

SENATE BILL No. 318

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-67.1; IC 31-14; IC 31-17.

Synopsis: Custody and parenting time. Provides that there is a presumption, rebuttable by a preponderance of the evidence, that: (1) joint physical custody is in the best interests of a child; and (2) equally shared parenting time is in the best interests of a child. Provides, for purposes of each presumption, that the presumption does not apply if a parent of the child has requested or been granted a protective order against the other parent on behalf of the child. Amends the factors a court must consider when making a physical custody determination. Requires a court that finds that equally shared parenting time is not in the best interests of the child to order a parenting time schedule that maximizes the time each parent spends with the child without endangering the child's physical health and well-being or significantly impairing the child's emotional health.

Effective: July 1, 2021.

Garten, Mishler

January 12, 2021, read first time and referred to Committee on Judiciary.



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 BILL No. 318

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

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

1 SECTION 1. IC 31-9-2-67.1 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2021]: **Sec. 67.1. "Joint physical custody", for purposes of**
4 **IC 31-14-13 and IC 31-17-2, means physical custody of a child**
5 **allocated equally, or as equally as practicable, between the child's**
6 **parents or custodians.**

7 SECTION 2. IC 31-14-13-2 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. **(a)** The court shall
9 determine custody in accordance with the best interests of the child. In
10 determining the child's best interests, there is not a presumption
11 favoring either parent. **However, except as provided in subsection**
12 **(c), there is a presumption, rebuttable by a preponderance of the**
13 **evidence, that joint physical custody is in the best interests of the**
14 **child.**

15 **(b) In making a determination under this section,** the court shall
16 consider all relevant factors, including the following:

17 (1) The age and sex of the child.



- 1 (2) The wishes of the child's parents.
 2 (3) The wishes of the child, with:
 3 (A) more consideration given to the child's wishes if the child
 4 is at least fourteen (14) years of age; **and**
 5 (B) **due consideration given to the influence a parent may**
 6 **have over the child's wishes.**
 7 (4) The interaction and interrelationship of the child with:
 8 (A) the child's parents;
 9 (B) the child's siblings; and
 10 (C) any other person who may significantly affect the child's
 11 best interest.
 12 (5) The child's adjustment **and continuing proximity** to home,
 13 school, and community.
 14 (6) The mental and physical health of all individuals involved.
 15 (7) Evidence of a pattern of domestic or family violence by either
 16 parent, **and the extent to which the domestic or family violence**
 17 **has affected the child and the child's relationship with each**
 18 **parent. If a parent has committed domestic or family violence,**
 19 **the court shall give due consideration to the parent's efforts**
 20 **to complete any violence treatment, counseling, or program.**
 21 (8) Evidence that the child has been cared for by a de facto
 22 custodian, and if the evidence is sufficient, the court shall
 23 consider the factors described in section 2.5(b) of this chapter.
 24 (9) **The motivation of the child's parents in participating in**
 25 **the custody proceeding.**
 26 (10) **The likelihood that a parent will allow the child frequent,**
 27 **meaningful, and continuing contact with the other parent or**
 28 **a de facto custodian of the child, unless the court finds that:**
 29 (A) **the other parent or de facto custodian engaged in**
 30 **domestic or family violence against the parent or child;**
 31 **and**
 32 (B) **a continuing relationship with the other parent or de**
 33 **facto custodian is likely to endanger the health or safety of**
 34 **the parent or child.**
 35 (c) **The presumption under subsection (a) that joint physical**
 36 **custody is in the best interests of the child does not apply if a**
 37 **parent who is a party to the custody proceeding has requested or**
 38 **been granted a protective order:**
 39 (1) **against the other parent; and**
 40 (2) **on behalf of the child;**
 41 **under IC 31-14-16.**
 42 SECTION 3. IC 31-14-13-6 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 6. (a) The court may
2 not modify a child custody order unless:

- 3 (1) modification is in the best interests of the child; and
4 (2) there is a substantial change in one (1) or more of the factors
5 that the court may consider under section 2 and, if applicable,
6 section 2.5 of this chapter.

