

# HOUSE BILL No. 1426

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-36-2-3; IC 23-14; IC 25-15-9-18; IC 29-2-16.1; IC 31-17-2-17; IC 36-2-14-6.

**Synopsis:** Issues relating to the death of a minor. Provides that if a minor child dies, the parent awarded: (1) sole legal custody; or (2) primary physical custody (if joint legal custody was awarded to the parents); is the parent who may decide issues regarding the disposition of the child's body, including autopsy, cremation, funeral arrangements, or anatomical gifts.

**Effective:** July 1, 2017.

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**Olthoff**

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January 17, 2017, read first time and referred to Committee on Judiciary.

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First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## HOUSE BILL No. 1426

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 16-36-2-3 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) For the purpose  
3 of this chapter, consent for a licensed physician to conduct an autopsy  
4 of the body of a deceased person is sufficient when given by the  
5 following persons if the persons survive the deceased:  
6 (1) By the surviving spouse. However, if the deceased and the  
7 surviving spouse were legally separated at the date of death, the  
8 survivor is not considered a surviving spouse.  
9 (2) If there is no surviving spouse, then by any one (1) adult child  
10 of the deceased.  
11 (3) **Subject to subdivision (5)**, if there is no surviving spouse or  
12 adult child of the deceased, then by one (1) parent of the  
13 deceased.  
14 (4) If there is no surviving spouse, adult child, or parent and there  
15 is an adult who is next of kin of the deceased residing in the  
16 county in which the deceased died a resident, then by any one (1)  
17 next of kin.



1           **(5) If the decedent is a minor child and the subject of a**  
 2           **custody order, the parent who was awarded:**

3               **(A) sole legal custody of the minor child; or**

4               **(B) primary physical custody, if the parents were awarded**  
 5               **joint legal custody of the minor child.**

6           ~~(5)~~ **(6)** If there is no surviving spouse, adult child, parent, or next  
 7           of kin, then by any person assuming custody of and financial  
 8           responsibility for the burial of the body.

9           (b) If there is more than one (1) person authorized to consent,  
 10          consent of one (1) of the persons is sufficient.

11          SECTION 2. IC 23-14-31-26, AS AMENDED BY P.L.190-2016,  
 12          SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13          JULY 1, 2017]: Sec. 26. (a) Except as provided in subsection (c), the  
 14          following persons, in the priority listed, have the right to serve as an  
 15          authorizing agent:

16               (1) A person:

17                   (A) granted the authority to serve in a funeral planning  
 18                   declaration executed by the decedent under IC 29-2-19; or

19                   (B) named in a United States Department of Defense form  
 20                   "Record of Emergency Data" (DD Form 93) or a successor  
 21                   form adopted by the United States Department of Defense, if  
 22                   the decedent died while serving in any branch of the United  
 23                   States Armed Forces (as defined in 10 U.S.C. 1481) and  
 24                   completed the form.

25               (2) An individual specifically granted the authority to serve in a  
 26               power of attorney or a health care power of attorney executed by  
 27               the decedent under IC 30-5-5-16.

28               (3) The individual who was the spouse of the decedent at the time  
 29               of the decedent's death, except when:

30                   (A) a petition to dissolve the marriage or for legal separation  
 31                   of the decedent and spouse is pending with a court at the time  
 32                   of the decedent's death, unless a court finds that the decedent  
 33                   and spouse were reconciled before the decedent's death; or

34                   (B) a court determines the decedent and spouse were  
 35                   physically and emotionally separated at the time of death and  
 36                   the separation was for an extended time that clearly  
 37                   demonstrates an absence of due affection, trust, and regard for  
 38                   the decedent.

39               (4) The decedent's surviving adult child or, if more than one (1)  
 40               adult child is surviving, the majority of the adult children.  
 41               However, less than half of the surviving adult children have the  
 42               rights under this subdivision if the adult children have used



1 reasonable efforts to notify the other surviving adult children of  
 2 their intentions and are not aware of any opposition to the final  
 3 disposition instructions by more than half of the surviving adult  
 4 children.

5 **(5) If the decedent is a minor child and the subject of a**  
 6 **custody order, the parent who was awarded:**

7 **(A) sole legal custody of the minor child; or**

8 **(B) primary physical custody, if the parents were awarded**  
 9 **joint legal custody of the minor child.**

10 ~~(5)~~ **(6)** The decedent's surviving parent or parents. If one (1) of the  
 11 parents is absent, the parent who is present has authority under  
 12 this subdivision if the parent who is present has used reasonable  
 13 efforts to notify the absent parent.

