joint legal custody under section 13 of this chapter would be in the best interest of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:

- (1) the fitness and suitability of each of the persons awarded joint custody;
- (2) whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare;
- (3) the wishes of the child **as determined under section 9 of this chapter**, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age;
- (4) whether the child has established a close and beneficial relationship with both of the persons awarded joint custody;
- (5) whether the persons awarded joint custody:
 - (A) live in close proximity to each other; and
 - (B) plan to continue to do so; and
- (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

SECTION 10. IC 31-17-2.2-1, AS ADDED BY P.L.50-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) A relocating individual must file a notice of the intent to move with the clerk of the court that:

- (1) issued the custody order or parenting time order; or
- (2) if subdivision (1) does not apply, has jurisdiction over the legal proceedings concerning the custody of or parenting time with a child;

and send a copy of the notice to any nonrelocating individual.

(b) Upon motion of a party, the court shall set the matter for a hearing to review and modify, if appropriate, a custody order, parenting time order, grandparent visitation order, or child support order. The court shall take into account the following in determining whether to modify a custody order, parenting time order, grandparent visitation order, or child support order:

- (1) The distance involved in the proposed change of residence.



(2) The hardship and expense involved for the nonrelocating individual to exercise parenting time or grandparent visitation.

(3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time and grandparent visitation arrangements, including consideration of the financial circumstances of the parties.

(4) Whether there is an established pattern of conduct by the relocating individual, including actions by the relocating individual to either promote or thwart a nonrelocating individual's contact with the child.

(5) The reasons provided by the:

(A) relocating individual for seeking relocation; and

(B) nonrelocating parent for opposing the relocation of the child.

(6) The wishes of the child. The court shall interview the child in chambers, in an age appropriate manner as determined by the court, to ascertain the child's wishes.

~~(6)~~ (7) Other factors affecting the best interest of the child.

(c) The court may award reasonable attorney's fees for a motion filed under this section in accordance with IC 31-15-10.

SECTION 11. IC 31-17-4-1, AS AMENDED BY P.L.68-2005, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) A parent not granted custody of the child is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

(b) The court ~~may~~ **shall** interview the child in chambers, **in an age appropriate manner as determined by the court**, to assist the court in determining the child's perception of whether parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

(c) The court may permit counsel to be present at the interview. If counsel is present:

(1) a record may be made of the interview; and

(2) the interview may be made part of the record for purposes of appeal.

SECTION 12. IC 31-17-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) The court may grant visitation rights if the court determines that visitation rights are in the best interests of the child.

(b) In determining the best interests of the child under this section,



1 the court may consider whether a grandparent has had or has attempted
2 to have meaningful contact with the child.

3 (c) The court ~~may~~ **shall** interview the child in chambers, **in an age**
4 **appropriate manner as determined by the court**, to assist the court
5 in determining the child's perception of whether visitation by a
6 grandparent is in the best interests of the child.

7 (d) The court may permit counsel to be present at the interview. If
8 counsel is present:

9 (1) a record may be made of the interview; and

10 (2) the interview may be made part of the record for purposes of
11 appeal.

12 SECTION 13. IC 31-17-6-1, AS AMENDED BY P.L.64-2016,
13 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2019]: Sec. 1. **(a) A court, in a proceeding under IC 31-17-2**
15 **or IC 31-17-4, shall appoint an available:**

16 **(1) guardian ad litem; or**

17 **(2) court appointed special advocate;**

18 **or both, for a child involved in the proceeding.**

19 **(b)** A court, in a proceeding under ~~IC 31-17-2; IC 31-17-4;~~ this
20 chapter, IC 31-17-7, IC 31-28-5, or IC 31-35-3.5, may **at any time**
21 appoint a guardian ad litem, a court appointed special advocate, or
22 both, for a child ~~at any time.~~ **involved in the proceeding.**

