



Reprinted
April 9, 2021

ENGROSSED

SENATE BILL No. 259

DIGEST OF SB 259 (Updated April 8, 2021 2:39 pm - DI 119)

Citations Affected: IC 29-3; IC 31-10; IC 31-17; IC 31-19; IC 31-25; IC 31-27.

Synopsis: Parents with disabilities. Specifies that it is the policy of the state to recognize the parenting rights of a parent regardless of whether the parent has a disability. Provides that the right of a person with a disability to parent the person's child may not be denied or restricted solely because the person has a disability. Provides that: (1) a court, in: (A) considering the appointment of a person as a guardian; (B) hearing an action to modify custody or an action to determine or modify parenting time; or (C) determining whether to grant a petition for adoption; and (2) the department of child services, in determining whether to grant a person a license to operate a foster family home; may not discriminate against, and shall take into consideration the provision of reasonable accommodations to, a person with a disability.

Effective: July 1, 2021.

**Niezgodski, Ford Jon, Yoder,
Bohacek, Crane, Ford J.D., Koch,
Grooms, Alting, Houchin, Qaddoura,
Rogers, Randolph Lonnie M**
(HOUSE SPONSORS — CLERE, PORTER, ANDRADE)

January 11, 2021, read first time and referred to Committee on Family and Children Services.

February 15, 2021, amended, reported favorably — Do Pass.

February 18, 2021, read second time, ordered engrossed. Engrossed.

February 22, 2021, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 4, 2021, read first time and referred to Committee on Family, Children and Human Affairs.

March 25, 2021, amended, reported — Do Pass.

April 8, 2021, read second time, amended, ordered engrossed.

ES 259—LS 6647/DI 106



Reprinted
April 9, 2021

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.

ENGROSSED SENATE BILL No. 259

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 29-3-5-4, AS AMENDED BY P.L.194-2017,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 4. **(a)** The court shall appoint as guardian a
4 qualified person or persons most suitable and willing to serve, having
5 due regard to the following:
6 (1) Any request made by a person alleged to be an incapacitated
7 person, including designations in a durable power of attorney
8 under IC 30-5-3-4(a).
9 (2) Any request made for a minor by:
10 (A) a parent of the minor; or
11 (B) a de facto custodian of the minor, including a designation
12 in a power of attorney under IC 30-5-3-4(b) or IC 30-5-3-4(c).
13 (3) Any request contained in a will or other written instrument.
14 (4) A designation of a standby guardian under IC 29-3-3-7.
15 (5) Any request made by a minor who is at least fourteen (14)
16 years of age.
17 (6) Any request made by the spouse of the alleged incapacitated

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1 person.

2 (7) The relationship of the proposed guardian to the individual for

3 whom guardianship is sought.

4 (8) Any person acting for the incapacitated person under a

5 durable power of attorney.

6 (9) The best interest of the incapacitated person or minor and the

7 property of the incapacitated person or minor.

8 **(b) In addition to subsection (a), section 4.1 of this chapter**

9 **applies when a prospective guardian is a person with a disability.**

10 SECTION 2. IC 29-3-5-4.1 IS ADDED TO THE INDIANA CODE

11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

12 1, 2021]: **Sec. 4.1. (a) As used in this section, "disability" has the**

13 **meaning set forth in 42 U.S.C. 12102.**

14 **(b) In considering the qualifications and suitability of an**

15 **individual with a disability for appointment as a guardian under**

16 **section 4 of this chapter, a court:**

17 **(1) shall not discriminate against; and**

18 **(2) shall take into consideration the provision of reasonable**

19 **accommodations to;**

20 **the individual as provided under Section 504 of the Rehabilitation**

21 **Act of 1973 (29 U.S.C. 794), Title II of the Americans with**

22 **Disabilities Act of 1990 (42 U.S.C. 12131 through 42 U.S.C. 12134),**

23 **and other applicable state and federal law.**

24 SECTION 3. IC 29-3-5-5, AS AMENDED BY P.L.194-2017,

25 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

26 JULY 1, 2021]: **Sec. 5. (a) The following are entitled to consideration**

27 **for appointment as a guardian under section 4 of this chapter in the**

28 **order listed:**

29 (1) A person designated in a durable power of attorney.