14 ~~(6)~~ **(7)** The decedent's surviving sibling or, if more than one (1)  
 15 sibling is surviving, the majority of the surviving siblings.  
 16 However, less than half of the surviving siblings have the rights  
 17 under this subdivision if the siblings have used reasonable efforts  
 18 to notify the other surviving siblings of their intentions and are  
 19 not aware of any opposition to the final disposition instructions by  
 20 more than half of the surviving siblings.

21 ~~(7)~~ **(8)** The individual in the next degree of kinship under  
 22 IC 29-1-2-1 to inherit the estate of the decedent or, if more than  
 23 one (1) individual of the same degree is surviving, the majority of  
 24 those who are of the same degree. However, less than half of the  
 25 individuals who are of the same degree of kinship have the rights  
 26 under this subdivision if they have used reasonable efforts to  
 27 notify the other individuals who are of the same degree of kinship  
 28 of their intentions and are not aware of any opposition to the final  
 29 disposition instructions by more than half of the individuals who  
 30 are of the same degree of kinship.

31 ~~(8)~~ **(9)** If none of the persons described in subdivisions (1)  
 32 through ~~(7)~~ **(8)** are available, or willing, to act and arrange for the  
 33 final disposition of the decedent's remains, a stepchild (as defined  
 34 in IC 6-4.1-1-3(f)) of the decedent. If more than one (1) stepchild  
 35 survives the decedent, then a majority of the surviving  
 36 stepchildren. However, less than half of the surviving stepchildren  
 37 have the rights under this subdivision if they have used reasonable  
 38 efforts to notify the other stepchildren of their intentions and are  
 39 not aware of any opposition to the final disposition instructions by  
 40 more than half of the stepchildren.

41 ~~(9)~~ **(10)** The person appointed to administer the decedent's estate  
 42 under IC 29-1.



1           ~~(10)~~ **(11)** If none of the persons described in subdivisions (1)  
 2 through ~~(9)~~ **(10)** are available, any other person willing to act and  
 3 arrange for the final disposition of the decedent's remains,  
 4 including a funeral home that:

5           (A) has a valid prepaid funeral plan executed under IC 30-2-13  
 6 that makes arrangements for the disposition of the decedent's  
 7 remains; and

8           (B) attests in writing that a good faith effort has been made to  
 9 contact any living individuals described in subdivisions (1)  
 10 through ~~(9)~~ **(10)**.

11           ~~(11)~~ **(12)** In the case of an indigent or other individual whose final  
 12 disposition is the responsibility of the state or township, the  
 13 following may serve as the authorizing agent:

14           (A) If none of the persons identified in subdivisions (1)  
 15 through ~~(10)~~ **(11)** are available:

16           (i) a public administrator, including a responsible township  
 17 trustee or the trustee's designee; or

18           (ii) the coroner.

19           (B) A state appointed guardian.

20           However, an indigent decedent may not be cremated if a  
 21 surviving family member objects to the cremation or if cremation  
 22 would be contrary to the religious practices of the deceased  
 23 individual as expressed by the individual or the individual's  
 24 family.

25           ~~(12)~~ **(13)** In the absence of any person under subdivisions (1)  
 26 through ~~(11)~~ **(12)**, any person willing to assume the responsibility  
 27 as the authorizing agent, as specified in this article.

28           (b) When a body part of a nondeceased individual is to be cremated,  
 29 a representative of the institution that has arranged with the crematory  
 30 authority to cremate the body part may serve as the authorizing agent.

31           (c) If:

32           (1) the death of the decedent appears to have been the result of:

33           (A) murder (IC 35-42-1-1);

34           (B) voluntary manslaughter (IC 35-42-1-3); or

35           (C) another criminal act, if the death does not result from the  
 36 operation of a vehicle; and

37           (2) the coroner, in consultation with the law enforcement agency  
 38 investigating the death of the decedent, determines that there is a  
 39 reasonable suspicion that a person described in subsection (a)  
 40 committed the offense;

41           the person referred to in subdivision (2) may not serve as the  
 42 authorizing agent.



1 (d) The coroner, in consultation with the law enforcement agency  
 2 investigating the death of the decedent, shall inform the crematory  
 3 authority of the determination referred to in subsection (c)(2).

4 (e) If a person vested with a right under subsection (a) does not  
 5 exercise that right not later than seventy-two (72) hours after the person  
 6 receives notification of the death of the decedent, the person forfeits the  
 7 person's right to determine the final disposition of the decedent's  
 8 remains, and the right to determine final disposition passes to the next  
 9 person described in subsection (a).

10 (f) A crematory authority owner has the right to rely, in good faith,  
 11 on the representations of a person listed in subsection (a) that any other  
 12 individuals of the same degree of kinship have been notified of the  
 13 final disposition instructions.

