

HOUSE BILL No. 1061

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-67; IC 31-14-13; IC 31-17-2.

Synopsis: Joint custody. Provides that a biological mother and biological father have joint legal custody unless otherwise provided by law. Requires a court to award joint legal custody unless it is in the child's best interest that sole legal custody be awarded. Provides that an award of joint legal custody creates a rebuttable presumption in favor of equal division of parenting time, and to rebut the presumption, a parent must prove that equal parenting time would be detrimental to the child.

Effective: July 1, 2024.

DeVon

January 8, 2024, read first time and referred to Committee on Judiciary.



Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

HOUSE BILL No. 1061

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 31-9-2-67, AS AMENDED BY P.L.95-2009,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2024]: Sec. 67. "Joint legal custody", for purposes of
4 IC 31-14-13, ~~IC 31-17-2-13~~, ~~IC 31-17-2-14~~, and ~~IC 31-17-2-15~~, means
5 that the persons awarded joint custody will share authority and
6 responsibility for the major decisions concerning the child's
7 upbringing, including the child's education, health care, and religious
8 training.

9 SECTION 2. IC 31-14-13-1, AS AMENDED BY P.L.25-2010,
10 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2024]: Sec. 1. ~~A biological mother of a child born out of~~
12 ~~wedlock has sole legal custody of the child, except as provided in~~
13 ~~IC 16-37-2-2.1, and A biological mother and biological father have~~
14 **joint legal custody**, unless a statute or court order provides otherwise
15 under the following:

- 16 (1) IC 12-26 (involuntary commitment of a child).
- 17 (2) IC 29-3 (guardianship and protective proceedings under the



- 1 probate code).
- 2 (3) IC 31-14 (custody of a child born outside of a marriage).
- 3 (4) IC 31-34 (child in need of services).
- 4 (5) IC 31-37 (delinquent child).
- 5 (6) IC 35-46 (offenses against the family).
- 6 (7) IC 35-50 (criminal sentences).
- 7 (8) An order by a court that has jurisdiction over the child.
- 8 SECTION 3. IC 31-14-13-2 IS AMENDED TO READ AS
- 9 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 2. **(a)** The court shall
- 10 ~~determine custody in accordance with~~ **award joint legal custody**
- 11 **unless the court finds that an award of sole legal custody would be**
- 12 **in** the best interests of the child. In determining the child's best
- 13 interests, there is not a presumption favoring either parent. The court
- 14 shall consider all relevant factors, including the following:
- 15 (1) The age and sex of the child.
- 16 (2) The wishes of the child's parents.
- 17 (3) The wishes of the child, with more consideration given to the
- 18 child's wishes if the child is at least fourteen (14) years of age.
- 19 (4) The interaction and interrelationship of the child with:
- 20 (A) the child's parents;
- 21 (B) the child's siblings; and
- 22 (C) any other person who may significantly affect the child's
- 23 best interest.
- 24 (5) The child's adjustment to home, school, and community.
- 25 (6) The mental and physical health of all individuals involved.
- 26 (7) Evidence of a pattern of domestic or family violence by either
- 27 parent.
- 28 (8) Evidence that the child has been cared for by a de facto
- 29 custodian, and if the evidence is sufficient, the court shall
- 30 consider the factors described in section 2.5(b) of this chapter.
- 31 **(b) An award of joint legal custody creates a rebuttable**
- 32 **presumption for an equal division of parenting time. To rebut this**
- 33 **presumption, a parent must prove, by a preponderance of the**
- 34 **evidence, that the equal division of parenting time would be**
- 35 **detrimental to the child.**
- 36 SECTION 4. IC 31-14-13-2.3 IS REPEALED [EFFECTIVE JULY
- 37 1, 2024]. Sec: ~~2.3:~~ (a) In a proceeding to which this chapter applies, the
- 38 court may award legal custody of a child jointly if the court finds that
- 39 an award of joint legal custody would be in the best interest of the
- 40 child.
- 41 ~~(b) An award of joint legal custody under this section does not~~
- 42 ~~require an equal division of physical custody of the child.~~



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

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

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

11 (3) the wishes of the child, with more consideration given to the
 12 child's wishes if the child is at least fourteen (14) years of age;

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

15 (5) whether the persons awarded joint legal custody:

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

17 (B) plan to continue to do so;

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

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

21 SECTION 5. IC 31-14-13-6 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 6. (a) The court may
 23 not modify a child custody order unless:

24 (1) modification is in the best interests of the child; and

25 (2) there is a substantial change in one (1) or more of the factors
 26 that the court may consider. ~~under section 2 and, if applicable,~~
 27 ~~section 2.5 of this chapter.~~

28 (b) For purposes of modification under this section, a
 29 noncustodial parent's move is considered a substantial change if
 30 the noncustodial parent:

31 (1) previously resided more than fifty (50) miles; and

32 (2) currently resides not more than fifty (50) miles;

33 away from the child.

