

# HOUSE BILL No. 1194

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Child custody and parenting time. Provides that if a court in a paternity or child custody proceeding does not award joint legal custody or joint physical custody of a child, the court shall enter findings of fact and conclusions of law citing clear and convincing evidence that awarding joint legal custody or joint physical custody is unreasonable and not in the best interest of the child. Provides for a court in a proceeding to modify custody to consider any substantial changes in the facts underlying a previous court decision not to award joint legal custody or joint physical custody. Provides that in allocating parenting time, there is a rebuttable presumption that it is in the best interests of the child for parenting time to be allocated equally or nearly equally between the child's custodial parent and the child's noncustodial parent. Provides that a finding by the court that a history of child abuse or neglect exists with respect to the child is sufficient to rebut the presumption.

**Effective:** July 1, 2021.

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**Judy, VanNatter, Lindauer**

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January 7, 2021, read first time and referred to Committee on Judiciary.

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First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## HOUSE BILL No. 1194

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, 2021]: 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 31-9-2-67.2 IS ADDED TO THE INDIANA CODE  
10 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
11 1, 2021]: **Sec. 67.2. "Joint physical custody", for purposes of**  
12 **IC 31-14-13 and IC 31-17-2, means physical custody of a child**  
13 **allocated equally or nearly equally between the child's parents or**  
14 **custodians.**

15 SECTION 3. IC 31-14-13-2.3, AS ADDED BY P.L.95-2009,  
16 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2021]: Sec. 2.3. (a) In a proceeding to which this chapter



1 applies, the court may award legal custody of a child jointly if the court  
 2 finds that an award of joint legal custody would be in the best interest  
 3 of the child.

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

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

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

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

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

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

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

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

22 (B) plan to continue to do so;

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

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

26 **(c) If the court does not award joint legal custody or joint  
 27 physical custody of the child, the court shall enter findings of fact  
 28 and conclusions of law citing clear and convincing evidence that  
 29 awarding joint legal custody or joint physical custody is  
 30 unreasonable and not in the best interest of the child.**

31 SECTION 4. IC 31-14-13-6 IS AMENDED TO READ AS  
 32 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 6. The court may not  
 33 modify a child custody order unless:

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

35 (2) there is a substantial change in:

36 **(A) one (1) or more of the factors that the court may consider  
 37 under ~~section sections~~ sections 2, 2.3(b), and, if applicable, ~~section 2.5~~  
 38 of this chapter; and**

39 **(B) if applicable, the facts underlying the court's finding of  
 40 clear and convincing evidence under section 2.3(c) of this  
 41 chapter.**

42 SECTION 5. IC 31-14-13-9 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 9. In a proceeding for  
 2 a custody modification, the court may not hear evidence on a matter  
 3 occurring before the last custody proceeding between the parties unless  
 4 the matter relates to a change in the factors relating to the best interests  
 5 of the child as described in section 2 and, if applicable, section 2.5 of  
 6 this chapter. **described in section 6(2) of this chapter.**

7 SECTION 6. IC 31-14-14-1, AS AMENDED BY P.L.223-2019,  
 8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 2021]: Sec. 1. (a) A noncustodial parent is entitled to  
 10 reasonable parenting time rights unless the court finds, after a hearing,  
 11 that parenting time might:

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

14 (b) The court may interview the child in chambers to assist the court  
 15 in determining the child's perception of whether parenting time by the  
 16 noncustodial parent might endanger the child's physical health or  
 17 significantly impair the child's emotional development.

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

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

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

24 (d) Except as provided in subsection (e), if a court grants parenting  
 25 time rights to a person who has been convicted of:

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

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

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

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

34 within the previous five (5) years, the court shall order that the  
 35 parenting time with the child must be supervised.

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

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

41 **(g) If the court does not make a finding that parenting time by**  
 42 **the noncustodial parent might endanger the child's physical health**



1 and well-being or significantly impair the child's emotional  
 2 development as described in subsection (a), there is a rebuttable  
 3 presumption that it is in the best interests of the child for parenting  
 4 time to be allocated equally or nearly equally between the child's  
 5 custodial parent and the child's noncustodial parent. A finding by  
 6 the court that a history of child abuse or neglect exists with respect  
 7 to the child is sufficient to rebut the presumption under this  
 8 subsection.