7 **(b) For purposes of subsection (a)(1), there is a presumption,
8 rebuttable by a preponderance of the evidence, that joint physical
9 custody is in the best interests of the child. However, the
10 presumption does not apply if a parent who is subject to the child
11 custody order has requested or been granted a protective order:**

- 12 **(1) against the other parent who is subject to the child custody
13 order; and
14 (2) on behalf of the child;**

15 **under IC 31-14-16.**

16 SECTION 4. IC 31-14-14-1, AS AMENDED BY P.L.223-2019,
17 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2021]: Sec. 1. (a) A noncustodial parent is entitled to
19 reasonable parenting time rights unless the court finds, after a hearing,
20 that parenting time might:

- 21 (1) endanger the child's physical health and well-being; or
22 (2) significantly impair the child's emotional development.

23 **(b) Subject to subsection (h), there is a presumption, rebuttable
24 by a preponderance of the evidence, that equally shared parenting
25 time is in the best interests of the child. If the court finds that
26 equally shared parenting time is not in the best interests of the
27 child, the court shall order a parenting time schedule that
28 maximizes the time each parent spends with the child without:**

- 29 **(1) endangering the child's physical health and well-being; or
30 (2) significantly impairing the child's emotional health.**

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

35 ~~(c)~~ (d) In a hearing under subsection (a), there is a rebuttable
36 presumption that a person who has been convicted of:

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

39 might endanger the child's physical health and well-being or
40 significantly impair the child's emotional development.

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



1 (1) child molesting (IC 35-42-4-3); or
 2 (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));
 3 there is a rebuttable presumption that the parenting time with the child
 4 must be supervised.

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

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

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

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

16 (h) **The presumption under subsection (b) that equally shared
 17 parenting time is in the best interests of the child does not apply if
 18 the child's custodial parent or noncustodial parent has requested
 19 or been granted a protective order:**

- 20 (1) **against the other parent; and**
 21 (2) **on behalf of the child;**

22 **under IC 31-14-16.**

23 SECTION 5. IC 31-17-2-8, AS AMENDED BY P.L.194-2017,
 24 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2021]: Sec. 8. (a) The court shall determine custody and enter
 26 a custody order in accordance with the best interests of the child. In
 27 determining the best interests of the child, there is no presumption
 28 favoring either parent. **However, except as provided in subsection**
 29 **(c), there is a presumption, rebuttable by a preponderance of the**
 30 **evidence, that joint physical custody is in the best interests of the**
 31 **child.**

32 (b) **In making a determination under this section,** the court shall
 33 consider all relevant factors, including the following:

- 34 (1) The age and sex of the child.
 35 (2) The wishes of the child's parent or parents.
 36 (3) The wishes of the child, with:
 37 (A) more consideration given to the child's wishes if the child
 38 is at least fourteen (14) years of age; **and**
 39 (B) **due consideration given to the influence a parent may**
 40 **have over the child's wishes.**
 41 (4) The interaction and interrelationship of the child with:
 42 (A) the child's parent or parents;