30 (2) A person designated as a standby guardian under IC 29-3-3-7.

31 (3) The spouse of an incapacitated person.

32 (4) An adult child of an incapacitated person.

33 (5) A parent of an incapacitated person, or a person nominated by

34 will of a deceased parent of an incapacitated person or by any

35 writing signed by a parent of an incapacitated person and attested

36 to by at least two (2) witnesses, or in a power of attorney of a

37 living parent of an incapacitated person under IC 30-5-3-4(c).

38 (6) A parent of a minor, a de facto custodian of a minor, or a

39 person nominated:

40 (A) by will of a deceased parent or a de facto custodian of a

41 minor; or

42 (B) by a power of attorney of a living parent or a de facto



- 1 custodian of a minor.
- 2 (7) Any person related to an incapacitated person by blood or
- 3 marriage with whom the incapacitated person has resided for
- 4 more than six (6) months before the filing of the petition.
- 5 (8) A person nominated by the incapacitated person who is caring
- 6 for or paying for the care of the incapacitated person.
- 7 (b) With respect to persons having equal priority, the court shall
- 8 select the person it considers best qualified to serve as guardian. The
- 9 court, acting in the best interest of the incapacitated person or minor,
- 10 may pass over a person having priority and appoint a person having a
- 11 lower priority or no priority under this section.
- 12 **(c) In addition to this section, section 4.1 of this chapter applies**
- 13 **if a person having equal priority is a person with a disability.**
- 14 SECTION 4. IC 31-10-2-1 IS AMENDED TO READ AS
- 15 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. It is the policy of this
- 16 state and the purpose of this title to:
- 17 (1) recognize the importance of family and children in our society,
- 18 **including the parenting rights of a parent, regardless of**
- 19 **whether the parent has a disability;**
- 20 (2) recognize the responsibility of the state to enhance the
- 21 viability of children and family in our society;
- 22 (3) acknowledge the responsibility each person owes to the other;
- 23 (4) strengthen family life by assisting parents to fulfill their
- 24 parental obligations;
- 25 (5) ensure that children within the juvenile justice system are
- 26 treated as persons in need of care, protection, treatment, and
- 27 rehabilitation;
- 28 (6) remove children from families only when it is in the child's
- 29 best interest or in the best interest of public safety;
- 30 (7) provide for adoption as a viable permanency plan for children
- 31 who are adjudicated children in need of services;
- 32 (8) provide a juvenile justice system that protects the public by
- 33 enforcing the legal obligations that children have to society and
- 34 society has to children;
- 35 (9) use diversionary programs when appropriate;
- 36 (10) provide a judicial procedure that:
- 37 (A) ensures fair hearings;
- 38 (B) recognizes and enforces the legal rights of children and
- 39 their parents; and
- 40 (C) recognizes and enforces the accountability of children and
- 41 parents;
- 42 (11) promote public safety and individual accountability by the



1 imposition of appropriate sanctions; and
 2 (12) provide a continuum of services developed in a cooperative
 3 effort by local governments and the state.

