

## **IC 31-14-13**

### **Chapter 13. Custody Following Determination of Paternity**

#### **IC 31-14-13-1**

##### **Sole legal custody in biological mother; exceptions**

Sec. 1. A biological mother of a child born out of wedlock has sole legal custody of the child, except as provided in IC 16-37-2-2.1, and unless a statute or court order provides otherwise under the following:

- (1) IC 12-26 (involuntary commitment of a child).
- (2) IC 29-3 (guardianship and protective proceedings under the probate code).
- (3) IC 31-14 (custody of a child born outside of a marriage).
- (4) IC 31-34 (child in need of services).
- (5) IC 31-37 (delinquent child).
- (6) IC 35-46 (offenses against the family).
- (7) IC 35-50 (criminal sentences).
- (8) An order by a court that has jurisdiction over the child.

*As added by P.L.1-1997, SEC.6. Amended by P.L.25-2010, SEC.2.*

#### **IC 31-14-13-2**

##### **Factors of custody determination**

Sec. 2. The court shall determine custody in accordance with the best interests of the child. In determining the child's best interests, there is not a presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
  - (A) the child's parents;
  - (B) the child's siblings; and
  - (C) any other person who may significantly affect the child's best interest.
- (5) The child's adjustment to home, school, and community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter.

*As added by P.L.1-1997, SEC.6. Amended by P.L.96-1999, SEC.2; P.L.133-2002, SEC.24.*

#### **IC 31-14-13-2.3**

##### **Joint legal custody; finding required for award; factors considered in making award**

Sec. 2.3. (a) In a proceeding to which this chapter applies, the

court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child.

(b) An award of joint legal custody under this section does not require an equal division of physical custody of the child.

(c) In determining whether an award of joint legal custody under this section would be in the best interest of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint legal custody have agreed to an award of joint legal custody. The court shall also consider:

- (1) the fitness and suitability of each of the persons awarded joint legal custody;
- (2) whether the persons awarded joint legal custody are willing and able to communicate and cooperate in advancing the child's welfare;
- (3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age;
- (4) whether the child has established a close and beneficial relationship with both of the persons awarded joint legal custody;
- (5) whether the persons awarded joint legal custody:
  - (A) live in close proximity to each other; and
  - (B) plan to continue to do so;
- (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint legal custody; and
- (7) whether there is a pattern of domestic or family violence.

*As added by P.L.95-2009, SEC.2.*

### **IC 31-14-13-2.5**

#### **Consideration of de facto custodian factors**

Sec. 2.5. (a) This section applies only if the court finds by clear and convincing evidence that the child has been cared for by a de facto custodian.

(b) In addition to the factors listed in section 2 of this chapter, the court shall consider the following factors in determining custody:

- (1) The wishes of the child's de facto custodian.
- (2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.
- (3) The intent of the child's parent in placing the child with the de facto custodian.
- (4) The circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent seeking custody to:
  - (A) seek employment;
  - (B) work; or
  - (C) attend school.

(c) If a court determines that a child is in the custody of a de facto custodian, the court shall make the de facto custodian a party to the proceeding.

(d) The court shall award custody of the child to the child's de facto custodian if the court determines that it is in the best interests of the child.

(e) If the court awards custody of the child to the child's de facto custodian, the de facto custodian is considered to have legal custody of the child under Indiana law.

*As added by P.L.96-1999, SEC.3.*

### **IC 31-14-13-3**

#### **Interview of child in chambers**

Sec. 3. (a) The court may interview the child in chambers to ascertain the child's wishes.

(b) The court may permit counsel to be present at the interview.

(c) If counsel is present at the interview, a record may be made of the interview and made part of the record for purposes of appeal.

*As added by P.L.1-1997, SEC.6.*

### **IC 31-14-13-4**

#### **Authority of custodial parent to determine child's upbringing**

Sec. 4. Except as otherwise provided in an order by a court, the custodial parent may determine the child's upbringing, which includes education, health care, and religious training, unless the court determines that the best interests of the child require a limitation on this authority.

