

HOUSE BILL No. 1072

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-36-2-3; IC 23-14; IC 25-15-9-18; IC 29-1-10-1; 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 estate of the child and disposition of the child's body, including autopsy, cremation, funeral arrangements, or anatomical gifts. Provides that, for purposes of a custody order, "health care" includes the disposition of a minor child's body upon the minor child's death.

Effective: July 1, 2018.

Olthoff

January 3, 2018, read first time and referred to Committee on Judiciary.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1072

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, 2018]: 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, 2018]: 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, 2018]: 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, 2018]: 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 29-1-10-1 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 1. (a) **Except as**
39 **provided in subsection (g)**, domiciliary letters testamentary or
40 domiciliary letters of general administration may be granted to one (1)
41 or more of the persons mentioned in this subsection, natural or
42 corporate, who are not disqualified, in the following order:



- 1 (1) To the executor or executors designated in a will that has been
 2 admitted to probate.
 3 (2) To a surviving spouse who is a devisee in a will that has been
 4 admitted to probate.
 5 (3) To a devisee in a will that has been admitted to probate.
 6 (4) To the surviving spouse, or to the person or persons
 7 nominated by the surviving spouse or to the surviving spouse and
 8 the person or persons nominated by the surviving spouse.
 9 (5) To:
 10 (A) an heir;
 11 (B) the person or persons nominated by an heir; or
 12 (C) an heir and the person or persons nominated by an heir.
 13 (6) If there is not a person listed in subdivisions (1) through (5),
 14 then to any other qualified person.
- 15 (b) No person is qualified to serve as a domiciliary personal
 16 representative who is:
 17 (1) under eighteen (18) years of age;
 18 (2) incapacitated unless the incapacity is caused only by:
 19 (A) physical illness;
 20 (B) physical impairment; or
 21 (C) physical infirmity;
 22 (3) a convicted felon, either under the laws of the United States or
 23 of any state or territory of the United States;
 24 (4) a resident corporation not authorized to act as a fiduciary in
 25 this state; or
 26 (5) a person whom the court finds unsuitable.
- 27 (c) A nonresident individual or corporate fiduciary may qualify and
 28 serve as a joint personal representative with a resident personal
 29 representative only by:
 30 (1) filing with the court that has jurisdiction of the administration
 31 of the decedent's estate a bond in an amount:
 32 (A) not less than:
 33 (i) the probable value of the estate's personal property; plus
 34 (ii) the estimated rents and profits to be derived from the
 35 property in the estate during the probate period; and
 36 (B) not greater than the probable gross value of the estate; and
 37 (2) otherwise meeting the qualifications of subsection (b).
- 38 (d) A nonresident individual who otherwise qualifies under
 39 subsection (b) may qualify to serve as a personal representative in
 40 Indiana only by filing with the court that has jurisdiction of the
 41 administration of the decedent's estate:
 42 (1) notice in writing of the individual's acceptance of the



- 1 appointment as personal representative;
 2 (2) notice of the appointment of a resident agent to accept service
 3 of process, notices, and other documents; and
 4 (3) a bond in an amount:
 5 (A) not less than:
 6 (i) the probable value of the estate's personal property; plus
 7 (ii) the estimated rents and profits to be derived from the
 8 property in the estate during the probate period; and
 9 (B) not greater than the probable gross value of the estate.
 10 (e) If a personal representative becomes a nonresident of this state,
 11 the representative remains qualified to serve only if the representative
 12 files with the court that has jurisdiction of the administration of the
 13 estate a bond in an amount:
 14 (1) not less than:
 15 (A) the probable value of the estate's personal property; plus
 16 (B) the estimated rents and profits to be derived from the
 17 property in the estate during the probate period; and
 18 (2) not greater than the probable gross value of the estate.
 19 (f) A nonresident individual who satisfies the conditions of
 20 subsection (d) or (e) submits personally to the jurisdiction of the court
 21 in any proceeding that relates to the estate of the decedent.
 22 **(g) If the decedent is a minor child and the subject of a custody**
 23 **order, domiciliary letters testamentary or domiciliary letters of**
 24 **general administration shall be, subject to subsection (h), granted**
 25 **to the parent who was awarded:**
 26 **(1) sole legal custody of the child; or**
 27 **(2) primary physical custody, if the parents were awarded**
 28 **joint legal custody of the minor child.**
 29 **(h) If the parent who was awarded sole legal custody or primary**
 30 **physical custody is disqualified under subsection (b), then**
 31 **domiciliary letters testamentary or domiciliary letters of general**
 32 **administration shall be granted to any other qualified person.**
 33 SECTION 6. IC 29-2-16.1-7, AS AMENDED BY P.L.3-2008,
 34 SECTION 226, IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2018]: Sec. 7. (a) Except as otherwise provided
 36 in subsection (g) and subject to subsection (f), in the absence of an
 37 express, contrary indication by the donor, a person other than the donor
 38 is barred from making, amending, or revoking an anatomical gift of a
 39 donor's body or part if the donor made an anatomical gift of the donor's
 40 body or part under section 4 of this chapter or an amendment to an
 41 anatomical gift of the donor's body or part under section 5 of this
 42 chapter.



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

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

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

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

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

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

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

34 SECTION 7. IC 29-2-16.1-8, AS ADDED BY P.L.147-2007,
 35 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2018]: Sec. 8. (a) Subject to subsections (b) and (c), unless
 37 barred by section 6 or 7 of this chapter, an anatomical gift of a
 38 decedent's body or part for the purpose of transplantation, therapy,
 39 research, or education may be made by any member of the following
 40 classes of persons who are reasonably available, in the order of priority
 41 listed:

42 (1) An agent of the decedent at the time of death who could have



1 made an anatomical gift under section 3(2) of this chapter
2 immediately before the decedent's death.

3 (2) The spouse of the decedent.

4 (3) Adult children of the decedent.

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

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

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

11 (5) Adult siblings of the decedent.

12 (6) Adult grandchildren of the decedent.

13 (7) Grandparents of the decedent.

14 (8) An adult who exhibited special care and concern for the
15 decedent.

16 (9) A person acting as the guardian of the decedent at the time of
17 death.

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

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

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

32 SECTION 8. IC 31-17-2-17 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 17. (a) **For purposes**
34 **of this section, "health care" includes the disposition of a child's**
35 **body upon the child's death.**

36 (b) Except:

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

39 (2) as provided in subsection ~~(b)~~; (c);

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

42 ~~(b)~~ (c) If the court finds after motion by a noncustodial parent that,



1 in the absence of a specific limitation of the custodian's authority, the
2 child's:

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

6 **(d) If a child dies, the parent awarded:**

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

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

13 SECTION 9. IC 36-2-14-6, AS AMENDED BY P.L.34-2011,
14 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2018]: Sec. 6. (a) Whenever the coroner is notified that a
16 person in the county:

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

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

30 (b) The coroner:

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

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

- 41 (1) the coroner has photographed them in the manner that most
42 fully discloses how the person died; and



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



1 circuit court clerk.

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

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

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

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

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