4 SECTION 5. IC 31-10-2-3 IS ADDED TO THE INDIANA CODE
 5 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 6 1, 2021]: **Sec. 3. The right of a person with a disability to parent the**
 7 **person's child may not be denied or restricted solely because the**
 8 **person has a disability.**

9 SECTION 6. IC 31-17-2-8.1 IS ADDED TO THE INDIANA CODE
 10 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 11 1, 2021]: **Sec. 8.1. (a) As used in this section, "disability" has the**
 12 **meaning set forth in 42 U.S.C. 12102.**

13 **(b) A court in a custody proceeding, including a proceeding to**
 14 **modify custody:**

- 15 **(1) shall not discriminate against; and**
 16 **(2) shall take into consideration the provision of reasonable**
 17 **accommodations to;**

18 **a parent who is a person with a disability, as provided under**
 19 **Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Title**
 20 **II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131**
 21 **through 42 U.S.C. 12134), and other applicable state and federal**
 22 **law.**

23 SECTION 7. IC 31-17-4-1, AS AMENDED BY P.L.223-2019,
 24 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2021]: Sec. 1. (a) Subject to subsections (d) and (e) **and**
 26 **subject to section 1.1 of this chapter**, a parent not granted custody of
 27 the child is entitled to reasonable parenting time rights unless the court
 28 finds, after a hearing, that parenting time by the noncustodial parent
 29 might endanger the child's physical health or significantly impair the
 30 child's emotional development.

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

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

- 37 **(1) a record may be made of the interview; and**
 38 **(2) the interview may be made part of the record for purposes of**
 39 **appeal.**

40 (d) Except as provided in subsection (e), if a court grants parenting
 41 time rights to a person who has been 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 there is a rebuttable presumption that the parenting time with the child
 3 must be supervised.

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

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

10 SECTION 8. IC 31-17-4-1.1 IS ADDED TO THE INDIANA CODE
 11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 12 1, 2021]: **Sec. 1.1. (a) As used in this section, "disability" has the
 13 meaning set forth in 42 U.S.C. 12102.**

14 **(b) A court in a proceeding to determine or modify parenting
 15 time:**

16 **(1) shall not discriminate against; and**
 17 **(2) shall take into consideration the provision of reasonable**
 18 **accommodations to;**
 19 **a parent who is a person with a disability, as provided under**
 20 **Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Title**
 21 **II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131**
 22 **through 42 U.S.C. 12134), and other applicable state and federal**
 23 **law.**

24 SECTION 9. IC 31-19-11-1, AS AMENDED BY P.L.142-2020,
 25 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2021]: Sec. 1. (a) Whenever the court has heard the evidence
 27 and finds that:

28 (1) the adoption requested is in the best interest of the child;
 29 (2) the petitioner or petitioners for adoption are of sufficient
 30 ability to rear the child and furnish suitable support and
 31 education;
 32 (3) the report of the investigation and recommendation under
 33 IC 31-19-8-5 has been filed;
 34 (4) the attorney or agency arranging an adoption has filed with the
 35 court an affidavit prepared by the state department of health under
 36 IC 31-19-5-16 indicating whether a man is entitled to notice of the
 37 adoption because the man has registered with the putative father
 38 registry in accordance with IC 31-19-5;
 39 (5) proper notice arising under subdivision (4), if notice is
 40 necessary, of the adoption has been given;
 41 (6) the attorney or agency has filed with the court an affidavit
 42 prepared by the state department of health under:



