

HOUSE/SENATE BILL No. _____

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-17-2-8, 31-17-2-13, 31-17-2-15, 31-17-2-21

Synopsis: This bill seeks to maintain the interaction and support of children by both parents following a dissolution of marriage. Provides a rebuttable presumption that the best interest of child would be served by maintaining an approximate 50/50 parenting time allocation and joint legal custody with each parent.

Effective: July 1, 2014.

Representative/Senator

First Regular Session 119th General Assembly (2014)

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.

HOUSE/SENATE BILL NO _____

A BILL FOR AN ACT to amend the Indiana Code concerning child custody

AN ACT RELATING TO THE legal custody and parenting time of children

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-17-2-8 IS AMENDED TO READ

AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) The court shall determine custody and enter a custody order in accordance with the best interests of the child.

(b) In determining the best interests of the child, there is ~~no presumption favoring either parent~~: **a rebuttable presumption that:**

- (1) **joint legal custody; and**
- (2) **approximate equal parenting time;**

are in the best interests of the child.

(c) **When a parent seeks to rebut the presumption under subsection (b)(2),** 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, 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.~~

(1) The capacity and disposition of the parents to provide love, affection, guidance, and protection to the child.

(2) The capacity and disposition of the parents to provide for the academic education and religious or spiritual training of the child.

(3) The capacity and disposition of the parents to provide food, clothing, shelter and medical care to the child.

(4) The willingness and ability of each of the parents to demonstrate facilitation and encouragement of a close and continuing relationship between the child and the other parent.

~~(5)~~ **(5) The mental and physical health of all individuals involved.**

(6) Evidence that a parent has made a false allegation against the other parent of:

- (A) abuse or neglect of the parties children; or**
- (B) harming or threatening to harm the other parent.**

(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) Any other factors that the court feels are relevant.

(d) The burden of overcoming the presumption under subsection (b) rests on the parent challenging the presumption. The presumption may be overcome only by clear and convincing evidence that the 50/50 parenting time plan would not be in the best interest of the child.

(e) If a court orders a mental health evaluation of either parent, the evaluation shall be required for both parents.

(f) If the court finds that the presumption under subsection (b) has been rebutted, the court shall include written findings in its order detailing the:

(1) factors relevant in rebutting the presumption under subsection (b); and

(2) any additional reasons that:

(A) joint legal custody is not;

(B) approximate equal parenting time is not; or

(C) both joint legal custody and approximate equal parenting time are not;

in the best interests of the child.

SECTION 2. IC 31-17-2-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Sec. 8.7. (a) During the pendency of any custody case and before entering a temporary custody order the court shall determine that when both parents were:

(1) residing in the familial residence before the petition for dissolution of marriage was filed; or

(2) not residing in the familial residence before the petition for dissolution of marriage was filed.

(b) After the court finds that:

(1) section (a)(1) applies the court shall presume that joint legal custody and an equal time share allocation between both parents and their children is in the best interest of the children; or

(2) section (a)(2) applies the court shall consider factors 1-4 under Section 8 of this Chapter and the best interest of the children in determining legal custody and parenting time;

(c) The burden of overcoming the presumption under subsection (b)(1) rests on the parent challenging the presumption. The presumption may be overcome only by clear and convincing evidence that joint legal custody and 50/50 parenting time would not be in the best interest of the child. The court shall consider factors 1-4 under Section 8 of this Chapter and the best interest of the children in its findings and determination of legal custody and parenting time.

SECTION 3. IC 31-17-2-10.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Sec. 10.3. Before a custody determination, a court shall require each parent to submit a parenting plan to the court stating parental preferences and agreements concerning

(1) each child's education, health care decisions, upbringing, and religious training;

and

(2) parenting time provisions including exchange location, parties responsible for transportation, and any deviation from the Indiana Parenting Time Guidelines holiday schedule and any other factors the parties wish to include.

The court may require the use of a form that it has acquired or developed which substantially meets the requirements of this section.

SECTION 4. IC 31-17-2-10.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Sec. 10.6. (a) After a child custody order is entered in which the parents share legal custody, the parents shall share decision making authority and responsibility regarding important decisions affecting the child's welfare.

(b) The court shall designate one parent as the custodial parent and the other as the non-custodial parent for purposes of the Indiana Parenting Time Guidelines.

(c) The parents shall agree upon a mediator or if unable to agree the court shall submit a striking panel to the parents. The court shall assign the cost of mediation proportional to each parents' income or enter an order using a different formula and stating specific findings to support the deviation.

(d) If parents are not able to agree to important decisions affecting the child's welfare, the custodial parent may make these decisions unilaterally. The non-custodial parent may choose to submit the issue to a mediator selected by the parties or the court as indicated in the custody and parenting time order. The parents shall comply with the mediator's decision unless either or both of the parents wish to contest the mediator's decision to the court.

(e) Any party filing an objection to the decision of a mediator shall be presumed responsible for paying costs associated with the objection unless a court finds cause to apportion any or all of the costs to any other party.

(f) If the court assesses attorney fees to either party the court shall state specific findings for the award of attorney fees.

SECTION 5. IC 31-17-2-13 Joint legal custody; finding required for award

Sec. 13. (a) The court ~~may~~ shall award legal custody of a child jointly ~~if~~ unless the court, after consideration of the factors listed under section 15 of this chapter, finds that an award of joint legal custody would not be in the best interest of the child.

(b) When a parent seeks to rebut the presumption under subsection (a), the court shall consider all relevant factors under section 15 of this chapter.

SECTION 6. IC 31-17-2-15 Joint legal custody; matters considered in making or modifying award

Sec. 15. (a) In determining whether to issue 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 resided together prior to filing for dissolution. ~~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, 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.~~

(b) The court may not modify a legal custody order unless:

- (1) the modification is in the best interests of the child; and**
- (2) there is a substantial change in one (1) or more of the factors the court shall consider in making the modification**

(c) In making a modification of legal custody the court shall 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, 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 7. IC 31-17-2-21 Modification of **parenting time** ~~child custody~~ order

Sec. 21. (a) The court may not modify a ~~child custody~~ **parenting time** order unless:

- ~~(1) the modification is in the best interests of the child; and~~
- ~~(2) there is a substantial change in one (1) or more of the factors that the court may shall consider under section 8 and, if applicable, section 8.5 of this chapter; or~~
- ~~(3) the factors listed under subsection (c)~~

(c) The shall consider the following factors when modifying a parenting time order;

- (1) The age and sex of the child.**
- (2) The wishes of the child's parent or parents.**
- (3) The wishes of the child, 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.**

(b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.

(c) The court shall not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described by section 8 and, if applicable, section 8.5 of this chapter.