- 1 (B) the child's sibling; and
 2 (C) any other person who may significantly affect the child's
 3 best interests.
- 4 (5) The child's adjustment **and continuing proximity** to the
 5 child's:
- 6 (A) home;
 7 (B) school; and
 8 (C) community.
- 9 (6) The mental and physical health of all individuals involved.
 10 (7) Evidence of a pattern of domestic or family violence by either
 11 parent, **and the extent to which the domestic or family violence**
 12 **has affected the child and the child's relationship with each**
 13 **parent. If a parent has committed domestic or family violence,**
 14 **the court shall give due consideration to the parent's efforts**
 15 **to complete any violence treatment, counseling, or program.**
- 16 (8) Evidence that the child has been cared for by a de facto
 17 custodian, and if the evidence is sufficient, the court shall
 18 consider the factors described in section 8.5(b) of this chapter.
- 19 (9) A designation in a power of attorney of:
- 20 (A) the child's parent; or
 21 (B) a person found to be a de facto custodian of the child.
- 22 **(10) The motivation of the child's parents in participating in**
 23 **the custody proceeding.**
- 24 **(11) The likelihood that a parent will allow the child frequent,**
 25 **meaningful, and continuing contact with the other parent or**
 26 **a de facto custodian of the child, unless the court finds that:**
- 27 (A) the other parent or de facto custodian engaged in
 28 domestic or family violence against the parent or child;
 29 and
 30 (B) a continuing relationship with the other parent or de
 31 facto custodian is likely to endanger the health or safety of
 32 the parent or child.
- 33 (c) **The presumption under subsection (a) that joint physical**
 34 **custody is in the best interests of the child does not apply if a**
 35 **parent who is a party to the custody proceeding has requested or**
 36 **been granted a protective order:**
- 37 (1) against the other parent; and
 38 (2) on behalf of the child;
- 39 **under IC 34-26-5.**
- 40 SECTION 6. IC 31-17-2-21 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 21. (a) The court may
 42 not modify a child custody order unless:



- 1 (1) the modification is in the best interests of the child; and
 2 (2) there is a substantial change in one (1) or more of the factors
 3 that the court may consider under section 8 and, if applicable,
 4 section 8.5 of this chapter.

5 (b) In making its determination, the court shall consider the factors
 6 listed under section 8 of this chapter.

7 **(c) For purposes of subsection (a)(1), there is a presumption,**
 8 **rebuttable by a preponderance of the evidence, that joint physical**
 9 **custody is in the best interests of the child. However, the**
 10 **presumption does not apply if a parent who is subject to the child**
 11 **custody order has requested or been granted a protective order:**

12 **(1) against the other parent who is subject to the child custody**
 13 **order; and**

14 **(2) on behalf of the child;**

15 **under IC 34-26-5.**

16 ~~(e)~~ **(d)** The court shall not hear evidence on a matter occurring
 17 before the last custody proceeding between the parties unless the
 18 matter relates to a change in the factors relating to the best interests of
 19 the child as described by section 8 and, if applicable, section 8.5 of this
 20 chapter.

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

29 **(b) Subject to subsection (g), there is a presumption, rebuttable**
 30 **by a preponderance of the evidence, that equally shared parenting**
 31 **time is in the best interests of the child. If the court finds that**
 32 **equally shared parenting time is not in the best interests of the**
 33 **child, the court shall order a parenting time schedule that**
 34 **maximizes the time each parent spends with the child without:**

35 **(1) endangering the child's physical health and well-being; or**

36 **(2) significantly impairing the child's emotional health.**

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

41 ~~(e)~~ **(d)** The court may permit counsel to be present at the interview.
 42 If counsel is present:



- 1 (1) a record may be made of the interview; and
 2 (2) the interview may be made part of the record for purposes of
 3 appeal.
- 4 ~~(d)~~ **(e)** Except as provided in subsection ~~(e)~~; **(f)**, if a court grants
 5 parenting time rights to a person who has been 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 there is a rebuttable presumption that the parenting time with the child
 9 must be supervised.
- 10 ~~(e)~~ **(f)** If a court grants parenting time rights to a person who has
 11 been convicted of:
 12 (1) child molesting (IC 35-42-4-3); or
 13 (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));
 14 within the previous five (5) years, the court shall order that the
 15 parenting time with the child must be supervised.
- 16 **(g) The presumption under subsection (b) that equally shared**
 17 **parenting time is in the best interests of the child does not apply if**
 18 **the child's custodial parent or noncustodial parent has requested**
 19 **or been granted a protective order:**
 20 **(1) against the other parent; and**
 21 **(2) on behalf of the child;**
 22 **under IC 34-26-5.**

