

# 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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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

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) (b) 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~~



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

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

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

**(b) 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 under subsection (a).**

**(c) If a court:**

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

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

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

**(b) A finding by the court that a history of child abuse or neglect 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.

