

HOUSE BILL No. 1248

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-67.1; IC 31-14; IC 31-17.

Synopsis: Physical custody and parenting time. Adds a rebuttable presumption in child custody proceedings that: (1) joint physical custody is in the best interests of the child; and (2) equal parenting time is in the best interests of the child. Provides that the default joint physical custody or parenting time schedule is to alternate weekly physical custody of the child, unless the parents submit an alternative schedule that is approved by the court.

Effective: July 1, 2021.

VanNatter, Karickhoff, Torr, Judy

January 14, 2021, read first time and referred to Committee on Judiciary.



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. 1248

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 31-9-2-67.1 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2021]: **Sec. 67.1. "Joint physical custody", for purposes of**
4 **IC 31-14 and IC 31-17, means that each parent or custodian has**
5 **equal, or nearly equal, periods of physical custody of the child.**
6 SECTION 2. IC 31-14-13-2 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. **(a)** The court shall
8 determine custody in accordance with the best interests of the child. In
9 determining the child's best interests, there is not a presumption
10 favoring either parent, **but there is a rebuttable presumption that**
11 **joint physical custody is in the best interests of the child.** The court
12 shall consider all relevant factors, including the following:
13 (1) The age and sex of the child.
14 (2) The wishes of the child's parents.
15 (3) The wishes of the child, with more consideration given to the
16 child's wishes if the child is at least fourteen (14) years of age.
17 (4) The interaction and interrelationship of the child with:



- 1 (A) the child's parents;
 2 (B) the child's siblings; and
 3 (C) any other person who may significantly affect the child's
 4 best interest.
- 5 (5) The child's adjustment to home, school, and community.
 6 (6) The mental and physical health of all individuals involved.
 7 (7) Evidence of a pattern of domestic or family violence by either
 8 parent.
 9 (8) Evidence that the child has been cared for by a de facto
 10 custodian, and if the evidence is sufficient, the court shall
 11 consider the factors described in section 2.5(b) of this chapter.
- 12 **(b) If the court enters an order for joint physical custody, the**
 13 **parents shall alternate weekly physical custody of the child, unless**
 14 **the parents submit an alternative schedule that is approved by the**
 15 **court.**
- 16 SECTION 3. IC 31-14-14-1, AS AMENDED BY P.L.223-2019,
 17 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2021]: Sec. 1. (a) A noncustodial parent is entitled to
 19 reasonable parenting time rights unless the court finds, after a hearing,
 20 that parenting time might:
- 21 (1) endanger the child's physical health and well-being; or
 22 (2) significantly impair the child's emotional development.
- 23 (b) The court may interview the child in chambers to assist the court
 24 in determining the child's perception of whether parenting time by the
 25 noncustodial parent might endanger the child's physical health or
 26 significantly impair the child's emotional development.
- 27 (c) In a hearing under subsection (a), there is a rebuttable
 28 presumption that a person who has been convicted of:
- 29 (1) child molesting (IC 35-42-4-3); or
 30 (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));
 31 might endanger the child's physical health and well-being or
 32 significantly impair the child's emotional development.
- 33 (d) Except as provided in subsection (e), if a court grants parenting
 34 time rights to a person who has been convicted of:
- 35 (1) child molesting (IC 35-42-4-3); or
 36 (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));
 37 there is a rebuttable presumption that the parenting time with the child
 38 must be supervised.
- 39 (e) If a court grants parenting time rights to a person who has been
 40 convicted of:
- 41 (1) child molesting (IC 35-42-4-3); or
 42 (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));



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

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

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

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

8 **(g) If the court does not make a finding that parenting time by**
 9 **the noncustodial parent might endanger the child's physical health**
 10 **and well-being or significantly impair the child's emotional**
 11 **development as described in subsection (a), there is a rebuttable**
 12 **presumption that it is in the best interests of the child for the**
 13 **amount of parenting time by each parent to be as equal as possible.**

14 **(h) The default parenting time schedule is for parenting time to**
 15 **alternate weekly between the parents, unless the parents submit an**
 16 **alternative schedule that is approved by the court.**

17 SECTION 4. IC 31-17-2-8, AS AMENDED BY P.L.194-2017,
 18 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2021]: Sec. 8. **(a)** The court shall determine custody and enter
 20 a custody order in accordance with the best interests of the child. In
 21 determining the best interests of the child, there is no presumption
 22 favoring either parent, **but there is a rebuttable presumption that**
 23 **joint physical custody is in the best interests of the child.** The court
 24 shall consider all relevant factors, including the following:

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

26 (2) The wishes of the child's parent or parents.

27 (3) The wishes of the child, with more consideration given to the
 28 child's wishes if the child is at least fourteen (14) years of age.

29 (4) The interaction and interrelationship of the child with:

30 (A) the child's parent or parents;

31 (B) the child's sibling; and

32 (C) any other person who may significantly affect the child's
 33 best interests.

34 (5) The child's adjustment to the child's:

35 (A) home;

36 (B) school; and

37 (C) community.

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

39 (7) Evidence of a pattern of domestic or family violence by either
 40 parent.

41 (8) Evidence that the child has been cared for by a de facto
 42 custodian, and if the evidence is sufficient, the court shall



1 consider the factors described in section 8.5(b) of this chapter.

2 (9) A designation in a power of attorney of:

3 (A) the child's parent; or

4 (B) a person found to be a de facto custodian of the child.

5 **(b) If the court enters an order for joint physical custody, the**
 6 **parents shall alternate physical custody of the child weekly, unless**
 7 **the parents submit an alternative schedule that is approved by the**
 8 **court.**

9 SECTION 5. IC 31-17-4-1, AS AMENDED BY P.L.223-2019,
 10 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2021]: Sec. 1. (a) Subject to subsections (d) and (e), a parent
 12 not granted custody of the child is entitled to reasonable parenting time
 13 rights unless the court finds, after a hearing, that parenting time by the
 14 noncustodial parent might endanger the child's physical health or
 15 significantly impair the child's emotional development.

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

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

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

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

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

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

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

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

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

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

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

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

37 **(f) If the court does not make a finding that parenting time by**
 38 **the noncustodial parent might endanger the child's physical health**
 39 **or significantly impair the child's emotional development as**
 40 **described in subsection (a), there is a rebuttable presumption that**
 41 **it is in the best interests of the child for the amount of parenting**
 42 **time by each parent to be as equal as possible.**



1 **(g) The default parenting time schedule is for parenting time to**
2 **alternate weekly between the parents, unless the parents submit an**
3 **alternative schedule that is approved by the court.**

