

HOUSE BILL No. 1296

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 a court, in determining custody of a child, shall consider evidence that relocation of the child to an area outside the jurisdiction of the court is not in the child's best interests, unless written consent to the relocation is provided to the court by: (1) both parents of the child; and (2) the child's de facto custodian, if the court finds that the child has been cared for by a de facto custodian. 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. Provides that a noncustodial parent is entitled to reasonable parenting time rights unless the court finds by clear and convincing evidence that parenting time might: (1) endanger the child's physical health and well-being; or (2) significantly impair the child's emotional development. Provides that if a court finds that granting parenting time to a noncustodial parent is not in the child's best interests, the court shall document the court's findings of fact and conclusions in writing and provide the written findings and conclusions to: (1) both parents of the child; and (2) the de facto custodian of the child, if the court finds that the child has been cared for by a de facto custodian. Provides that a court shall not restrict a parent's parenting time rights unless the court finds by clear and convincing evidence that the parenting time might endanger the child's physical health or significantly impair the child's emotional development. Provides that
(Continued next page)

Effective: July 1, 2023.

VanNatter

January 11, 2023, read first time and referred to Committee on Judiciary.



Digest Continued

a court shall (rather than may, under current law) provide in a parenting time order or modification of a parenting time order for a security, bond, or other guarantee to secure enforcement of the parenting time order. Provides that a noncustodial parent may make up parenting time missed as the result of: (1) the noncustodial parent's: (A) active deployment in the armed forces of the United States; (B) active service in a state, county, or local law enforcement agency; (C) active service in a fire department; or (D) employment related trips or training; or (2) other factors the court considers to have directly impeded participation of the parent in parenting time. Provides that a noncustodial parent who is barred by a custodial parent from exercising parenting time rights granted to the noncustodial parent by a court may file for an injunction against the custodial parent in a court that has jurisdiction over a child custody proceeding with regard to the child. Provides that if a court: (1) issues an injunction or temporary restraining order with regard to a custodial parent's denial of court ordered parenting time to the child's noncustodial parent; and (2) finds that the custodial parent has, without justifiable cause, violated the injunction or temporary restraining order; the court may modify custody of the child.



Introduced

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1296

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, 2023]: **Sec. 67.1. "Joint physical custody", for purposes of**
4 **IC 31-14 and IC 31-17, means that each parent or custodian of a**
5 **child has equal, or nearly equal, periods of physical custody of the**
6 **child.**

7 SECTION 2. IC 31-14-13-2 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. **(a)** The court shall
9 determine custody in accordance with the best interests of the child. In
10 determining the child's best interests, there is not a presumption
11 favoring either parent, **but there is a rebuttable presumption that**
12 **joint physical custody is in the best interests of the child.** The court
13 shall consider all relevant factors, including the following:

- 14 (1) The age and sex of the child.
15 (2) The wishes of the child's parents.

2023

IN 1296—LS 6291/DI 119



- 1 (3) The wishes of the child, with more consideration given to the
 2 child's wishes if the child is at least fourteen (14) years of age.
 3 (4) The interaction and interrelationship of the child with:
 4 (A) the child's parents;
 5 (B) the child's siblings; and
 6 (C) any other person who may significantly affect the child's
 7 best ~~interest~~: **interests**.
 8 (5) The child's adjustment to home, school, and community.
 9 (6) The mental and physical health of all individuals involved.
 10 (7) Evidence of a pattern of domestic or family violence by either
 11 parent.
 12 **(8) Evidence that relocation of the child to an area outside the**
 13 **jurisdiction of the court under this chapter is not in the child's**
 14 **best interests, unless written consent to relocation of the child**
 15 **to an area outside the jurisdiction of the court is provided to**
 16 **the court by:**
 17 **(A) both parents of the child; and**
 18 **(B) the child's de facto custodian, if the court finds under**
 19 **section 2.5 of this chapter that the child has been cared for**
 20 **by a de facto custodian.**
 21 ~~(8)~~ **(9)** Evidence that the child has been cared for by a de facto
 22 custodian, and if the evidence is sufficient, the court shall
 23 consider the factors described in section 2.5(b) of this chapter.
 24 **(b) If the court enters an order for joint physical custody, the**
 25 **parents shall alternate weekly physical custody of the child, unless**
 26 **the parents submit an alternative schedule that is approved by the**
 27 **court.**
 28 SECTION 3. IC 31-14-14-1, AS AMENDED BY P.L.223-2019,
 29 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2023]: Sec. 1. (a) A noncustodial parent is entitled to
 31 reasonable parenting time rights unless the court finds after a hearing,
 32 **by clear and convincing evidence**, that parenting time might:
 33 (1) endanger the child's physical health and well-being; or
 34 (2) significantly impair the child's emotional development.
 35 (b) The court may interview the child in chambers to assist the court
 36 in determining the child's perception of whether parenting time by the
 37 noncustodial parent might endanger the child's physical health or
 38 significantly impair the child's emotional development.
 39 (c) In a hearing under subsection (a), there is a rebuttable
 40 presumption that a person who has been 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 might endanger the child's physical health and well-being or
2 significantly impair the child's emotional development.

