

IC 31-21-5

Chapter 5. Jurisdiction

IC 31-21-5-1

Jurisdiction requirements

Sec. 1. (a) Except as otherwise provided in section 4 of this chapter, an Indiana court has jurisdiction to make an initial child custody determination only if one (1) of the following applies:

(1) Indiana is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six (6) months before the commencement of the proceeding, and the child is absent from Indiana but a parent or person acting as a parent continues to live in Indiana.

(2) A court of another state does not have jurisdiction under subdivision (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that Indiana is the more appropriate forum under section 8 or 9 of this chapter, and:

(A) the child and the child's parents, or the child and at least one (1) parent or person acting as a parent, have a significant connection with Indiana other than mere physical presence; and

(B) substantial evidence is available in Indiana concerning the child's care, protection, training, and personal relationships.

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that an Indiana court is the more appropriate forum to determine the custody of the child under section 8 or 9 of this chapter.

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).

(b) The jurisdictional requirements described in this section provide the exclusive jurisdictional basis for making a child custody determination by an Indiana court.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

As added by P.L.138-2007, SEC.45.

IC 31-21-5-2

Exclusive, continuing jurisdiction of child custody cases

Sec. 2. (a) Except as otherwise provided in section 4 of this chapter, an Indiana court that has made a child custody determination consistent with section 1 or 3 of this chapter has exclusive, continuing jurisdiction over the determination until:

(1) an Indiana court determines that:

(A) neither:

(i) the child;

(ii) the child's parents; nor
(iii) any person acting as a parent;
has a significant connection with Indiana; and
(B) substantial evidence is no longer available in Indiana concerning the child's care, protection, training, and personal relationships; or
(2) an Indiana court or a court of another state determines that:
(A) the child;
(B) the child's parents; and
(C) any person acting as a parent;
do not presently reside in Indiana.
(b) An Indiana court that:
(1) has made a child custody determination; and
(2) does not have exclusive, continuing jurisdiction under this section;
may modify the determination only if the Indiana court has jurisdiction to make an initial determination under section 1 of this chapter.

As added by P.L.138-2007, SEC.45.

IC 31-21-5-3

Modification of a child custody determination made in another state

Sec. 3. Except as provided in section 4 of this chapter, an Indiana court may not modify a child custody determination made by a court of another state unless an Indiana court has jurisdiction to make an initial determination under section 1(a)(1) or 1(a)(2) of this chapter and:

- (1) the court of the other state determines that:
(A) it no longer has exclusive, continuing jurisdiction under section 2 of this chapter; or
(B) an Indiana court would be a more convenient forum under section 8 of this chapter; or
(2) an Indiana court or a court of the other state determines that:
(A) the child;
(B) the child's parents; and
(C) any person acting as a parent;
do not presently reside in the other state.

As added by P.L.138-2007, SEC.45.

IC 31-21-5-4

Temporary emergency jurisdiction; child custody determinations; communication with other courts

Sec. 4. (a) An Indiana court has temporary emergency jurisdiction if the child is present in Indiana and:

- (1) the child has been abandoned; or
(2) it is necessary in an emergency to protect the child because:
(A) the child;
(B) the child's sibling; or

(C) the child's parent;
is subjected to or threatened with mistreatment or abuse.

(b) If:

- (1) there is no previous child custody determination that is entitled to be enforced under this article; and
- (2) a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 1 through 3 of this chapter;

a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 1 through 3 of this chapter.

(c) If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 1 through 3 of this chapter, a child custody determination made under this section becomes a final determination, and, if it so provides, Indiana becomes the home state of the child.

(d) If:

- (1) there is a previous child custody determination that is entitled to be enforced under this article; or
- (2) a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 1 through 3 of this chapter;

an order issued by an Indiana court under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 1 through 3 of this chapter.

(e) The order issued in Indiana remains in effect until an order is obtained from the other state within the period specified or the period expires.

(f) An Indiana court that has been asked to make a child custody determination under this section, on being informed that:

- (1) a child custody proceeding has been commenced in; or
- (2) a child custody determination has been made by;

a court of a state having jurisdiction under sections 1 through 3 of this chapter, shall immediately communicate with the other court.

