

Indiana Divorce Laws

Title 31. Family Law and Juvenile Law

Article 11. Family Law: Marriage

Chapter 3. Uniform Premarital Agreement Act

IC 31-11-3-1

Applicability of chapter

Sec. 1. This chapter applies to a premarital agreement executed on or after July 1, 1995.

IC 31-11-3-2

"Premarital agreement" defined

Sec. 2. As used in this chapter, "premarital agreement" means an agreement between prospective spouses that:

- (1) is executed in contemplation of marriage; and
- (2) becomes effective upon marriage.

IC 31-11-3-3

"Property" defined

Sec. 3. As used in this chapter, "property" means an interest, present or future, legal or equitable, vested or contingent, in real and personal property, including income and earnings.

IC 31-11-3-4

Agreement must be in writing; consideration not required

Sec. 4. A premarital agreement must be in writing and signed by both parties. The agreement is enforceable without consideration.

IC 31-11-3-5

Content; child support unaffected

Sec. 5. (a) Parties to a premarital agreement may contract with each other regarding the following matters:

(1) The rights and obligations of each of the parties in any property of either or both of them whenever and wherever acquired or located.

(2) The right to:

- (A) buy;
- (B) sell;
- (C) use;
- (D) exchange;
- (E) abandon;
- (F) lease;
- (G) consume;
- (H) expend;
- (I) assign;
- (J) create a security interest in;
- (K) mortgage;
- (L) encumber;
- (M) dispose of; or
- (N) otherwise manage and control;

property.

(3) The disposition of property upon:

- (A) legal separation;

- (B) dissolution of marriage;
 - (C) death; or
 - (D) the occurrence or nonoccurrence of any other event.
 - (4) The modification or elimination of spousal maintenance.
 - (5) The making of:
 - (A) a will;
 - (B) a trust; or
 - (C) other arrangement;to carry out the provisions of the agreement.
 - (6) The ownership rights in and disposition of a death benefit from a life insurance policy.
 - (7) The choice of law governing the construction of the agreement.
 - (8) Any other matter not in violation of public policy or a statute imposing a criminal penalty, including the personal rights and obligations of the parties.
- (b) A premarital agreement may not adversely affect the right of a child to support.

IC 31-11-3-6
Effective date

Sec. 6. A premarital agreement becomes effective upon marriage.

IC 31-11-3-7
Amendment or revocation must be in writing; consideration not required

Sec. 7. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

IC 31-11-3-8
Enforceability of agreement

Sec. 8. (a) A premarital agreement is not enforceable if a party against whom enforcement is sought proves that:

- (1) the party did not execute the agreement voluntarily; or
- (2) the agreement was unconscionable when the agreement was executed.

(b) If:

- (1) a provision of a premarital agreement modifies or eliminates spousal maintenance; and
- (2) the modification or elimination causes one (1) party to the

agreement extreme hardship under circumstances not reasonably foreseeable at the time of the execution of the agreement;

a court, notwithstanding the terms of the agreement, may require the other party to provide spousal maintenance to the extent necessary to avoid extreme hardship.

(c) A court shall decide an issue of unconscionability of a premarital agreement as a matter of law.

IC 31-11-3-9
Effect of void marriage

Sec. 9. If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

IC 31-11-3-10
Tolling of statute of limitations during marriage; equitable defenses

Sec. 10. Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

Chapter 8. Void Marriages

IC 31-11-8-1**Marriages void without legal proceedings**

Sec. 1. A marriage that is solemnized in Indiana and is void under section 2, 3, or 5 of this chapter is void without any legal proceedings.

IC 31-11-8-2**Prior existing marriage**

Sec. 2. A marriage is void if either party to the marriage had a wife or husband who was living when the marriage was solemnized.

IC 31-11-8-3**Marriage to close relative; marriages between cousins; exceptions**

Sec. 3. A marriage is void if the parties to the marriage are more closely related than second cousins. However, a marriage is not void if:

- (1) the marriage was solemnized after September 1, 1977;
- (2) the parties to the marriage are first cousins; and
- (3) both of the parties were at least sixty-five (65) years of age when the marriage was solemnized.

IC 31-11-8-4**Mentally incompetent persons**

Sec. 4. A marriage is void if either party to the marriage was mentally incompetent when the marriage was solemnized.

IC 31-11-8-5**Common law marriages entered into after January 1, 1958**

Sec. 5. A marriage is void if the marriage is a common law marriage that was entered into after January 1, 1958.