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

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

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

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

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

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

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

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

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

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

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

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

26 **(h) If the court finds that granting parenting time to a**
27 **noncustodial parent is not in the child's best interests, the court**
28 **shall document the court's findings of fact and conclusions in**
29 **writing and provide the written findings and conclusions to:**

30 **(1) both parents of the child; and**

31 **(2) the child's de facto custodian, if the court finds under**
32 **IC 31-14-13-2.5 that the child has been cared for by a de facto**
33 **custodian.**

34 **(i) The default parenting time schedule is for parenting time to**
35 **alternate weekly between the parents, unless the parents submit an**
36 **alternative schedule that is approved by the court.**

37 SECTION 4. IC 31-14-14-2, AS AMENDED BY P.L.68-2005,
38 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2023]: Sec. 2. The court may modify an order granting or
40 denying parenting time rights whenever modification would serve the
41 best interests of the child. **However, the court shall not restrict a**
42 **parent's parenting time rights unless the court finds by clear and**



1 **convincing evidence that the parenting time might endanger the**
 2 **child's physical health or significantly impair the child's emotional**
 3 **development.**

4 SECTION 5. IC 31-14-14-2.5, AS AMENDED BY P.L.68-2005,
 5 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2023]: Sec. 2.5. The court ~~may~~ **shall** provide in:

7 (1) a parenting time order; or
 8 (2) a modification of a parenting time order;
 9 for ~~the a~~ security, bond, or other guarantee that is satisfactory to secure
 10 enforcement of the parenting time order.

11 SECTION 6. IC 31-14-14-4, AS AMENDED BY P.L.68-2005,
 12 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2023]: Sec. 4. A noncustodial parent who misses parenting
 14 time as the result of:

15 (1) participation in: ~~an activity of:~~

16 ~~(A) an activity of~~ the Indiana National Guard; ~~or~~

17 ~~(B) an activity of~~ a reserve component of the armed forces
 18 of the United States;

19 **(C) an active deployment in the armed forces of the United**
 20 **States;**

21 **(D) active service in a state, county, or local law**
 22 **enforcement agency;**

23 **(E) active service in a fire department; or**

24 **(F) an employment related trip or training; or**

25 **(2) other factors the court considers to have directly impeded**
 26 **participation of the parent in parenting time with the child;**
 27 may make up the lost parenting time as provided in IC 10-16-7-22.

28 SECTION 7. IC 31-14-15-1, AS AMENDED BY P.L.68-2005,
 29 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2023]: Sec. 1. A noncustodial parent who:

31 (1) has been granted parenting time rights with a child who lives
 32 with the custodial parent;

33 (2) regularly pays support ordered by a court for the child; and

34 (3) is barred by a custodial parent from exercising parenting time
 35 rights ordered for the noncustodial parent and the child;

36 may file, in the court that has jurisdiction over the paternity action **or**
 37 **jurisdiction over a child custody proceeding with regard to the**
 38 **child under IC 31-17-2-1**, an application for an injunction against the
 39 custodial parent under Rule 65 of the Indiana Rules of Trial Procedure.

40 SECTION 8. IC 31-14-15-4, AS AMENDED BY P.L.68-2005,
 41 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2023]: Sec. 4. A court that finds a violation without justifiable



1 cause by a custodial parent of an injunction or a temporary restraining
2 order issued under this chapter (or IC 31-6-6.1-12.1 before its repeal):

3 (1) shall find the custodial parent in contempt of court;

4 (2) shall order the exercise of parenting time that was not
5 exercised due to the violation under this section (or
6 IC 31-6-6.1-12.1(e) before its repeal) at a time the court considers
7 compatible with the schedules of the noncustodial parent and the
8 child;

9 (3) may order payment by the custodial parent of reasonable
10 attorney's fees, costs, and expenses to the noncustodial parent;

11 ~~and~~

12 (4) may order the custodial parent to perform community
13 restitution or service without compensation in a manner specified
14 by the court; **and**

15 **(5) may modify custody of the child under IC 31-14-13-8.**

16 SECTION 9. IC 31-17-2-8, AS AMENDED BY P.L.194-2017,
17 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2023]: Sec. 8. **(a)** The court shall determine custody and enter
19 a custody order in accordance with the best interests of the child. In
20 determining the best interests of the child, there is no presumption
21 favoring either parent, **but there is a rebuttable presumption that**
22 **joint physical custody is in the best interests of the child.** The court
23 shall consider all relevant factors, including the following:

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

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

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

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

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

30 (B) the child's sibling; and

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

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

34 (A) home;

35 (B) school; and

36 (C) community.

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

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

40 **(8) Evidence that relocation of the child to an area outside the**
41 **jurisdiction of the court under this chapter is not in the child's**
42 **best interests, unless written consent for relocation of the**



1 child to an area outside the jurisdiction of the court is
2 provided to the court by:

3 (A) both parents of the child; and

4 (B) the child's de facto custodian, if the court finds under
5 section 8.5 of this chapter that the child has been cared for
6 by a de facto custodian.