- 1 (A) IC 31-19-6 indicating whether a record of a paternity
 2 determination; or
 3 (B) IC 16-37-2-2(g) indicating whether a paternity affidavit
 4 executed under IC 16-37-2-2.1;
 5 has been filed in relation to the child;
 6 (7) proper consent, if consent is necessary, to the adoption has
 7 been given;
 8 (8) the petitioner for adoption is not prohibited from adopting the
 9 child as the result of an inappropriate criminal history described
 10 in subsection (c) or (d); and
 11 (9) the person, licensed child placing agency, or local office that
 12 has placed the child for adoption has provided the documents and
 13 other information required under IC 31-19-17 to the prospective
 14 adoptive parents;
 15 the court shall grant the petition for adoption and enter an adoption
 16 decree.
 17 (b) A court may not grant an adoption unless the state department
 18 of health's affidavit under IC 31-19-5-16 is filed with the court as
 19 provided under subsection (a)(4).
 20 (c) A juvenile adjudication for an act listed in IC 31-9-2-84.8 that
 21 would be a felony if committed by an adult, a conviction of a
 22 misdemeanor related to the health and safety of a child, or a conviction
 23 of a felony not listed in IC 31-9-2-84.8 by a petitioner for adoption or
 24 household member is a permissible basis for the court to deny the
 25 petition for adoption. In addition, the court may not grant an adoption
 26 if a petitioner for adoption has been convicted of a nonwaivable offense
 27 under IC 31-9-2-84.8. However, the court is not prohibited from
 28 granting an adoption based upon a felony conviction for:
 29 (1) a felony under IC 9-30-5;
 30 (2) battery (IC 35-42-2-1);
 31 (3) criminal recklessness (IC 35-42-2-2) as a felony;
 32 (4) criminal confinement (IC 35-42-3-3);
 33 (5) arson (IC 35-43-1-1);
 34 (6) nonsupport of a dependent child (IC 35-46-1-5);
 35 (7) operating a motorboat while intoxicated (IC 35-46-9-6) as a
 36 felony;
 37 (8) a felony involving a weapon under IC 35-47; or
 38 (9) a felony relating to controlled substances under IC 35-48-4;
 39 if the date of the conviction did not occur within the immediately
 40 preceding five (5) year period.
 41 (d) A court may not grant an adoption if the petitioner is a sex or
 42 violent offender (as defined in IC 11-8-8-5) or a sexually violent



1 predator (as defined in IC 35-38-1-7.5).

2 **(e) In addition to this section, section 1.1 of this chapter applies**
 3 **when one (1) or more petitioners is a person with a disability.**

4 SECTION 10. IC 31-19-11-1.1 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2021]: **Sec. 1.1. (a) As used in this section,**
 7 **"disability" has the meaning set forth in 42 U.S.C. 12102.**

8 **(b) A court, in determining whether to grant a petition for**
 9 **adoption:**

10 **(1) shall not discriminate against; and**

11 **(2) shall take into consideration the provision of reasonable**
 12 **accommodations to;**

13 **a petitioner who is a person with a disability, as provided under**
 14 **Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Title**
 15 **II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131**
 16 **through 42 U.S.C. 12134), and other applicable state and federal**
 17 **law.**

18 SECTION 11. IC 31-25-2-10, AS AMENDED BY P.L.131-2009,
 19 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2021]: **Sec. 10. (a) This section applies after June 30, 2008.**

21 **(b) The department of child services:**

22 **(1) must have sufficient qualified and trained staff to:**

23 **(A) fulfill the purpose of this article;**

24 **(B) comply with the maximum caseload ratios for:**

25 **(i) family case managers; and**

26 **(ii) child welfare caseworkers;**

27 **as set forth in IC 31-25-2-5;**

28 **(2) must be organized to maximize the continuity of**
 29 **responsibility, care, and service of individual family case**
 30 **managers toward individual children and families;**

31 **(3) must provide training to representatives of the department**
 32 **regarding the legal duties of the representatives in carrying out the**
 33 **responsibility of the department under section 7 of this chapter,**
 34 **which may consist of various methods of informing the**
 35 **representatives of their duties, in order to protect the legal rights**
 36 **and safety of children and families from the initial time of contact**
 37 **during the investigation through treatment; ~~and~~**

38 **(4) must provide training to representatives of the child protection**
 39 **services system regarding the constitutional rights of the child's**
 40 **family, including a child's guardian or custodian, that is the**
 41 **subject of an assessment of child abuse or neglect consistent with**
 42 **the Fourth Amendment to the United States Constitution and**



1 Article 1, Section 11 of the Constitution of the State of Indiana;
 2 **and**
 3 **(5) shall collaborate with the Indiana Statewide Independent**
 4 **Living Council, Self-Advocates of Indiana, and The Arc of**
 5 **Indiana, and may collaborate with other organizations**
 6 **representing persons with disabilities, to provide appropriate**
 7 **training programs conducted by a person with a disability to**
 8 **educate departmental employees in the rights and capabilities**
 9 **of persons with disabilities.**