IC 31-11-8-6**Foreign marriage solemnized between Indiana residents to evade Indiana law**

Sec. 6. A marriage is void if the parties to the marriage:

- (1) are residents of Indiana;
- (2) had their marriage solemnized in another state with the intent to:
 - (A) evade IC 31-11-4-4 or IC 31-11-4-11 (or IC 31-7-3-3 or IC 31-7-3-10 before their repeal); and
 - (B) subsequently return to Indiana and reside in Indiana; and
- (3) without having established residence in another state in

Chapter 9. Voidable Marriages**IC 31-11-9-1****Actions to annul voidable marriages**

Sec. 1. Actions to annul voidable marriages under this chapter are governed by IC 31-11-10.

IC 31-11-9-2**Incapacity to marry because of age or mental incompetence**

Sec. 2. A marriage is voidable if a party to the marriage was incapable because of age or mental incompetency of contracting the marriage.

IC 31-11-9-3**Fraud**

Sec. 3. A marriage is voidable if the marriage was brought about through fraud on the part of one (1) of the parties to the marriage.

Chapter 10. Actions to Annul Voidable Marriages

IC 31-11-10-1

Action by party incapable of contracting marriage because of age or mental incompetence

Sec. 1. (a) This section applies to a marriage that is voidable under IC 31-11-9-2 on the ground that a party to the marriage was incapable because of age or mental incompetency of contracting the marriage.

(b) The incapable party described in subsection (a) may file an action to annul the marriage in a court that has jurisdiction over the action under section 3 of this chapter.

IC 31-11-10-2

Action by victim of fraud; defense

Sec. 2. (a) This section applies to a marriage that is voidable under IC 31-11-9-3 on the ground that the marriage was brought about through fraud on the part of one (1) of the parties to the marriage.

(b) The alleged victim of fraud described in subsection (a) may file an action to annul the marriage in a court that has jurisdiction over the action under section 3 of this chapter.

(c) It is a defense in an action brought under this section that, after the discovery of the alleged fraud, the alleged victim continued to cohabit with the other party to the marriage.

IC 31-11-10-3

Jurisdiction

Sec. 3. A circuit or superior court has jurisdiction over actions to annul voidable marriages under this chapter.

IC 31-11-10-4

Procedure

Sec. 4. An action to annul a voidable marriage under this chapter must be conducted in accordance with IC 31-15.

ARTICLE 15. FAMILY LAW: DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

Chapter 1. General Provisions

IC 31-15-1-1

Construction and application of article

Sec. 1. This article shall be construed and applied to promote the purposes and policies of this article.

IC 31-15-1-2

Purposes and policies of article

Sec. 2. The purposes and policies of this article are as follows:

(1) To abolish the existing grounds for absolute and limited divorce and to provide as the basis for dissolution of marriage:

- (A) irretrievable breakdown of the marriage;
- (B) the conviction of either party, subsequent to the marriage, of a felony;
- (C) impotence existing at the time of the marriage; and
- (D) incurable insanity of either party for a period of at least two (2) years.

(2) To provide for the appropriate procedures for the dissolution of marriage.

- (3) To provide for the disposition of property, child support, and child custody.
- (4) To provide for separation agreements.
- (5) To provide for a temporary legal separation.

Chapter 2. Actions for Dissolution of Marriage

IC 31-15-2-1

Applicability of Indiana Rules of Civil Procedure

Sec. 1. Proceedings under this article must comply with the Indiana Rules of Civil Procedure.

IC 31-15-2-2

Cause of action established

Sec. 2. A cause of action for dissolution of marriage is established.

IC 31-15-2-3

Grounds for decree

Sec. 3. Dissolution of marriage shall be decreed upon a finding by a court of one (1) of the following grounds and no other ground:

- (1) Irretrievable breakdown of the marriage.
- (2) The conviction of either of the parties, subsequent to the marriage, of a felony.
- (3) Impotence, existing at the time of the marriage.
- (4) Incurable insanity of either party for a period of at least two (2) years.

IC 31-15-2-4

Caption

Sec. 4. A proceeding for dissolution of marriage is commenced by the filing of a petition entitled, "In Re the marriage of _____ and _____."