7 ~~(8)~~ (9) Evidence that the child has been cared for by a de facto
8 custodian, and if the evidence is sufficient, the court shall
9 consider the factors described in section 8.5(b) of this chapter.

10 ~~(9)~~ (10) A designation in a power of attorney of:

11 (A) the child's parent; or

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

13 (b) If the court enters an order for joint physical custody, the
14 parents shall alternate physical custody of the child weekly, unless
15 the parents submit an alternative schedule that is approved by the
16 court.

17 SECTION 10. IC 31-17-4-1, AS AMENDED BY P.L.146-2021,
18 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2023]: Sec. 1. (a) Subject to subsections (d) and (e) and
20 subject to section 1.1 of this chapter, a parent not granted custody of
21 the child is entitled to reasonable parenting time rights unless the court
22 finds after a hearing, **by clear and convincing evidence**, that parenting
23 time by the noncustodial parent might endanger the child's physical
24 health or significantly impair the child's emotional development.

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

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

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

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

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

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

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

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

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

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



1 (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));
 2 within the previous five (5) years, the court shall order that the
 3 parenting time with the child must be supervised.

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

10 **(g) If the court finds that granting parenting time to a**
 11 **noncustodial parent is not in the child's best interests, the court**
 12 **shall document the court's findings of fact and conclusions in**
 13 **writing and provide the written findings and conclusions to:**

14 **(1) both parents of the child; and**

15 **(2) the child's de facto custodian, if the court finds under**
 16 **IC 31-17-2-8.5 that the child has been cared for by a de facto**
 17 **custodian.**

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

21 SECTION 11. IC 31-17-4-2, AS AMENDED BY P.L.68-2005,
 22 SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2023]: Sec. 2. The court may modify an order granting or
 24 denying parenting time rights whenever modification would serve the
 25 best interests of the child. However, the court shall not restrict a
 26 parent's parenting time rights unless the court finds **by clear and**
 27 **convincing evidence** that the parenting time might endanger the child's
 28 physical health or significantly impair the child's emotional
 29 development.

30 SECTION 12. IC 31-17-4-2.5, AS AMENDED BY P.L.68-2005,
 31 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2023]: Sec. 2.5. The court ~~may~~ **shall** provide in:

33 (1) a parenting time order; or

34 (2) a modification to a parenting time order;

35 for ~~the~~ **a** security, bond, or other guarantee that is satisfactory to the
 36 court to secure enforcement of the provisions of the parenting time
 37 order.

38 SECTION 13. IC 31-17-4-4, AS AMENDED BY P.L.68-2005,
 39 SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2023]: Sec. 4. A noncustodial parent who:

41 (1) has been granted parenting time rights with a child who lives
 42 with the custodial parent;



1 (2) regularly pays support ordered by a court for the child; and
 2 (3) is barred by a custodial parent from exercising parenting time
 3 rights ordered for the noncustodial parent and the child;
 4 may file, in the court that has jurisdiction over the dissolution of
 5 marriage **or jurisdiction over a child custody proceeding with**
 6 **regard to the child under IC 31-17-2-1**, an application for an
 7 injunction against the custodial parent under Rule 65 of the Indiana
 8 Rules of Trial Procedure.

9 SECTION 14. IC 31-17-4-8, AS AMENDED BY P.L.68-2005,
 10 SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2023]: Sec. 8. A court that finds an intentional violation
 12 without justifiable cause by a custodial parent of an injunction or a
 13 temporary restraining order issued under this chapter (or
 14 IC 31-1-11.5-26 before its repeal):

- 15 (1) shall find the custodial parent in contempt of court;
 16 (2) shall order the exercise of parenting time that was not
 17 exercised due to the violation under this section at a time the
 18 court considers compatible with the schedules of the noncustodial
 19 parent and the child;
 20 (3) may order payment by the custodial parent of reasonable
 21 attorney's fees, costs, and expenses to the noncustodial parent;
 22 **and**
 23 (4) may order the custodial parent to perform community
 24 restitution or service without compensation in a manner specified
 25 by the court; **and**

26 **(5) may modify custody of the child under IC 31-17-2-22.**

27 SECTION 15. IC 31-17-4-10, AS AMENDED BY P.L.68-2005,
 28 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2023]: Sec. 10. A noncustodial parent who misses parenting
 30 time as the result of:

- 31 (1) participation in: ~~an activity of:~~
 32 ~~(A) an activity of~~ the Indiana National Guard; ~~or~~
 33 ~~(B) an activity of~~ a reserve component of the armed forces
 34 of the United States;
 35 **(C) an active deployment in the armed forces of the United**
 36 **States;**
 37 **(D) active service in a state, county, or local law**
 38 **enforcement agency;**
 39 **(E) active service in a fire department; or**
 40 **(F) an employment related trip or training; or**
 41 (2) other factors the court considers to have directly impeded
 42 participation of the parent in parenting time with the child;



1 may make up the lost parenting time as provided in IC 10-16-7-22.

