

## HOUSE BILL No. 1306

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 31-9-2-67.5; IC 31-14-13; IC 31-17-2.

**Synopsis:** Presumption in favor of joint physical custody. Provides that an award of joint legal custody of a child creates a rebuttable presumption in favor of awarding joint physical custody of the child to the individuals who are awarded joint legal custody. 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 in favor of joint physical custody. Requires a court that: (1) awards joint legal custody of a child; but (2) does not award joint physical custody of the child to the individuals who are awarded joint legal custody; to cite clear and convincing evidence that awarding joint physical custody to the individuals is unreasonable and not in the best interest of the child. Eliminates a requirement that a court consider agreement between the parties in a custody proceeding to share joint legal custody to be a primary, but not determinative, factor in determining whether awarding joint legal custody is in the best interest of a child.

**Effective:** July 1, 2019.

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**Judy, Lindauer**

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January 14, 2019, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## HOUSE BILL No. 1306

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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 31-9-2-67.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2019]: Sec. 67.5. **"Joint physical custody"**, for purposes of  
4 IC 31-14-13 and IC 31-17-2, means physical custody of a child  
5 allocated equally, or as equally as practicable, between the child's  
6 parents or custodians.

7 SECTION 2. IC 31-14-13-2.3, AS ADDED BY P.L.95-2009,  
8 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
9 JULY 1, 2019]: Sec. 2.3. (a) In a proceeding to which this chapter  
10 applies, the court may award legal custody of a child jointly if the court  
11 finds that an award of joint legal custody would be in the best interest  
12 of the child.

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

15 (c) In determining whether an award of joint legal custody under  
16 this section would be in the best interest of the child, the court shall  
17 consider: it a matter of primary, but not determinative, importance that



1       the persons awarded joint legal custody have agreed to an award of  
 2       joint legal custody. The court shall also consider:

- 3           (1) the fitness and suitability of each of the persons awarded joint  
 4           legal custody;
- 5           (2) whether the persons awarded joint legal custody are willing  
 6           and able to communicate and cooperate in advancing the child's  
 7           welfare;
- 8           (3) the wishes of the child, with more consideration given to the  
 9           child's wishes if the child is at least fourteen (14) years of age;
- 10           (4) whether the child has established a close and beneficial  
 11           relationship with both of the persons awarded joint legal custody;
- 12           (5) whether the persons awarded joint legal custody:
  - 13           (A) live in close proximity to each other; and
  - 14           (B) plan to continue to do so;
- 15           (6) the nature of the physical and emotional environment in the  
 16           home of each of the persons awarded joint legal custody; and
- 17           (7) whether there is a pattern of domestic or family violence.

18       SECTION 3. IC 31-14-13-2.4 IS ADDED TO THE INDIANA  
 19       CODE AS A NEW SECTION TO READ AS FOLLOWS  
 20       [EFFECTIVE JULY 1, 2019]: **Sec. 2.4. (a) An award of joint legal  
 21       custody under section 2.3 of this chapter creates a rebuttable  
 22       presumption in favor of awarding joint physical custody of the  
 23       child to the individuals who are awarded joint legal custody.**

24       **(b) A finding by the court that a history of child abuse or neglect  
 25       exists with respect to the child is sufficient to rebut the  
 26       presumption under subsection (a).**

27       **(c) If a court:**

- 28           **(1) awards joint legal custody of a child under section 2.3 of  
 29           this chapter; and**
- 30           **(2) does not award joint physical custody of the child to the  
 31           individuals who are awarded joint legal custody;**

32       **the court shall cite clear and convincing evidence that awarding  
 33       joint physical custody to the individuals is unreasonable and not in  
 34       the best interest of the child.**

35       SECTION 4. IC 31-17-2-14 IS AMENDED TO READ AS  
 36       FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 14. (a) An award of  
 37       joint legal custody under section 13 of this chapter does not require an  
 38       equal division of physical custody of the child: creates a rebuttable  
 39       presumption in favor of awarding joint physical custody of the  
 40       child to the individuals who are awarded joint legal custody.**

41       **(b) A finding by the court that a history of child abuse or neglect  
 42       exists with respect to the child is sufficient to rebut the**



1       **presumption under subsection (a).**

2       **(c) If a court:**

3           **(1) awards joint legal custody of a child under section 13 of**

4           **this chapter; and**

5           **(2) does not award joint physical custody of the child to the**

6           **individuals who are awarded joint legal custody;**

7       **the court shall cite clear and convincing evidence that awarding**

8       **joint physical custody to the individuals is unreasonable and not in**

9       **the best interest of the child.**

10       SECTION 5. IC 31-17-2-15, AS AMENDED BY P.L.3-2008,  
11       SECTION 237, IS AMENDED TO READ AS FOLLOWS  
12       [EFFECTIVE JULY 1, 2019]: Sec. 15. In determining whether an  
13       award of joint legal custody under section 13 of this chapter would be  
14       in the best interest of the child, the court shall consider: **it a matter of**  
15       **primary, but not determinative, importance that the persons awarded**  
16       **joint custody have agreed to an award of joint legal custody. The court**  
17       **shall also consider:**

18           (1) the fitness and suitability of each of the persons awarded joint  
19           custody;

20           (2) whether the persons awarded joint custody are willing and  
21           able to communicate and cooperate in advancing the child's  
22           welfare;

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

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

27           (5) whether the persons awarded joint custody:

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

29              (B) plan to continue to do so; and

30           (6) the nature of the physical and emotional environment in the  
31           home of each of the persons awarded joint custody.