14 (g) If there is a dispute concerning the disposition of a decedent's  
 15 remains, a crematory authority is not liable for refusing to accept the  
 16 remains of the decedent until the crematory authority receives:

17 (1) a court order; or

18 (2) a written agreement signed by the disputing parties;

19 that determines the final disposition of the decedent's remains. If a  
 20 crematory authority agrees to shelter the remains of the decedent while  
 21 the parties are in dispute, the crematory authority may collect any  
 22 applicable fees for storing the remains, including legal fees that are  
 23 incurred.

24 (h) Any cause of action filed under this section must be filed in the  
 25 probate court in the county where the decedent resided, unless the  
 26 decedent was not a resident of Indiana.

27 (i) A spouse seeking a judicial determination under subsection  
 28 (a)(3)(A) that the decedent and spouse were reconciled before the  
 29 decedent's death may petition the court having jurisdiction over the  
 30 dissolution or separation proceeding to make this determination by  
 31 filing the petition under the same cause number as the dissolution or  
 32 separation proceeding. A spouse who files a petition under this  
 33 subsection is not required to pay a filing fee.

34 SECTION 3. IC 23-14-55-2, AS AMENDED BY P.L.190-2016,  
 35 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36 JULY 1, 2017]: Sec. 2. (a) Except as provided in subsection (c), the  
 37 owner of a cemetery is authorized to inter, entomb, or inurn the body  
 38 or cremated remains of a deceased human upon the receipt of a written  
 39 authorization of an individual who professes either of the following:

40 (1) To be (in the priority listed) one (1) of the following:

41 (A) An individual granted the authority to serve in a funeral  
 42 planning declaration executed by the decedent under



- 1 IC 29-2-19, or the person named in a United States  
 2 Department of Defense form "Record of Emergency Data"  
 3 (DD Form 93) or a successor form adopted by the United  
 4 States Department of Defense, if the decedent died while  
 5 serving in any branch of the United States Armed Forces (as  
 6 defined in 10 U.S.C. 1481) and completed the form.
- 7 (B) An individual specifically granted the authority in a power  
 8 of attorney or a health care power of attorney executed by the  
 9 decedent under IC 30-5-5-16.
- 10 (C) The individual who was the spouse of the decedent at the  
 11 time of the decedent's death, except when:
- 12 (i) a petition to dissolve the marriage or for legal separation  
 13 of the decedent and spouse is pending with a court at the  
 14 time of the decedent's death, unless a court finds that the  
 15 decedent and spouse were reconciled before the decedent's  
 16 death; or
- 17 (ii) a court determines the decedent and spouse were  
 18 physically and emotionally separated at the time of death  
 19 and the separation was for an extended time that clearly  
 20 demonstrates an absence of due affection, trust, and regard  
 21 for the decedent.
- 22 (D) The decedent's surviving adult child or, if more than one  
 23 (1) adult child is surviving, the majority of the adult children.  
 24 However, less than half of the surviving adult children have  
 25 the rights under this clause if the adult children have used  
 26 reasonable efforts to notify the other surviving adult children  
 27 of their intentions and are not aware of any opposition to the  
 28 final disposition instructions by more than half of the surviving  
 29 adult children.
- 30 **(E) If the decedent is a minor child and the subject of a**  
 31 **custody order, the parent who was awarded:**
- 32 **(i) sole legal custody of the minor child; or**  
 33 **(ii) primary physical custody, if the parents were**  
 34 **awarded joint legal custody of the minor child.**
- 35 ~~(F)~~ **(F)** The decedent's surviving parent or parents. If one (1)  
 36 of the parents is absent, the parent who is present has authority  
 37 under this clause if the parent who is present has used  
 38 reasonable efforts to notify the absent parent.
- 39 ~~(G)~~ **(G)** The decedent's surviving sibling or, if more than one  
 40 (1) sibling is surviving, the majority of the surviving siblings.  
 41 However, less than half of the surviving siblings have the  
 42 rights under this clause if the siblings have used reasonable



1 efforts to notify the other surviving siblings of their intentions  
 2 and are not aware of any opposition to the final disposition  
 3 instructions by more than half of the surviving siblings.

4 ~~(G)~~ **(H)** The individual in the next degree of kinship under  
 5 IC 29-1-2-1 to inherit the estate of the decedent or, if more  
 6 than one (1) individual of the same degree of kinship is  
 7 surviving, the majority of those who are of the same degree.  
 8 However, less than half of the individuals who are of the same  
 9 degree of kinship have the rights under this clause if they have  
 10 used reasonable efforts to notify the other individuals who are  
 11 of the same degree of kinship of their intentions and are not  
 12 aware of any opposition to the final disposition instructions by  
 13 more than half of the individuals who are of the same degree  
 14 of kinship.