IC 31-15-2-5

Verified petition; averments

Sec. 5. A petition for dissolution of marriage must:

- (1) be verified; and
- (2) set forth the following:
 - (A) The residence of each party and the length of residence in the state and county.
 - (B) The date of the marriage.
 - (C) The date on which the parties separated.
 - (D) The name, age, and address of:
 - (i) any living child less than twenty-one (21) years of age; and
 - (ii) any incapacitated child;of the marriage and whether the wife is pregnant.
 - (E) The grounds for dissolution of the marriage.
 - (F) The relief sought.

IC 31-15-2-6

Residence

Sec. 6. (a) At the time of the filing of a petition under section 4 of this chapter, at least one (1) of the parties must have been:

- (1) a resident of Indiana; or
 - (2) stationed at a United States military installation within Indiana;
- for six (6) months immediately preceding the filing of the petition.

(b) At the time of the filing of a petition under section 4 of this chapter, at least one (1) of the parties must have been:

- (1) a resident of the county; or
- (2) stationed at a United States military installation within the county;

where the petition is filed for three (3) months immediately preceding the filing of the petition.

IC 31-15-2-7

Venue; legal separation proceeding pending or order in effect; disposition

Sec. 7. (a) A petition or counter petition for dissolution of marriage must be filed in the court in which:

- (1) a legal separation proceeding is pending; or
- (2) a provisional order or decree for legal separation is in effect;

if the petition for legal separation was filed before the petition or counter petition for dissolution of marriage.

(b) If a petition or counter petition for dissolution of marriage under section 4 of this chapter is filed while a provisional order or decree for legal separation is in effect, the procedure for dissolution of marriage continues. The provisional order or decree for legal separation remains in effect only:

- (1) until the effective date of the provisional order on the petition or counter petition for dissolution; or
 - (2) until the provisional order or decree for legal separation expires;
- whichever occurs first.

(c) The court shall dismiss a petition for legal separation if, at the time the petition for dissolution is filed, neither:

- (1) a provisional order; nor
- (2) a decree for legal separation;

has been granted.

IC 31-15-2-8

Service of petition and summons

Sec. 8. Whenever a petition is filed, a copy of the petition, including a copy of a summons, shall be served upon the other party to the marriage in the same manner as service of summons in civil actions generally.

IC 31-15-2-9

Responsive pleading or counter petition

Sec. 9. A responsive pleading or a counter petition may be filed under this chapter.

IC 31-15-2-10

Final hearing

Sec. 10. Except as provided in sections 13 and 14 of this chapter, in an action for a dissolution of marriage under section 2 of this chapter, a final hearing shall be conducted not earlier than sixty (60) days after the filing of the petition.

IC 31-15-2-11

Final hearing; action for legal separation pending when action for dissolution of marriage filed

Sec. 11. If a petition has been filed in an action for legal separation under IC 31-15-3-2 (or IC 31-1-11.5-3(c) before its repeal), a final hearing on a petition or counter petition subsequently filed in an action for dissolution of marriage under section 2 of this chapter (or IC 31-1-11.5-3(a) before its repeal) may be held at any time after sixty (60) days after the petition in an action for legal separation under IC 31-15-3-2 has been filed.

IC 31-15-2-12

Motion to dismiss by party who filed action; counter petition; hearing

Sec. 12. (a) This section applies if a party who filed an action for dissolution of marriage under section 2 of this chapter (or IC 31-1-11.5-3(a) before its repeal) files a motion to dismiss the action.

(b) A party that files an action shall serve each other party to the action with a copy of the motion.

(c) A party to the action may file a counter petition under section 2 of this chapter not later than five (5) days after the filing of the motion to dismiss. If a party files a counter petition under this subsection, the court shall set the petition and counter petition for final hearing not earlier than sixty (60) days after the initial petition was filed.

IC 31-15-2-13

Summary dissolution decree

Sec. 13. At least sixty (60) days after a petition is filed in an action for dissolution of marriage under section 2 of this chapter, the court may enter a summary dissolution decree without holding a final hearing under this chapter if there have been filed with the court verified pleadings, signed by both parties, containing:

(1) a written waiver of final hearing; and

(2) either:

(A) a statement that there are no contested issues in the action; or

(B) a written agreement made in accordance with section 17 of this chapter that settles any contested issues between the parties.