*As added by P.L.1-1997, SEC.6. Amended by P.L.95-2009, SEC.3.*

### **IC 31-14-13-5**

#### **Supervision of placement**

Sec. 5. The court may order the probation department or any licensed child placing agency to supervise the placement to ensure that the custodial or parenting time terms of the decree are carried out if:

- (1) both parents or the child request supervision; or
- (2) the court finds that without supervision the child's physical health and well-being would be endangered or the child's emotional development would be significantly impaired.

*As added by P.L.1-1997, SEC.6. Amended by P.L.68-2005, SEC.17; P.L.146-2008, SEC.557.*

### **IC 31-14-13-6**

#### **Modification of child custody order**

Sec. 6. The court may not modify a child custody order unless:

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

*As added by P.L.1-1997, SEC.6. Amended by P.L.96-1999, SEC.4.*

### **IC 31-14-13-6.1**

#### **Delegation of parenting time during deployment; automatically**

**terminates upon return**

Sec. 6.1. (a) Upon the motion of a parent who has received military deployment orders, the court may delegate the parent's parenting time, or a part of the parent's parenting time, during the time the parent is deployed to a person who has a close and substantial relationship with the parent's child if the court finds that delegating the parent's parenting time is in the best interests of the child.

(b) If a court delegates parenting time under subsection (a), the order delegating parenting time automatically terminates after the parent returns from deployment.

(c) A court may terminate an order delegating parenting time if the court determines that the delegated parenting time is no longer in the best interests of the child.

*As added by P.L.55-2012, SEC.1.*

**IC 31-14-13-6.2**

**Military duties, expedited hearing; allow evidence by electronic means**

Sec. 6.2. (a) Upon a motion of a parent who has received military temporary duty, deployment, or mobilization orders, the court shall hold an expedited hearing to determine or modify the custody of a child or parenting time with a child if the military duties of the parent have a material effect on the parent's ability to appear in person at a regularly scheduled hearing concerning custody or parenting time.

(b) Upon a motion of a parent who has received military temporary duty, deployment, or mobilization orders, the court shall, with reasonable notice, allow the parent to present testimony and evidence by:

- (1) telephone;
- (2) video teleconference;
- (3) Internet; or
- (4) other electronic means approved by the court;

in a custody or parenting time proceeding if the military duties of the parent have a material effect on the parent's ability to appear in person at a regularly scheduled hearing concerning custody or parenting time.

*As added by P.L.55-2012, SEC.2.*

**IC 31-14-13-6.3**

**Parent's active duty service not a factor; temporary modification of custody**

Sec. 6.3. (a) A court may not consider a parent's absence or relocation due to active duty service as a factor in determining custody or permanently modifying a child custody order.

(b) If a court temporarily modifies a custody order due to a parent's active duty service, the order temporarily modifying the custody order terminates automatically not later than ten (10) days after the date the parent notifies the temporary custodian in writing that the parent has returned from active duty service. This subsection

does not prevent a court from modifying a child custody order as provided under this article after a parent returns from active duty service.

*As added by P.L.80-2010, SEC.28.*

#### **IC 31-14-13-6.5**

##### **Security, bond, or guarantee**

Sec. 6.5. The court may provide in:

- (1) a custody order; or
- (2) a modification of a custody order;

for the security, bond, or other guarantee that is satisfactory to the court to secure enforcement of the custody order.

*As added by P.L.171-2001, SEC.3.*

#### **IC 31-14-13-6.7**

##### **Security, bond, or guarantee; determinations**

Sec. 6.7. (a) The court shall consider requiring security, a bond, or another guarantee under section 6.5 of this chapter if the court makes a finding under subdivision (1), (2), (4), or (7) by clear and convincing evidence. If the court makes a finding under subdivision (1), (2), (4), or (7), the court shall also consider subdivisions (3), (5), (6), (8), and (9) in determining the amount of security, bond, or other guarantee. In making a determination under this section, the court shall consider the following:

- (1) Whether a party has previously taken a child out of Indiana or another state in violation of a custody, parenting time, or visitation order.
- (2) Whether a party has previously threatened to take a child out of Indiana or another state in violation of a custody, parenting time, or visitation order.
- (3) Whether a party has strong ties to Indiana.
- (4) Whether a party:
  - (A) is a citizen of another country;
  - (B) has strong emotional or cultural ties to the other country;and
  - (C) has indicated or threatened to take a child out of Indiana to the other country.
- (5) Whether a party has friends or family living outside Indiana.
- (6) Whether a party does not have a financial reason to stay in Indiana, such as whether the party is unemployed, able to work anywhere, or is financially independent.
- (7) Whether a party has engaged in planning that would facilitate removal from Indiana, such as quitting a job, selling the party's primary residence, terminating a lease, closing an account, liquidating other assets, hiding or destroying documents, applying for a passport, applying for a birth certificate, or applying for school or medical records.
- (8) Whether a party has a history of marital instability, a lack of parental cooperation, domestic violence, or child abuse.
- (9) Whether a party has a criminal record.

After considering evidence, the court shall issue a written determination of security, bond, or other written guarantee supported by findings of fact and conclusions of law.

(b) If a motion for change of judge or change of venue is filed, the court may, before a determination of change of judge or change of venue, consider security, bond, or other guarantee under this chapter. *As added by P.L.171-2001, SEC.4. Amended by P.L.68-2005, SEC.18.*

#### **IC 31-14-13-7**

##### **Determination; factors considered**

Sec. 7. In making a determination, the court shall consider the factors listed under section 2 of this chapter. *As added by P.L.1-1997, SEC.6.*

#### **IC 31-14-13-8**

##### **Custody modification proceeding; violation of injunction or temporary restraining order as factor**

Sec. 8. An intentional violation by a custodial parent of an injunction or a temporary restraining order issued under IC 31-14-15 (or IC 31-6-6.1-12.1 before its repeal) may be considered a relevant factor under section 2 of this chapter that the court must consider in a proceeding for a custody modification under this chapter. *As added by P.L.1-1997, SEC.6.*

#### **IC 31-14-13-9**

##### **Custody modification proceeding; admissible evidence**

Sec. 9. In a proceeding for a custody modification, the court may not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described in section 2 and, if applicable, section 2.5 of this chapter. *As added by P.L.1-1997, SEC.6. Amended by P.L.96-1999, SEC.5.*

#### **IC 31-14-13-10**

##### **Notice of intent to move residence**

Sec. 10. If an individual who has been awarded custody of or parenting time with a child under this article (or IC 31-6-6.1-11 before its repeal) intends to move the individual's residence, the individual must:

- (1) file a notice of that intent with the clerk of the court that issued the custody or parenting time order; and
- (2) send a copy of the notice to each nonrelocating individual in accordance with IC 31-17-2.2.

*As added by P.L.1-1997, SEC.6. Amended by P.L.50-2006, SEC.6.*

#### **IC 31-14-13-11**

##### **Notice of passport application for child**

Sec. 11. (a) If any party to a custody order applies for a passport for the child, the party who applies for the child's passport shall do

the following not less than ten (10) days before applying for the child's passport:

(1) File a notice of the passport application with the clerk of the court that issued the custody order.

(2) Send a copy of the notice to the other party.

(b) The parties may jointly agree in writing to waive the requirements of subsection (a).

*As added by P.L.1-1997, SEC.6. Amended by P.L.96-1999, SEC.6.*

### **IC 31-14-13-12**

#### **Submissions to the court; court requests for information**

Sec. 12. (a) If a person files a petition to establish or modify custody of a child, any person who:

(1) is a party to the custody proceeding; and

(2) has knowledge that:

(A) a party to the custody proceeding has been determined to be a perpetrator of a substantiated report of child abuse or neglect;

(B) the child named in the petition has been the subject of a substantiated report of child abuse or neglect;

(C) the child named in the petition has been determined to be a child in need of services under IC 31-34; or

(D) the child named in the petition has been involved in an informal adjustment under IC 31-34-8;

shall submit to the court in writing under seal that a party to the custody proceeding is a person described in subdivision (2)(A) or the child named in the petition is a child described in subdivision (2)(B), (2)(C), or (2)(D).

(b) A court reviewing a petition to establish or modify the custody of a child may request information from the department of child services regarding a petition or proceeding described in subsection (a)(2). The department shall provide a response under seal to the court's request for information not later than ten (10) days after the department receives the court's request for the information.

*As added by P.L.239-2013, SEC.2.*