15 ~~(H)~~ **(I)** If none of the persons described in clauses (A) through  
 16 ~~(G)~~ **(H)** are available, or willing, to act and arrange for the  
 17 final disposition of the decedent's remains, a stepchild (as  
 18 defined in IC 6-4.1-1-3(f)) of the decedent. If more than one  
 19 (1) stepchild survives the decedent, then a majority of the  
 20 surviving stepchildren. However, less than half of the  
 21 surviving stepchildren have the rights under this subdivision  
 22 if they have used reasonable efforts to notify the other  
 23 stepchildren of their intentions and are not aware of any  
 24 opposition to the final disposition instructions by more than  
 25 half of the stepchildren.

26 ~~(I)~~ **(J)** The person appointed to administer the decedent's estate  
 27 under IC 29-1.

28 ~~(J)~~ **(K)** If none of the persons described in clauses (A) through  
 29 ~~(I)~~ **(J)** are available, any other person willing to act and  
 30 arrange for the final disposition of the decedent's remains,  
 31 including a funeral home that:

32 (i) has a valid prepaid funeral plan executed under  
 33 IC 30-2-13 that makes arrangements for the disposition of  
 34 the decedent's remains; and

35 (ii) attests in writing that a good faith effort has been made  
 36 to contact any living individuals described in clauses (A)  
 37 through ~~(I)~~ **(J)**.

38 (2) To have acquired by court order the right to control the  
 39 disposition of the deceased human body or cremated remains.

40 The owner of a cemetery may accept the authorization of an individual  
 41 only if all other individuals of the same priority or a higher priority  
 42 (according to the priority listing in this subsection) are deceased, are





1 barred from authorizing the disposition of the deceased human body or  
2 cremated remains under subsection (c), or are physically or mentally  
3 incapacitated from exercising the authorization, and the incapacity is  
4 certified to by a qualified medical doctor.

5 (b) An action may not be brought against the owner of a cemetery  
6 relating to the remains of a human that have been left in the possession  
7 of the cemetery owner without permanent interment, entombment, or  
8 inurnment for a period of three (3) years, unless the cemetery owner  
9 has entered into a written contract for the care of the remains.

10 (c) If:

11 (1) the death of the decedent appears to have been the result of:

12 (A) murder (IC 35-42-1-1);

13 (B) voluntary manslaughter (IC 35-42-1-3); or

14 (C) another criminal act, if the death does not result from the  
15 operation of a vehicle; and

16 (2) the coroner, in consultation with the law enforcement agency  
17 investigating the death of the decedent, determines that there is a  
18 reasonable suspicion that a person described in subsection (a)  
19 committed the offense;

20 the person referred to in subdivision (2) may not authorize the  
21 disposition of the decedent's body or cremated remains.

22 (d) The coroner, in consultation with the law enforcement agency  
23 investigating the death of the decedent, shall inform the cemetery  
24 owner of the determination referred to in subsection (c)(2).

25 (e) If a person vested with a right under subsection (a) does not  
26 exercise that right not less than seventy-two (72) hours after the person  
27 receives notification of the death of the decedent, the person forfeits the  
28 person's right to determine the final disposition of the decedent's  
29 remains and the right to determine final disposition passes to the next  
30 person described in subsection (a).

31 (f) A cemetery owner has the right to rely, in good faith, on the  
32 representations of a person listed in subsection (a) that any other  
33 individuals of the same degree of kinship have been notified of the  
34 final disposition instructions.

35 (g) If there is a dispute concerning the disposition of a decedent's  
36 remains, a cemetery owner is not liable for refusing to accept the  
37 remains of the decedent until the cemetery owner receives:

38 (1) a court order; or

39 (2) a written agreement signed by the disputing parties;

40 that determines the final disposition of the decedent's remains. If a  
41 cemetery agrees to shelter the remains of the decedent while the parties  
42 are in dispute, the cemetery may collect any applicable fees for storing



1 the remains, including legal fees that are incurred.

2 (h) Any cause of action filed under this section must be filed in the  
3 probate court in the county where the decedent resided, unless the  
4 decedent was not a resident of Indiana.

5 (i) A spouse seeking a judicial determination under subsection  
6 (a)(1)(C)(i) that the decedent and spouse were reconciled before the  
7 decedent's death may petition the court having jurisdiction over the  
8 dissolution or separation proceeding to make this determination by  
9 filing the petition under the same cause number as the dissolution or  
10 separation proceeding. A spouse who files a petition under this  
11 subsection is not required to pay a filing fee.