IC 31-15-2-14

Bifurcation of issues; summary disposition orders

Sec. 14. (a) The court may bifurcate the issues in an action for dissolution of marriage filed under section 2 of this chapter (or IC 31-1-11.5-3(a) before its repeal) to provide for a summary disposition of uncontested issues and a final hearing of contested issues. The court may enter a summary disposition order under this section upon the filing with the court of verified pleadings, signed by both parties, containing:

(1) a written waiver of a final hearing in the matter of:

(A) uncontested issues specified in the waiver; or

(B) contested issues specified in the waiver upon which the parties have reached an agreement;

(2) a written agreement made in accordance with section 17 of this chapter pertaining to contested issues settled by the parties; and

(3) a statement:

(A) specifying contested issues remaining between the parties; and

(B) requesting the court to order a final hearing as to contested issues to be held under this chapter.

(b) The court shall include in a summary disposition order entered under this section a date for a final hearing of contested issues.

IC 31-15-2-15

Final hearing; evidence; dissolution decree; continuance; motion for dissolution

Sec. 15. (a) At the final hearing on a petition for dissolution of marriage the court shall consider evidence, including agreements and verified pleadings filed with the court. If the court finds that the material allegations of the petition are true, the court:

(1) shall enter a dissolution decree as provided in section 16 of this chapter; or

(2) if the court finds that there is a reasonable possibility of reconciliation, may continue the matter and order the parties to seek reconciliation through any available counseling.

(b) At any time forty-five (45) days after the date of a continuance:

(1) either party may move for the dissolution of the marriage; and

(2) the court may enter a dissolution decree as provided in section 16 of this chapter.

(c) If no motion for the dissolution is filed, the matter shall be, automatically and without further action by the court, dismissed after the expiration of ninety (90) days from the date of continuance.

IC 31-15-2-16

Dissolution decree; scope; finality; remarriage pending appeal

Sec. 16. (a) The court shall enter a dissolution decree:

- (1) when the court has made the findings required by section 15 of this chapter; or
- (2) upon the filing of pleadings under section 13 of this chapter.

The decree may include orders as provided for in this article.

(b) A dissolution decree is final when entered, subject to the right of appeal.

(c) An appeal from the provisions of a dissolution decree that does not challenge the findings as to the dissolution of the marriage does not delay the finality of the provision of the decree that dissolves the marriage, so that the parties may remarry pending appeal.

IC 31-15-2-17 **Agreements**

Sec. 17. (a) To promote the amicable settlements of disputes that have arisen or may arise between the parties to a marriage attendant upon the dissolution of their marriage, the parties may agree in writing to provisions for:

- (1) the maintenance of either of the parties;
- (2) the disposition of any property owned by either or both of the parties; and
- (3) the custody and support of the children of the parties.

(b) In an action for dissolution of marriage:

(1) the terms of the agreement, if approved by the court, shall be incorporated and merged into the decree and the parties shall be ordered to perform the terms; or

(2) the court may make provisions for:

- (A) the disposition of property;
- (B) child support;
- (C) maintenance; and
- (D) custody;

as provided in this title.

(c) The disposition of property settled by an agreement described in subsection (a) and incorporated and merged into the decree is not subject to subsequent modification by the court, except as the agreement prescribes or the parties subsequently consent.

Chapter 3. Actions for Legal Separation

IC 31-15-3-1 **Applicability of Indiana Rules of Civil Procedure**

Sec. 1. Proceedings under this article must comply with the Indiana Rules of Civil Procedure.

IC 31-15-3-2 **Cause of action established**

Sec. 2. A cause of action for legal separation is established.

IC 31-15-3-3 **Findings required for decree**

Sec. 3. Legal separation shall be decreed upon a finding by a court:

- (1) that conditions in or circumstances of the marriage make it currently intolerable for both parties to live together; and
- (2) that the marriage should be maintained.

IC 31-15-3-4 **Caption; verified petition; averments**

Sec. 4. A proceeding for legal separation is commenced by the filing of a petition entitled, "In Re the legal separation of _____ and _____". The petition must:

- (1) be verified; and
- (2) set forth the following:
 - (A) The residence of each party and the length of residence in the state and county.
 - (B) The date of the marriage.

- (C) The date on which the parties separated.
 - (D) The names, ages, and addresses of:
 - (i) any living child less than twenty-one (21) years of age; and
 - (ii) any incapacitated child;
- of the marriage and whether the wife is pregnant.
- (E) The grounds for legal separation.
 - (F) The relief sought.

