

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.

SENATE ENROLLED ACT No. 259

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:

SECTION 1. IC 29-3-5-4, AS AMENDED BY P.L.194-2017, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4. **(a)** The court shall appoint as guardian a qualified person or persons most suitable and willing to serve, having due regard to the following:

- (1) Any request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under IC 30-5-3-4(a).
- (2) Any request made for a minor by:
 - (A) a parent of the minor; or
 - (B) a de facto custodian of the minor, including a designation in a power of attorney under IC 30-5-3-4(b) or IC 30-5-3-4(c).
- (3) Any request contained in a will or other written instrument.
- (4) A designation of a standby guardian under IC 29-3-3-7.
- (5) Any request made by a minor who is at least fourteen (14) years of age.
- (6) Any request made by the spouse of the alleged incapacitated person.
- (7) The relationship of the proposed guardian to the individual for whom guardianship is sought.
- (8) Any person acting for the incapacitated person under a durable power of attorney.

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

(b) In addition to subsection (a), section 4.1 of this chapter applies when a prospective guardian is a person with a disability.

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.

SECTION 3. IC 29-3-5-5, AS AMENDED BY P.L.194-2017, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 5. (a) The following are entitled to consideration for appointment as a guardian under section 4 of this chapter in the order listed:**

- (1) A person designated in a durable power of attorney.
- (2) A person designated as a standby guardian under IC 29-3-3-7.
- (3) The spouse of an incapacitated person.
- (4) An adult child of an incapacitated person.
- (5) A parent of an incapacitated person, or a person nominated by will of a deceased parent of an incapacitated person or by any writing signed by a parent of an incapacitated person and attested to by at least two (2) witnesses, or in a power of attorney of a living parent of an incapacitated person under IC 30-5-3-4(c).
- (6) A parent of a minor, a de facto custodian of a minor, or a person nominated:
 - (A) by will of a deceased parent or a de facto custodian of a minor; or
 - (B) by a power of attorney of a living parent or a de facto custodian of a minor.
- (7) Any person related to an incapacitated person by blood or marriage with whom the incapacitated person has resided for more than six (6) months before the filing of the petition.
- (8) A person nominated by the incapacitated person who is caring



for or paying for the care of the incapacitated person.

(b) With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person or minor, may pass over a person having priority and appoint a person having a lower priority or no priority under this section.

(c) In addition to this section, section 4.1 of this chapter applies if a person having equal priority is a person with a disability.

SECTION 4. IC 31-10-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. It is the policy of this state and the purpose of this title to:

- (1) recognize the importance of family and children in our society, **including the parenting rights of a parent, regardless of whether the parent has a disability;**
- (2) recognize the responsibility of the state to enhance the viability of children and family in our society;
- (3) acknowledge the responsibility each person owes to the other;
- (4) strengthen family life by assisting parents to fulfill their parental obligations;
- (5) ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation;
- (6) remove children from families only when it is in the child's best interest or in the best interest of public safety;
- (7) provide for adoption as a viable permanency plan for children who are adjudicated children in need of services;
- (8) provide a juvenile justice system that protects the public by enforcing the legal obligations that children have to society and society has to children;
- (9) use diversionary programs when appropriate;
- (10) provide a judicial procedure that:
 - (A) ensures fair hearings;
 - (B) recognizes and enforces the legal rights of children and their parents; and
 - (C) recognizes and enforces the accountability of children and parents;
- (11) promote public safety and individual accountability by the imposition of appropriate sanctions; and
- (12) provide a continuum of services developed in a cooperative effort by local governments and the state.

SECTION 5. IC 31-10-2-3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2021]: **Sec. 3. 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.**

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

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

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

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

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

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

- (1) child molesting (IC 35-42-4-3); or**
- (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));**

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

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

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

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.

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

(1) the adoption requested is in the best interest of the child;

(2) the petitioner or petitioners for adoption are of sufficient ability to rear the child and furnish suitable support and education;

(3) the report of the investigation and recommendation under IC 31-19-8-5 has been filed;

(4) the attorney or agency arranging an adoption has filed with the court an affidavit prepared by the state department of health under IC 31-19-5-16 indicating whether a man is entitled to notice of the adoption because the man has registered with the putative father registry in accordance with IC 31-19-5;

(5) proper notice arising under subdivision (4), if notice is necessary, of the adoption has been given;

(6) the attorney or agency has filed with the court an affidavit prepared by the state department of health under:

(A) IC 31-19-6 indicating whether a record of a paternity determination; or

(B) IC 16-37-2-2(g) indicating whether a paternity affidavit executed under IC 16-37-2-2.1;

has been filed in relation to the child;



(7) proper consent, if consent is necessary, to the adoption has been given;

(8) the petitioner for adoption is not prohibited from adopting the child as the result of an inappropriate criminal history described in subsection (c) or (d); and

(9) the person, licensed child placing agency, or local office that has placed the child for adoption has provided the documents and other information required under IC 31-19-17 to the prospective adoptive parents;

the court shall grant the petition for adoption and enter an adoption decree.

(b) A court may not grant an adoption unless the state department of health's affidavit under IC 31-19-5-16 is filed with the court as provided under subsection (a)(4).

(c) A juvenile adjudication for an act listed in IC 31-9-2-84.8 that would be a felony if committed by an adult, a conviction of a misdemeanor related to the health and safety of a child, or a conviction of a felony not listed in IC 31-9-2-84.8 by a petitioner for adoption or household member is a permissible basis for the court to deny the petition for adoption. In addition, the court may not grant an adoption if a petitioner for adoption has been convicted of a nonwaivable offense under IC 31-9-2-84.8. However, the court is not prohibited from granting an adoption based upon a felony conviction for:

- (1) a felony under IC 9-30-5;
- (2) battery (IC 35-42-2-1);
- (3) criminal recklessness (IC 35-42-2-2) as a felony;
- (4) criminal confinement (IC 35-42-3-3);
- (5) arson (IC 35-43-1-1);
- (6) nonsupport of a dependent child (IC 35-46-1-5);
- (7) operating a motorboat while intoxicated (IC 35-46-9-6) as a felony;
- (8) a felony involving a weapon under IC 35-47; or
- (9) a felony relating to controlled substances under IC 35-48-4;

if the date of the conviction did not occur within the immediately preceding five (5) year period.

(d) A court may not grant an adoption if the petitioner is a sex or violent offender (as defined in IC 11-8-8-5) or a sexually violent predator (as defined in IC 35-38-1-7.5).

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

SECTION 10. IC 31-19-11-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

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[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.

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 the Indiana Statewide Independent Living Council, Self-Advocates of Indiana, and The Arc of Indiana, and may collaborate with other 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.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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