12 SECTION 4. IC 25-15-9-18, AS AMENDED BY P.L.190-2016,  
13 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
14 JULY 1, 2017]: Sec. 18. (a) Except as provided in subsection (b), the  
15 following persons, in the order of priority indicated, have the authority  
16 to designate the manner, type, and selection of the final disposition of  
17 human remains, to make arrangements for funeral services, and to  
18 make other ceremonial arrangements after an individual's death:

19 (1) A person:

- 20 (A) granted the authority to serve in a funeral planning  
21 declaration executed by the decedent under IC 29-2-19; or  
22 (B) named in a United States Department of Defense form  
23 "Record of Emergency Data" (DD Form 93) or a successor  
24 form adopted by the United States Department of Defense, if  
25 the decedent died while serving in any branch of the United  
26 States Armed Forces (as defined in 10 U.S.C. 1481) and  
27 completed the form.

28 (2) An individual specifically granted the authority in a power of  
29 attorney or a health care power of attorney executed by the  
30 decedent under IC 30-5-5-16.

31 (3) The individual who was the spouse of the decedent at the time  
32 of the decedent's death, except when:

- 33 (A) a petition to dissolve the marriage or for legal separation  
34 of the decedent and spouse is pending with a court at the time  
35 of the decedent's death, unless a court finds that the decedent  
36 and spouse were reconciled before the decedent's death; or  
37 (B) a court determines the decedent and spouse were  
38 physically and emotionally separated at the time of death and  
39 the separation was for an extended time that clearly  
40 demonstrates an absence of due affection, trust, and regard for  
41 the decedent.

42 (4) The decedent's surviving adult child or, if more than one (1)



1 adult child is surviving, the majority of the adult children.  
 2 However, less than half of the surviving adult children have the  
 3 rights under this subdivision if the adult children have used  
 4 reasonable efforts to notify the other surviving adult children of  
 5 their intentions and are not aware of any opposition to the final  
 6 disposition instructions by more than half of the surviving adult  
 7 children.

8 **(5) If the decedent is a minor child and the subject of a**  
 9 **custody order, the parent who was awarded:**

10 (A) sole legal custody of the minor child; or

11 (B) primary physical custody, if the parents were awarded  
 12 joint legal custody of the minor child.

13 ~~(5)~~ (6) The decedent's surviving parent or parents. If one (1) of the  
 14 parents is absent, the parent who is present has the rights under  
 15 this subdivision if the parent who is present has used reasonable  
 16 efforts to notify the absent parent.

17 ~~(6)~~ (7) The decedent's surviving sibling or, if more than one (1)  
 18 sibling is surviving, the majority of the surviving siblings.  
 19 However, less than half of the surviving siblings have the rights  
 20 under this subdivision if the siblings have used reasonable efforts  
 21 to notify the other surviving siblings of their intentions and are  
 22 not aware of any opposition to the final disposition instructions by  
 23 more than half of the surviving siblings.

24 ~~(7)~~ (8) The individual in the next degree of kinship under  
 25 IC 29-1-2-1 to inherit the estate of the decedent or, if more than  
 26 one (1) individual of the same degree survives, the majority of  
 27 those who are of the same degree of kinship. However, less than  
 28 half of the individuals who are of the same degree of kinship have  
 29 the rights under this subdivision if they have used reasonable  
 30 efforts to notify the other individuals who are of the same degree  
 31 of kinship of their intentions and are not aware of any opposition  
 32 to the final disposition instructions by more than half of the  
 33 individuals who are of the same degree of kinship.

34 ~~(8)~~ (9) If none of the persons described in subdivisions (1)  
 35 through ~~(7)~~ (8) are available, or willing, to act and arrange for the  
 36 final disposition of the decedent's remains, a stepchild (as defined  
 37 in IC 6-4.1-1-3(f)) of the decedent. If more than one (1) stepchild  
 38 survives the decedent, then a majority of the surviving  
 39 stepchildren. However, less than half of the surviving stepchildren  
 40 have the rights under this subdivision if they have used reasonable  
 41 efforts to notify the other stepchildren of their intentions and are  
 42 not aware of any opposition to the final disposition instructions by



1 more than half of the stepchildren.

2 ~~(9)~~ **(10)** The person appointed to administer the decedent's estate  
3 under IC 29-1.

4 ~~(10)~~ **(11)** If none of the persons identified in subdivisions (1)  
5 through ~~(9)~~ **(10)** are available, any other person willing to act and  
6 arrange for the final disposition of the decedent's remains,  
7 including a funeral home that:

8 (A) has a valid prepaid funeral plan executed under IC 30-2-13  
9 that makes arrangements for the disposition of the decedent's  
10 remains; and

11 (B) attests in writing that a good faith effort has been made to  
12 contact any living individuals described in subdivisions (1)  
13 through ~~(9)~~ **(10)**.

