

IC 31-15-4

Chapter 4. Provisional Orders in Dissolution and Legal Separation Actions

IC 31-15-4-1

Motions

Sec. 1. (a) In an action for dissolution of marriage under IC 31-15-2 or legal separation under IC 31-15-3, either party may file a motion for any of the following:

- (1) Temporary maintenance.
- (2) Temporary support or custody of a child of the marriage entitled to support.
- (3) Possession of property.
- (4) Counseling.
- (5) A protective order under IC 34-26-5.

(b) If a party desires a protective order under subsection (a)(5), the party must file a petition under IC 34-26-5 in the court in which the case is pending, and the court may not require the moving party to give security. If the petitioner requests an ex parte protective order, the court shall immediately:

- (1) review the request; and
- (2) if required, set a hearing;

under IC 34-26-5. The procedure and law for a proceeding under this subsection are controlled by IC 34-26-5.

As added by P.L.1-1997, SEC.7. Amended by P.L.133-2002, SEC.27; P.L.221-2003, SEC.5.

IC 31-15-4-2

Supporting affidavit

Sec. 2. Except for a protective order under section 1 of this chapter, the motion must be accompanied by an affidavit setting forth the following:

- (1) The factual basis for the motion.
- (2) The amounts requested or other relief sought.

As added by P.L.1-1997, SEC.7. Amended by P.L.133-2002, SEC.28.

IC 31-15-4-3

Motion for temporary restraining order

Sec. 3. As a part of a motion for temporary maintenance, for support or custody of a child, or for possession of property under section 1 of this chapter or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order:

- (1) restraining any person from transferring, encumbering, concealing, or in any way disposing of any property, except in the usual course of business or for the necessities of life; or
- (2) granting temporary possession of property to either party.

As added by P.L.1-1997, SEC.7. Amended by P.L.133-2002, SEC.29.

IC 31-15-4-4

Hearing of motions

Sec. 4. The motion for temporary maintenance, support or custody of a child, or possession of property under section 1 of this chapter shall be set for hearing by the court.

As added by P.L.1-1997, SEC.7.

IC 31-15-4-5

Preliminary hearing of petition for temporary support or custody of child

Sec. 5. The court shall immediately schedule a preliminary hearing upon the filing of a petition for:

- (1) temporary child support; or
- (2) temporary custody of a child entitled to support.

As added by P.L.1-1997, SEC.7.

IC 31-15-4-6

Determination

Sec. 6. The court shall determine:

- (1) after the hearing; and
- (2) not later than twenty-one (21) days after the petition is filed; whether to grant or deny the petition.

As added by P.L.1-1997, SEC.7.

IC 31-15-4-7

Temporary restraining order

Sec. 7. The court may issue a temporary restraining order if the court finds on the basis of the moving party's affidavit that injury would result to the moving party if an immediate order were not issued.

As added by P.L.1-1997, SEC.7.

IC 31-15-4-8

Temporary orders

Sec. 8. (a) The court may issue an order for temporary maintenance or support in such amounts and on such terms that are just and proper. However, the court shall require that the support payments be made through the clerk of the circuit court as trustee for remittance to the person entitled to receive benefits, unless the court has reasonable grounds for providing or approving another method of payment.

- (b) The court may issue:
- (1) a temporary restraining order;
 - (2) a custody order; or
 - (3) an order for possession of property;

to the extent the court considers proper.

As added by P.L.1-1997, SEC.7.

IC 31-15-4-9

Counseling

Sec. 9. The court may require the parties to seek counseling for

themselves or for a child of the parties under such terms and conditions that the court considers appropriate if:

- (1) either party makes a motion for counseling in an effort to improve conditions of their marriage;
- (2) a party, the child of the parties, the child's guardian ad litem or court appointed special advocate, or the court makes a motion for counseling for the child; or
- (3) the court makes a motion for counseling for parties who are the parents of a child less than eighteen (18) years of age.

As added by P.L.1-1997, SEC.7.

IC 31-15-4-10

Joint counseling

Sec. 10. The court may not require joint counseling of the parties under section 9 of this chapter:

- (1) without the consent of both parties; or
- (2) if there is evidence that the other party has demonstrated a pattern of domestic or family violence against a family or household member.

As added by P.L.1-1997, SEC.7. Amended by P.L.133-2002, SEC.30.

IC 31-15-4-11

Change of venue or change from judge; effect on jurisdiction

Sec. 11. The filing by either party of a motion for change of venue or change from the judge during the period before the court makes a determination under section 6 of this chapter does not divest the court of jurisdiction to:

- (1) hear evidence upon the petition;
- (2) set an amount of temporary child support;
- (3) determine temporary custody; or
- (4) order appropriate parenting time.

As added by P.L.1-1997, SEC.7. Amended by P.L.68-2005, SEC.27.

IC 31-15-4-12

Change of venue or change from judge; effect on provisional orders

Sec. 12. If the court grants a change of venue or change from the judge after the preliminary order of support, custody, or parenting time is issued, either party may:

- (1) file a petition for a subsequent preliminary hearing on the issue of temporary child support, temporary custody, or parenting time;
- (2) seek relief from the original order; and
- (3) request that the court conduct a hearing relating to any other temporary order available under this article.

As added by P.L.1-1997, SEC.7. Amended by P.L.68-2005, SEC.28.

IC 31-15-4-13

Provisional order; rights not prejudiced

Sec. 13. The issuance of a provisional order is without prejudice

to the rights of the parties or the child as adjudicated at the final hearing in the proceeding.

As added by P.L.1-1997, SEC.7.

IC 31-15-4-14

Provisional order; termination

Sec. 14. A provisional order terminates when:

(1) the final decree is entered subject to right of appeal; or

(2) the petition for dissolution or legal separation is dismissed.

As added by P.L.1-1997, SEC.7.

IC 31-15-4-15

Provisional order; revocation or modification

Sec. 15. The terms of a provisional order may be revoked or modified before the final decree on a showing of the facts appropriate to revocation or modification.

As added by P.L.1-1997, SEC.7.

IC 31-15-4-16

Repealed

(Repealed by P.L.133-2002, SEC.69.)