(g) An Indiana court that is exercising jurisdiction under sections 1 through 3 of this chapter, on being informed that:

- (1) a child custody proceeding has been commenced in; or
- (2) a child custody determination has been made by;

a court of another state under a statute similar to this section, shall immediately communicate with the court of the other state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

As added by P.L.138-2007, SEC.45.

IC 31-21-5-5

Notice and opportunity to be heard; intervention and joinder

Sec. 5. (a) Before a child custody determination is made under this article, notice and an opportunity to be heard in accordance with the

standards of IC 31-21-3-3 must be given to the following persons:

- (1) Persons entitled to notice under Indiana law as in child custody proceedings between residents of Indiana.
- (2) A parent whose parental rights have not been previously terminated.
- (3) Any person having physical custody of the child.

(b) This article does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this article are governed by Indiana law in the same manner as in child custody proceedings between Indiana residents.

As added by P.L.138-2007, SEC.45.

IC 31-21-5-6

Proceeding commenced in another state; court review of documents

Sec. 6. (a) Except as otherwise provided in section 4 of this chapter, an Indiana court may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this article, unless the proceeding:

- (1) has been terminated; or
- (2) is stayed by the court of the other state because an Indiana court is a more convenient forum under section 8 of this chapter.

(b) Except as otherwise provided in section 4 of this chapter, an Indiana court, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties under sections 10 through 13 of this chapter. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this article, the Indiana court shall:

- (1) stay its proceeding; and
- (2) communicate with the court of the other state.

If the court of the state having jurisdiction substantially in accordance with this article does not determine that the Indiana court is a more appropriate forum, the Indiana court shall dismiss the proceeding.

As added by P.L.138-2007, SEC.45.

IC 31-21-5-7

Proceeding to modify a child custody determination; proceeding commenced in another state

Sec. 7. In a proceeding to modify a child custody determination, an Indiana court shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the Indiana court may:

- (1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
- (2) enjoin the parties from continuing with the proceeding for enforcement; or
- (3) proceed with the modification under conditions the Indiana court considers appropriate.

As added by P.L.138-2007, SEC.45.

IC 31-21-5-8

Court declining exercise of jurisdiction

Sec. 8. (a) An Indiana court that has jurisdiction under this article to make a child custody determination may decline to exercise its jurisdiction at any time if the Indiana court determines that:

- (1) the Indiana court is an inconvenient forum under the circumstances; and
- (2) a court of another state is a more appropriate forum.

The issue of inconvenient forum may be raised on motion of a party, the court's own motion, or request of another court.

(b) Before determining whether an Indiana court is an inconvenient forum, the Indiana court shall consider whether it is inappropriate for a court of another state to exercise jurisdiction. For this purpose, the Indiana court shall allow the parties to submit information and shall consider the relevant factors, including the following:

- (1) Whether domestic violence has occurred and is likely to continue in the future and which state is best able to protect the parties and the child.
- (2) The length of time the child has resided outside Indiana.
- (3) The distance between the Indiana court and the court in the state that would assume jurisdiction.
- (4) The relative financial circumstances of the parties.
- (5) An agreement of the parties as to which state should assume jurisdiction.
- (6) The nature and location of the evidence required to resolve the pending litigation, including the child's testimony.
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If an Indiana court determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, the Indiana court:

- (1) shall stay the proceedings on condition that a child custody proceeding be promptly commenced in another designated state; and
- (2) may impose any other condition the Indiana court considers just and proper.

(d) An Indiana court may decline to exercise its jurisdiction under this article if a child custody determination is incidental to an action for dissolution of marriage or another proceeding while still retaining jurisdiction over the dissolution of marriage or other proceeding.
As added by P.L.138-2007, SEC.45.