14 ~~(11)~~ **(12)** In the case of an indigent or other individual whose final  
15 disposition is the responsibility of the state or township, the  
16 following:

17 (A) If none of the persons identified in subdivisions (1)  
18 through ~~(10)~~ **(11)** is available:

19 (i) a public administrator, including a responsible township  
20 trustee or the trustee's designee; or

21 (ii) the coroner.

22 (B) A state appointed guardian.

23 (b) If:

24 (1) the death of the decedent appears to have been the result of:

25 (A) murder (IC 35-42-1-1);

26 (B) voluntary manslaughter (IC 35-42-1-3); or

27 (C) another criminal act, if the death does not result from the  
28 operation of a vehicle; and

29 (2) the coroner, in consultation with the law enforcement agency  
30 investigating the death of the decedent, determines that there is a  
31 reasonable suspicion that a person described in subsection (a)  
32 committed the offense;

33 the person referred to in subdivision (2) may not authorize or designate  
34 the manner, type, or selection of the final disposition of human  
35 remains.

36 (c) The coroner, in consultation with the law enforcement agency  
37 investigating the death of the decedent, shall inform the cemetery  
38 owner or crematory authority of the determination under subsection  
39 (b)(2).

40 (d) If the decedent had filed a protection order against a person  
41 described in subsection (a) and the protection order is currently in  
42 effect, the person described in subsection (a) may not authorize or



1 designate the manner, type, or selection of the final disposition of  
2 human remains.

3 (e) A law enforcement agency shall determine if the protection order  
4 is in effect. If the law enforcement agency cannot determine the  
5 existence of a protection order that is in effect, the law enforcement  
6 agency shall consult the protective order registry established under  
7 IC 5-2-9-5.5.

8 (f) If a person vested with a right under subsection (a) does not  
9 exercise that right not later than seventy-two (72) hours after the person  
10 receives notification of the death of the decedent, the person forfeits the  
11 person's right to determine the final disposition of the decedent's  
12 remains and the right to determine final disposition passes to the next  
13 person described in subsection (a).

14 (g) A funeral home has the right to rely, in good faith, on the  
15 representations of a person listed in subsection (a) that any other  
16 individuals of the same degree of kinship have been notified of the  
17 final disposition instructions.

18 (h) If there is a dispute concerning the disposition of a decedent's  
19 remains, a funeral home is not liable for refusing to accept the remains  
20 of the decedent until the funeral home receives:

21 (1) a court order; or

22 (2) a written agreement signed by the disputing parties;  
23 that determines the final disposition of the decedent's remains. If a  
24 funeral home agrees to shelter the remains of the decedent while the  
25 parties are in dispute, the funeral home may collect any applicable fees  
26 for storing the remains, including legal fees that are incurred.

27 (i) Any cause of action filed under this section must be filed in the  
28 probate court in the county where the decedent resided, unless the  
29 decedent was not a resident of Indiana.

30 (j) A spouse seeking a judicial determination under subsection  
31 (a)(3)(A) that the decedent and spouse were reconciled before the  
32 decedent's death may petition the court having jurisdiction over the  
33 dissolution or separation proceeding to make this determination by  
34 filing the petition under the same cause number as the dissolution or  
35 separation proceeding. A spouse who files a petition under this  
36 subsection is not required to pay a filing fee.

37 SECTION 5. IC 29-2-16.1-7, AS AMENDED BY P.L.3-2008,  
38 SECTION 226, IS AMENDED TO READ AS FOLLOWS  
39 [EFFECTIVE JULY 1, 2017]: Sec. 7. (a) Except as otherwise provided  
40 in subsection (g) and subject to subsection (f), in the absence of an  
41 express, contrary indication by the donor, a person other than the donor  
42 is barred from making, amending, or revoking an anatomical gift of a



1 donor's body or part if the donor made an anatomical gift of the donor's  
 2 body or part under section 4 of this chapter or an amendment to an  
 3 anatomical gift of the donor's body or part under section 5 of this  
 4 chapter.

5 (b) A donor's revocation of an anatomical gift of the donor's body or  
 6 part under section 5 of this chapter is not a refusal and does not bar the  
 7 person specified in section 3 or 8 of this chapter from making an  
 8 anatomical gift of the donor's body or part under section 4 or 9 of this  
 9 chapter.

10 (c) If a person other than the donor makes an unrevoked anatomical  
 11 gift of the donor's body or part under section 4 of this chapter or an  
 12 amendment to an anatomical gift of the donor's body or part under  
 13 section 5 of this chapter, another person may not make, amend, or  
 14 revoke the gift of the donor's body or part under section 9 of this  
 15 chapter.

16 (d) A revocation of an anatomical gift of a donor's body or part  
 17 under section 5 of this chapter by a person other than the donor does  
 18 not bar another person from making an anatomical gift of the body or  
 19 part under section 4 or 9 of this chapter.