10 SECTION 12. IC 31-27-4-6.5 IS ADDED TO THE INDIANA
 11 CODE AS A NEW SECTION TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 2021]: **Sec. 6.5. (a) As used in this section,**
 13 **"disability" has the meaning set forth in 42 U.S.C. 12102.**

14 **(b) The department, in determining whether to grant an**
 15 **application for a license to operate a foster family home:**

16 **(1) shall not discriminate against; and**
 17 **(2) shall take into consideration the provision of reasonable**
 18 **accommodations to;**

19 **an applicant who is a person with a disability, as provided under**
 20 **Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Title**
 21 **II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131**
 22 **through 42 U.S.C. 12134), and other applicable state and federal**
 23 **law.**



COMMITTEE REPORT

Madam President: The Senate Committee on Family and Children Services, to which was referred Senate Bill No. 259, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 37.

Page 3, line 29, delete ""supportive guardianship services"" and insert ""**reasonable accommodation**"".

Page 3, line 30, after "means" insert "**a change in the way policies are applied and**".

Page 3, line 30, after "services" insert "**are usually provided**".

Page 4, line 3, delete "supportive" and insert "**a reasonable accommodation**".

Page 4, line 4, delete "guardianship services".

Page 4, delete lines 7 through 9 and insert "**a reasonable accommodation.**".

Page 4, line 13, delete "of".

Page 4, line 14, delete "supportive guardianship services".

Page 5, delete lines 6 through 42.

Page 6, delete lines 1 through 32.

Page 7, line 39, delete ""supportive parenting services"" and insert ""**reasonable accommodation**"".

Page 7, line 40, after "means" insert "**a change in the way policies are applied and**".

Page 7, line 40, after "services" insert "**are usually provided**".

Page 8, line 13, delete "supportive parenting" and insert "**a reasonable accommodation**".

Page 8, line 14, delete "services".

Page 8, line 16, delete "supportive parenting services. The court" and insert "**a reasonable accommodation.**".

Page 8, delete lines 17 through 18.

Page 8, line 22, delete "of".

Page 8, line 23, delete "supportive parenting services".

Page 9, line 19, delete ""supportive parenting services"" and insert ""**reasonable accommodation**"".

Page 9, line 20, after "means" insert "**a change in the way policies are applied and**".

Page 9, line 20, after "services" insert "**are usually provided**".

Page 9, line 36, delete "supportive parenting" and insert "**a**



reasonable accommodation".

Page 9, line 37, delete "services".

Page 9, line 39, delete "supportive parenting services." and insert "**a reasonable accommodation.**".

Page 9, delete lines 40 through 41.

Page 10, line 4, delete "of".

Page 10, line 5, delete "supportive parenting services".

Page 11, line 37, delete ""supportive parenting services"" and insert ""**reasonable accommodation**"".

Page 11, line 38, after "means" insert "**a change in the way policies are applied and**".

Page 11, line 38, after "services" insert "**are usually provided**".

Page 12, line 19, delete "supportive" and insert "**a reasonable accommodation**".

Page 12, line 20, delete "parenting services".

Page 12, line 21, delete "supportive parenting" and insert "**a reasonable accommodation**".

Page 12, line 22, delete "services".

Page 12, line 27, delete "of".

Page 12, line 28, delete "supportive parenting services".

Page 13, line 17, delete ""supportive parenting services"" and insert ""**reasonable accommodation**"".

Page 13, line 18, after "means" insert "**a change in the way policies are applied and**".

Page 13, line 18, after "services" insert "**are usually provided**".

Page 13, line 34, delete "supportive parenting" and insert "**a reasonable accommodation**".

Page 13, line 35, delete "services".

Page 13, line 38, delete "supportive parenting services. The department shall" and insert "**a reasonable accommodation.**".