9 SECTION 7. IC 31-17-2-13 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 13. (a) The court may  
 11 award legal custody of a child jointly if the court finds that an award of  
 12 joint legal custody would be in the best interest of the child.

13 **(b) If the court does not award joint legal custody or joint**  
 14 **physical custody of the child, the court shall enter findings of fact**  
 15 **and conclusions of law citing clear and convincing evidence that**  
 16 **awarding joint legal custody or joint physical custody is**  
 17 **unreasonable and not in the best interest of the child.**

18 SECTION 8. IC 31-17-2-14 IS REPEALED [EFFECTIVE JULY 1,  
 19 2021]. ~~Sec. 14. An award of joint legal custody under section 13 of this~~  
 20 ~~chapter does not require an equal division of physical custody of the~~  
 21 ~~child.~~

22 SECTION 9. IC 31-17-2-15, AS AMENDED BY P.L.3-2008,  
 23 SECTION 237, IS AMENDED TO READ AS FOLLOWS  
 24 [EFFECTIVE JULY 1, 2021]: Sec. 15. In determining whether an  
 25 award of joint legal custody under section 13 of this chapter would be  
 26 in the best interest of the child, the court shall consider: ~~it a matter of~~  
 27 ~~primary, but not determinative, importance that the persons awarded~~  
 28 ~~joint custody have agreed to an award of joint legal custody. The court~~  
 29 ~~shall also consider:~~

- 30 (1) the fitness and suitability of each of the persons awarded joint  
 31 custody;
- 32 (2) whether the persons awarded joint custody are willing and  
 33 able to communicate and cooperate in advancing the child's  
 34 welfare;
- 35 (3) the wishes of the child, with more consideration given to the  
 36 child's wishes if the child is at least fourteen (14) years of age;
- 37 (4) whether the child has established a close and beneficial  
 38 relationship with both of the persons awarded joint custody;
- 39 (5) whether the persons awarded joint custody:
- 40 (A) live in close proximity to each other; and
- 41 (B) plan to continue to do so; and
- 42 (6) the nature of the physical and emotional environment in the



1 home of each of the persons awarded joint custody.

2 SECTION 10. IC 31-17-2-21 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 21. (a) The court may  
4 not modify a child custody order unless:

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

6 (2) there is a substantial change in:

7 (A) one (1) or more of the factors that the court may consider  
8 under ~~section sections~~ 8, 15, and, if applicable, ~~section~~ 8.5 of  
9 this chapter; and

10 (B) **if applicable, the facts underlying the evidence cited by**  
11 **the court under section 13(b) of this chapter.**

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

14 (c) The court shall not hear evidence on a matter occurring before  
15 the last custody proceeding between the parties unless the matter  
16 relates to a change ~~in the factors relating to the best interests of the~~  
17 ~~child as described by section 8 and, if applicable, section 8.5 of this~~  
18 ~~chapter. described in subsection (a)(2).~~

19 SECTION 11. IC 31-17-4-1, AS AMENDED BY P.L.223-2019,  
20 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
21 JULY 1, 2021]: Sec. 1. (a) Subject to subsections (d) and (e), a parent  
22 not granted custody of the child is entitled to reasonable parenting time  
23 rights unless the court finds, after a hearing, that parenting time by the  
24 noncustodial parent might endanger the child's physical health or  
25 significantly impair the child's emotional development.

26 (b) The court may interview the child in chambers to assist the court  
27 in determining the child's perception of whether parenting time by the  
28 noncustodial parent might endanger the child's physical health or  
29 significantly impair the child's emotional development.

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

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

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

35 (d) Except as provided in subsection (e), if a court grants parenting  
36 time rights to a person who has been convicted of:

37 (1) child molesting (IC 35-42-4-3); or

38 (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));

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

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



1           (1) child molesting (IC 35-42-4-3); or  
2           (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));  
3       within the previous five (5) years, the court shall order that the  
4       parenting time with the child must be supervised.  
5       **(f) If the court does not make a finding that parenting time by**  
6       **the noncustodial parent might endanger the child's physical health**  
7       **or significantly impair the child's emotional development as**  
8       **described in subsection (a), there is a rebuttable presumption that**  
9       **it is in the best interests of the child for parenting time to be**  
10       **allocated equally or nearly equally between the child's custodial**  
11       **parent and the child's noncustodial parent. A finding by the court**  
12       **that a history of child abuse or neglect exists with respect to the**  
13       **child is sufficient to rebut the presumption under this subsection.**