34 SECTION 6. IC 31-17-2-8, AS AMENDED BY P.L.194-2017,
 35 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2024]: Sec. 8. (a) The court shall ~~determine custody and enter~~
 37 ~~a custody order in accordance with award joint legal custody unless~~
 38 **the court finds that an award of sole legal custody would be in the**
 39 **best interests of the child.** In determining the best interests of the child,
 40 there is no presumption favoring either parent. The court shall consider
 41 all relevant factors, including the following:

42 (1) The age and sex of the child.



- 1 (2) The wishes of the child's parent or parents.
 2 (3) The wishes of the child, with more consideration given to the
 3 child's wishes if the child is at least fourteen (14) years of age.
 4 (4) The interaction and interrelationship of the child with:
 5 (A) the child's parent or parents;
 6 (B) the child's sibling; and
 7 (C) any other person who may significantly affect the child's
 8 best interests.
 9 (5) The child's adjustment to the child's:
 10 (A) home;
 11 (B) school; and
 12 (C) community.
 13 (6) The mental and physical health of all individuals involved.
 14 (7) Evidence of a pattern of domestic or family violence by either
 15 parent.
 16 (8) Evidence that the child has been cared for by a de facto
 17 custodian, and if the evidence is sufficient, the court shall
 18 consider the factors described in section 8.5(b) of this chapter.
 19 (9) A designation in a power of attorney of:
 20 (A) the child's parent; or
 21 (B) a person found to be a de facto custodian of the child.
 22 **(b) An award of joint legal custody creates a rebuttable**
 23 **presumption for an equal division of parenting time. To rebut this**
 24 **presumption, a parent must prove, by a preponderance of the**
 25 **evidence, that the equal division of parenting time would be**
 26 **detrimental to the child.**
 27 SECTION 7. IC 31-17-2-13 IS REPEALED [EFFECTIVE JULY 1,
 28 2024]. ~~Sec. 13. The court may award legal custody of a child jointly if~~
 29 ~~the court finds that an award of joint legal custody would be in the best~~
 30 ~~interest of the child.~~
 31 SECTION 8. IC 31-17-2-14 IS REPEALED [EFFECTIVE JULY 1,
 32 2024]. ~~Sec. 14. An award of joint legal custody under section 13 of this~~
 33 ~~chapter does not require an equal division of physical custody of the~~
 34 ~~child.~~
 35 SECTION 9. IC 31-17-2-15 IS REPEALED [EFFECTIVE JULY 1,
 36 2024]. ~~Sec. 15. In determining whether an award of joint legal custody~~
 37 ~~under section 13 of this chapter would be in the best interest of the~~
 38 ~~child, the court shall consider it a matter of primary, but not~~
 39 ~~determinative, importance that the persons awarded joint custody have~~
 40 ~~agreed to an award of joint legal custody. The court shall also consider:~~
 41 ~~(1) the fitness and suitability of each of the persons awarded joint~~
 42 ~~custody;~~



- 1 (2) whether the persons awarded joint custody are willing and
- 2 able to communicate and cooperate in advancing the child's
- 3 welfare;
- 4 (3) the wishes of the child, with more consideration given to the
- 5 child's wishes if the child is at least fourteen (14) years of age;
- 6 (4) whether the child has established a close and beneficial
- 7 relationship with both of the persons awarded joint custody;
- 8 (5) whether the persons awarded joint custody:
- 9 (A) live in close proximity to each other; and
- 10 (B) plan to continue to do so; and
- 11 (6) the nature of the physical and emotional environment in the
- 12 home of each of the persons awarded joint custody.
- 13 SECTION 10. IC 31-17-2-21 IS AMENDED TO READ AS
- 14 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 21. (a) The court may
- 15 not modify a child custody order unless:
- 16 (1) the modification is in the best interests of the child; and
- 17 (2) there is a substantial change in one (1) or more of the factors
- 18 that the court may consider. ~~under section 8 and, if applicable,~~
- 19 ~~section 8.5 of this chapter.~~
- 20 (b) In making its determination, the court shall consider the factors
- 21 listed under section 8 of this chapter.
- 22 (c) The court shall not hear evidence on a matter occurring before
- 23 the last custody proceeding between the parties unless the matter
- 24 relates to a change in the factors relating to the best interests of the
- 25 child as described by section 8 and, if applicable, section 8.5 of this
- 26 chapter.
- 27 **(d) For purposes of modification under this section, a**
- 28 **noncustodial parent's move is considered a substantial change if**
- 29 **the noncustodial parent:**
- 30 **(1) previously resided more than fifty (50) miles; and**
- 31 **(2) currently resides not more than fifty (50) miles;**
- 32 **away from the child.**