Page 13, delete lines 39 through 40.

Page 14, line 3, delete "of".

Page 14, line 4, delete "supportive parenting services".

Page 14, delete lines 6 through 38.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 259 as introduced.)

GROOMS, Chairperson

Committee Vote: Yeas 9, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Family, Children and Human Affairs, to which was referred Senate Bill 259, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 8, delete "Section" and insert "**In addition to subsection (a), section**".

Page 2, delete lines 10 through 42, begin a new paragraph and insert:

"SECTION 2. IC 29-3-5-4.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 4.1. (a) As used in this section, "disability" has the meaning set forth in 42 U.S.C. 12102.**

(b) In considering the qualifications and suitability of an individual with a disability for appointment as a guardian under section 4 of this chapter, a court:

- (1) shall not discriminate against; and**
- (2) shall take into consideration the provision of reasonable accommodations to;**

the individual as provided under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 through 42 U.S.C. 12134), and other applicable state and federal law.

(c) If an individual is a qualified individual with a disability, as defined by 42 U.S.C. 12131(2), there is a rebuttable presumption that the individual's disability, and any reasonable accommodation for the disability, does not make the individual unfit to serve as a guardian.

(d) If a court does not appoint an individual as a guardian due to the individual's disability, the court shall make specific written findings setting forth:

- (1) the basis for the court's determination; and**
- (2) how the rebuttable presumption under subsection (c) was overcome."**

Page 3, delete line 1.

Page 3, line 31, delete "Section", begin a new paragraph and insert: "**(c) In addition to this section, section**".

Page 4, line 26, delete "(a)".

Page 4, delete lines 29 through 42, begin a new paragraph and insert:

"SECTION 6. IC 31-17-2-8.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2021]: **Sec. 8.1. (a) As used in this section, "disability" has the meaning set forth in 42 U.S.C. 12102.**

(b) A court in a custody proceeding, including a proceeding to modify custody:

- (1) shall not discriminate against; and**
- (2) shall take into consideration the provision of reasonable accommodations to;**

a parent who is a person with a disability, as provided under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 through 42 U.S.C. 12134), and other applicable state and federal law.

(c) If a person is a qualified individual with a disability, as defined by 42 U.S.C. 12131(2), there is a rebuttable presumption that the individual's disability, and any reasonable accommodation for the disability, does not make the person unfit to parent.

(d) If a court denies custody to a parent, or modifies a parent's custody in a manner that restricts the parent's custody, due to the parent's disability, the court shall make specific written findings setting forth:

- (1) the basis for the court's determination; and**
- (2) how the rebuttable presumption under subsection (c) was overcome."**

Page 5, delete lines 1 through 23.

Page 6, delete lines 11 through 42, begin a new paragraph and insert:

"SECTION 8. IC 31-17-4-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 1.1. (a) As used in this section, "disability" has the meaning set forth in 42 U.S.C. 12102.**

(b) A court in a proceeding to determine or modify parenting time:

- (1) shall not discriminate against; and**
- (2) shall take into consideration the provision of reasonable accommodations to;**

a parent who is a person with a disability, as provided under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 through 42 U.S.C. 12134), and other applicable state and federal law.

(c) If a person is a qualified individual with a disability, as defined by 42 U.S.C. 12131(2), there is a rebuttable presumption



that the individual's disability, and any reasonable accommodation for the disability, does not make the person unfit to parent.

(d) If a court denies or unreasonably restricts a parent's parenting time due to the parent's disability, the court shall make specific written findings setting forth:

- (1) the basis for the court's determination; and**
- (2) how the rebuttable presumption under subsection (c) was overcome."**

Page 7, delete lines 1 through 5.

Page 8, line 26, delete "Section" and insert **"In addition to this section, section"**.

Page 8, delete lines 28 through 42, begin a new paragraph and insert:

"SECTION 10. IC 31-19-11-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1.1. (a) As used in this section, "disability" has the meaning set forth in 42 U.S.C. 12102.