IC 31-21-5-9

Court declining exercise of jurisdiction if person engaged in unjustifiable conduct; exceptions; remedies; reasonable expenses

Sec. 9. (a) Except as otherwise provided in section 4 of this chapter or by any other Indiana law, if an Indiana court has jurisdiction under this article because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

- (1) the child's parents and any person acting as a parent have acquiesced in the exercise of jurisdiction;
- (2) a court of the state otherwise having jurisdiction under sections 1 through 3 of this chapter determines that Indiana is a more appropriate forum under section 8 of this chapter; or
- (3) no court of any other state would have jurisdiction under the criteria specified in sections 1 through 3 of this chapter.

(b) If an Indiana court declines to exercise its jurisdiction under subsection (a), the Indiana court may fashion an appropriate remedy to:

- (1) ensure the safety of the child; and
- (2) prevent a repetition of the unjustifiable conduct;

including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections 1 through 3 of this chapter.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction under subsection (a), the court shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses, including:

- (1) costs;
- (2) communication expenses;
- (3) attorney's fees;
- (4) investigative fees;
- (5) expenses for witnesses;
- (6) travel expenses; and
- (7) child care during the course of the proceedings;

unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against the state unless authorized by law other than this article.

As added by P.L.138-2007, SEC.45.

IC 31-21-5-10

Information required by each party in a child custody proceeding

Sec. 10. (a) Subject to local law providing for the confidentiality

of procedures, addresses, and other identifying information in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall provide information, under oath, regarding:

- (1) the child's present address or whereabouts and the places where the child has lived during the immediately preceding five (5) years; and
- (2) the names and present addresses of the persons with whom the child has lived during that period.

(b) The pleading or affidavit must state the following:

- (1) Whether the party has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify:

- (A) the court;
- (B) the case number; and
- (C) the date of the child custody determination, if any.

- (2) Whether the party knows of a proceeding that may affect the current proceeding, including proceedings for enforcement and proceedings relating to:

- (A) domestic violence;
- (B) protective orders;
- (C) termination of parental rights; and
- (D) adoptions;

and, if so, identify the court, the case number, and the nature of the proceeding.

- (3) Whether the party knows the names and addresses of a person not a party to the proceeding who:

- (A) has physical custody of the child; or
- (B) claims rights of legal custody or physical custody of, or visitation with, the child;

and, if so, the names and addresses of the persons.

(c) If the information required by subsection (a) is not furnished, the court, on motion of a party or its own motion, may stay the proceeding until the information is furnished.

As added by P.L.138-2007, SEC.45.

IC 31-21-5-11

Additional information required by each party in a child custody proceeding

Sec. 11. If the declaration as to any of the items described in section 10(b)(1) through 10(b)(3) of this chapter is in the affirmative, the party shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to:

- (1) the court's jurisdiction; and
- (2) the disposition of the case.

As added by P.L.138-2007, SEC.45.

IC 31-21-5-12

Continuous duty to inform

Sec. 12. Each party has a continuing duty to inform the court of a proceeding in Indiana or any other state that may affect the current proceeding.

As added by P.L.138-2007, SEC.45.

IC 31-21-5-13

Information required to be sealed

Sec. 13. If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court:

- (1) takes into consideration the health, safety, or liberty of the party or child; and
- (2) determines that the disclosure is in the interest of justice.

As added by P.L.138-2007, SEC.45.

IC 31-21-5-14

Order to appear before the court

Sec. 14. (a) In a child custody proceeding in Indiana, the court may order a party to the proceeding who is in Indiana to appear before the court in person with or without the child. The court may order any person who:

- (1) is in Indiana; and
- (2) has physical custody or control of the child;

to appear in person with the child.

(b) If a party to a child custody proceeding whose presence is desired by the court is outside Indiana, the court may order that a notice given under IC 31-21-3-3 include a statement:

- (1) directing the party to appear in person with or without the child; and
- (2) informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter an order necessary to ensure the safety of:

- (1) the child; and
- (2) any person ordered to appear under this section.

(d) If a party to a child custody proceeding who is outside Indiana:

- (1) is directed to appear under subsection (b); or
- (2) desires to appear personally before the court with or without the child;

the court may require another party to pay reasonable and necessary travel and other expenses of the party who appears and of the child.

As added by P.L.138-2007, SEC.45.