20 (e) In the absence of an express, contrary indication by the donor or  
 21 other person authorized to make an anatomical gift under section 3 of  
 22 this chapter, an anatomical gift of a part is neither a refusal to give  
 23 another part nor a limitation on the making of an anatomical gift of  
 24 another part at a later time by the donor or another person.

25 (f) In the absence of an express, contrary indication by the donor or  
 26 other person authorized to make an anatomical gift under section 3 of  
 27 this chapter, an anatomical gift of a part for one (1) or more of the  
 28 purposes set forth in section 3 of this chapter is not a limitation on the  
 29 making of an anatomical gift of the part for any of the other purposes  
 30 of the donor or any other person under section 4 or 9 of this chapter.

31 (g) If a donor who is an unemancipated minor dies, a parent of the  
 32 donor **as set forth in section 8(a)(4) of this chapter** who is reasonably  
 33 available may revoke or amend an anatomical gift of the donor's body  
 34 or part.

35 (h) If an unemancipated minor who signed a refusal dies, a parent  
 36 of the minor **as set forth in section 8(a)(4) of this chapter** who is  
 37 reasonably available may revoke the minor's refusal.

38 SECTION 6. IC 29-2-16.1-8, AS ADDED BY P.L.147-2007,  
 39 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 2017]: Sec. 8. (a) Subject to subsections (b) and (c), unless  
 41 barred by section 6 or 7 of this chapter, an anatomical gift of a  
 42 decedent's body or part for the purpose of transplantation, therapy,



1 research, or education may be made by any member of the following  
 2 classes of persons who are reasonably available, in the order of priority  
 3 listed:

4 (1) An agent of the decedent at the time of death who could have  
 5 made an anatomical gift under section 3(2) of this chapter  
 6 immediately before the decedent's death.

7 (2) The spouse of the decedent.

8 (3) Adult children of the decedent.

9 (4) Parents of the decedent; **however, if the decedent is a minor**  
 10 **child and the subject of a custody order, the parent who was**  
 11 **awarded:**

12 (A) **sole legal custody of the minor child; or**

13 (B) **primary physical custody, if the parents were awarded**  
 14 **joint legal custody of the minor child.**

15 (5) Adult siblings of the decedent.

16 (6) Adult grandchildren of the decedent.

17 (7) Grandparents of the decedent.

18 (8) An adult who exhibited special care and concern for the  
 19 decedent.

20 (9) A person acting as the guardian of the decedent at the time of  
 21 death.

22 (10) Any other person having the authority to dispose of the  
 23 decedent's body.

24 (b) If there is more than one (1) member of a class listed in  
 25 subsection (a)(1), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(9) entitled  
 26 to make an anatomical gift, an anatomical gift may be made by a  
 27 member of the class unless that member or a person to whom the gift  
 28 may pass under section 10 of this chapter knows of an objection by  
 29 another member of the class. If an objection is known, the gift may be  
 30 made only by a majority of the members of the class who are  
 31 reasonably available.

32 (c) A person may not make an anatomical gift if, at the time of the  
 33 decedent's death, a person in a prior class under subsection (a) is  
 34 reasonably available to make or to object to the making of an  
 35 anatomical gift.

36 SECTION 7. IC 31-17-2-17 IS AMENDED TO READ AS  
 37 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 17. (a) Except:

38 (1) as otherwise agreed by the parties in writing at the time of the  
 39 custody order; and

40 (2) as provided in subsection (b);

41 the custodian may determine the child's upbringing, including the  
 42 child's education, health care, and religious training.



1 (b) If the court finds after motion by a noncustodial parent that, in  
 2 the absence of a specific limitation of the custodian's authority, the  
 3 child's:

- 4 (1) physical health would be endangered; or  
 5 (2) emotional development would be significantly impaired;  
 6 the court may specifically limit the custodian's authority.

7 **(c) If a child dies, the parent awarded:**

- 8 **(1) sole legal custody of the child; or**  
 9 **(2) primary physical custody of the child, if the parents were**  
 10 **awarded joint legal custody;**

11 **has the authority regarding the decedent set forth in IC 16-36-2-3,**  
 12 **IC 23-14-31-26, IC 23-14-55-2, IC 25-15-9-18, IC 29-1-10-1,**  
 13 **IC 29-2-16.1-8, IC 31-17-2-17, and IC 36-2-14-6.**

14 SECTION 8. IC 36-2-14-6, AS AMENDED BY P.L.34-2011,  
 15 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2017]: Sec. 6. (a) Whenever the coroner is notified that a  
 17 person in the county:

- 18 (1) has died from violence;  
 19 (2) has died by casualty;  
 20 (3) has died when apparently in good health;  
 21 (4) has died in an apparently suspicious, unusual, or unnatural  
 22 manner; or  
 23 (5) has been found dead;

24 the coroner shall, before the scene of the death is disturbed, notify a  
 25 law enforcement agency having jurisdiction in that area. The agency  
 26 shall assist the coroner in conducting an investigation of how the  
 27 person died and a medical investigation of the cause of death. The  
 28 coroner may hold the remains of the decedent until the investigation of  
 29 how the person died and the medical investigation of the cause of death  
 30 are concluded.