(b) A court, in determining whether to grant a petition for adoption:

- (1) shall not discriminate against; and**
- (2) shall take into consideration the provision of reasonable accommodations to;**

a petitioner who is a person with a disability, as provided under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 through 42 U.S.C. 12134), and other applicable state and federal law.

(c) If a person is a qualified individual with a disability, as defined by 42 U.S.C. 12131(2), there is a rebuttable presumption that the individual's disability, and any reasonable accommodation for the disability, does not make the person unfit to adopt.

(d) If a court denies a petition for adoption due to a petitioner's disability, the court shall make specific written findings setting forth:

- (1) the basis for the court's determination; and**
- (2) how the rebuttable presumption under subsection (c) was overcome.**

SECTION 11. IC 31-25-2-10, AS AMENDED BY P.L.131-2009, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 10. (a) This section applies after June 30, 2008.

(b) The department of child services:

- (1) must have sufficient qualified and trained staff to:**



- (A) fulfill the purpose of this article;
- (B) comply with the maximum caseload ratios for:
 - (i) family case managers; and
 - (ii) child welfare caseworkers;

as set forth in IC 31-25-2-5;

(2) must be organized to maximize the continuity of responsibility, care, and service of individual family case managers toward individual children and families;

(3) must provide training to representatives of the department regarding the legal duties of the representatives in carrying out the responsibility of the department under section 7 of this chapter, which may consist of various methods of informing the representatives of their duties, in order to protect the legal rights and safety of children and families from the initial time of contact during the investigation through treatment; ~~and~~

(4) must provide training to representatives of the child protection services system regarding the constitutional rights of the child's family, including a child's guardian or custodian, that is the subject of an assessment of child abuse or neglect consistent with the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Constitution of the State of Indiana; **and**

(5) shall collaborate with organizations representing persons with disabilities to provide appropriate training programs conducted by a person with a disability to educate departmental employees in the rights and capabilities of persons with disabilities.

SECTION 12. IC 31-27-4-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 6.5. (a) As used in this section, "disability" has the meaning set forth in 42 U.S.C. 12102.**

(b) The department, in determining whether to grant an application for a license to operate a foster family home:

- (1) shall not discriminate against; and**
- (2) shall take into consideration the provision of reasonable accommodations to;**

an applicant who is a person with a disability, as provided under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 through 42 U.S.C. 12134), and other applicable state and federal law.

(c) If a person is a qualified individual with a disability, as



defined by 42 U.S.C. 12131(2), there is a rebuttable presumption that the individual's disability, and any reasonable accommodation for the disability, does not make the person unfit to hold a license to operate a foster family home.

(d) If the department does not issue a license to operate a foster family home to an applicant due to the applicant's disability, the department shall make specific written findings setting forth:

- (1) the basis for the department's determination; and
- (2) how the rebuttable presumption under subsection (c) was overcome."

Delete pages 9 through 11.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 259 as printed February 16, 2021.)

DEVON

Committee Vote: yeas 11, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 259 be amended to read as follows:

Page 2, delete lines 24 through 34.

Page 3, line 23, after "applies" insert "**if a person having equal priority is a person with a disability.**".

Page 3, delete lines 24 through 25.

Page 4, delete lines 35 through 42.

Page 5, delete lines 1 through 3.

Page 6, delete lines 5 through 14.

Page 7, line 36, delete "." and insert ".".

Page 8, delete lines 9 through 18.

Page 9, line 4, after "with" insert "**the Indiana Statewide Independent Living Council, Self-Advocates of Indiana, and The Arc of Indiana, and may collaborate with other**".

Page 9, line 5, after "disabilities" insert ",".

Page 9, delete lines 23 through 33.

(Reference is to ESB 259 as printed March 25, 2021.)

CLERE

ES 259—LS 6647/DI 106