31 (b) The coroner:

- 32 (1) shall file a certificate of death with the county health  
 33 department, or, if applicable, a multiple county health department,  
 34 of the county in which the individual died, within seventy-two  
 35 (72) hours after the completion of the death investigation;  
 36 (2) shall complete the certificate of death utilizing all verifiable  
 37 information establishing the time and date of death; and  
 38 (3) may file a pending investigation certificate of death before  
 39 completing the certificate of death, if necessary.

40 (c) If this section applies, the body and the scene of death may not  
 41 be disturbed until:

- 42 (1) the coroner has photographed them in the manner that most





- 1 fully discloses how the person died; and  
 2 (2) law enforcement and the coroner have finished their initial  
 3 assessment of the scene of death.  
 4 However, a coroner or law enforcement officer may order a body to be  
 5 moved before photographs are taken if the position or location of the  
 6 body unduly interferes with activities carried on where the body is  
 7 found, but the body may not be moved from the immediate area and  
 8 must be moved without substantially destroying or altering the  
 9 evidence present.
- 10 (d) When acting under this section, if the coroner considers it  
 11 necessary to have an autopsy performed, is required to perform an  
 12 autopsy under subsection (f), or is requested by the prosecuting  
 13 attorney of the county to perform an autopsy, the coroner shall employ  
 14 a:
- 15 (1) physician certified by the American Board of Pathology; or  
 16 (2) pathology resident acting under the direct supervision of a  
 17 physician certified in anatomic pathology by the American Board  
 18 of Pathology;
- 19 to perform the autopsy. The physician performing the autopsy shall be  
 20 paid a fee of at least fifty dollars (\$50) from the county treasury.
- 21 (e) If:
- 22 (1) at the request of:
- 23 (A) the decedent's spouse;  
 24 (B) a child of the decedent, if the decedent does not have a  
 25 spouse;  
 26 **(C) if the decedent is a minor child and subject to a custody**  
 27 **order, only the parent awarded:**  
 28 **(i) sole legal custody of the child; or**  
 29 **(ii) primary physical custody of the child, if the parents**  
 30 **were awarded joint legal custody;**  
 31 ~~(D)~~ **(D) except as provided in clause (C)**, a parent of the  
 32 decedent, if the decedent does not have a spouse or children;  
 33 ~~(E)~~ **(E)** a brother or sister of the decedent, if the decedent does  
 34 not have a spouse, children, or parents; or  
 35 ~~(F)~~ **(F)** a grandparent of the decedent, if the decedent does not  
 36 have a spouse, children, parents, brothers, or sisters;
- 37 (2) in any death, two (2) or more witnesses who corroborate the  
 38 circumstances surrounding death are present; and  
 39 (3) two (2) physicians who are licensed to practice medicine in  
 40 the state and who have made separate examinations of the  
 41 decedent certify the same cause of death in an affidavit within  
 42 twenty-four (24) hours after death;



1 an autopsy need not be performed. The affidavits shall be filed with the  
2 circuit court clerk.

3 (f) A county coroner may not certify the cause of death in the case  
4 of the sudden and unexpected death of a child who is less than three (3)  
5 years old unless an autopsy is performed at county expense. However,  
6 a coroner may certify the cause of death of a child described in this  
7 subsection without the performance of an autopsy if subsection (e)  
8 applies to the death of the child.

9 (g) After consultation with the law enforcement agency  
10 investigating the death of a decedent, the coroner shall do the  
11 following:

12 (1) Inform a crematory authority if a person is barred under  
13 IC 23-14-31-26(c) from serving as the authorizing agent with  
14 respect to the cremation of the decedent's body because the  
15 coroner made the determination under IC 23-14-31-26(c)(2) in  
16 connection with the death of the decedent.

17 (2) Inform a cemetery owner if a person is barred under  
18 IC 23-14-55-2(c) from authorizing the disposition of the body or  
19 cremated remains of the decedent because the coroner made the  
20 determination under IC 23-14-55-2(c)(2) in connection with the  
21 death of the decedent.

22 (3) Inform a seller of prepaid services or merchandise if a person's  
23 contract is unenforceable under IC 30-2-13-23(b) because the  
24 coroner made the determination under IC 30-2-13-23(b)(4) in  
25 connection with the death of the decedent.