IC 31-15-3-5

Dissolution of marriage action; provisional order or decree as bar to legal separation proceeding

Sec. 5. A proceeding may not be commenced under section 4 of this chapter if:

- (1) an action for dissolution of marriage filed under IC 31-15-2-4 (or IC 31-1-11.5-3(a) before its repeal) is pending; or
- (2) a provisional order or decree based on a petition for dissolution of marriage filed under IC 31-15-2-4 (or IC 31-1-11.5-3(a) before its repeal) has been granted.

IC 31-15-3-6

Residence

Sec. 6. (a) At the time of the filing of a petition for legal separation under section 4 of this chapter, at least one (1) of the parties must have been:

- (1) a resident of Indiana; or
 - (2) stationed at a United States military installation within Indiana;
- for six (6) months immediately preceding the filing of each petition.

(b) At the time of the filing of a petition for legal separation under section 4 of this chapter, at least one (1) of the parties must have been:

- (1) a resident of the county; or
 - (2) stationed at a United States military installation within the county;
- where the petition is filed for three (3) months immediately preceding the filing of the petition.

IC 31-15-3-7

Service of petition and summons

Sec. 7. Whenever a petition is filed, a copy of the petition, including a copy of a summons, shall be served upon the other party to the marriage in the same manner as service of summons in civil actions generally.

IC 31-15-3-8

Responsive pleading or counter petition

Sec. 8. A responsive pleading or a counter petition may be filed under this chapter.

IC 31-15-3-9

Decree; term; findings

Sec. 9. In an action for legal separation under section 2 of this chapter, the court may grant a decree for a separation of the parties to the marriage for a period not to exceed one (1) year if the court finds that:

- (1) conditions in or circumstances of the marriage make it currently intolerable for both parties to live together;
- (2) the marriage should be maintained; and
- (3) neither party has filed a petition or counter petition for dissolution of marriage under IC 31-15-2 (or IC 31-1-11.5 before its repeal).

IC 31-15-3-10

Scope of decree

Sec. 10. A decree under this chapter may include orders as provided in this article.

IC 31-15-3-11
Maintenance

Sec. 11. A decree under this chapter may not include a maintenance provision that extends beyond the period of legal separation.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Chapter 5. Protective Orders in Dissolution and Legal Separation Actions**IC 31-15-5-1****Protective order; procedure**

Sec. 1. Either party may request a protective order to prevent domestic or family violence at any time during the dissolution of marriage or legal separation action by filing a petition under IC 34-26-5 in the court in which the case is pending. 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 section are controlled by IC 34-26-5.

Chapter 6. Appointment of Guardians Ad Litem and Court Appointed Special Advocates in Dissolution and Legal Separation Actions**IC 31-15-6-1****Appointment**

Sec. 1. A court in a proceeding under this article may appoint:

- (1) a guardian ad litem;
- (2) a court appointed special advocate; or
- (3) both;

for a child at any time.

IC 31-15-6-2**Persons ineligible for appointment**

Sec. 2. A court may not appoint a party to the proceedings, the party's employee, or the party's representative as the:

- (1) guardian ad litem;
- (2) court appointed special advocate;
- (3) guardian ad litem program; or
- (4) court appointed special advocate program;

for a child who is involved in the proceedings.

IC 31-15-6-3

Protection of best interests of the child

Sec. 3. A guardian ad litem or court appointed special advocate shall represent and protect the best interests of the child.

IC 31-15-6-4

Term of appointment

Sec. 4. A guardian ad litem or court appointed special advocate serves until the court enters an order for removal.

IC 31-15-6-5

Officers of the court

Sec. 5. The guardian ad litem or the court appointed special advocate, or both, are considered officers of the court for the purpose of representing the child's interests.

IC 31-15-6-6

Representation by attorney

Sec. 6. The guardian ad litem or the court appointed special advocate may be represented by an attorney. If necessary to protect the child's interests, the court may appoint an attorney to represent the guardian ad litem or the court appointed special advocate.

IC 31-15-6-7

Subpoena powers; presentation of evidence

Sec. 7. A guardian ad litem or court appointed special advocate appointed by a court under this chapter (or IC 31-1-11.5-28 before its repeal) may subpoena witnesses and present evidence regarding:

- (1) the supervision of the action; or
- (2) any investigation and report that the court requires of the guardian ad litem or court appointed special advocate.

IC 31-15-6-8

Continuing supervision

Sec. 8. The court may order a guardian ad litem or court appointed special advocate appointed by a court under this chapter (or IC 31-1-11.5-28 before its repeal) to exercise continuing supervision over the child to assure that the custodial or parenting time terms of an order entered by the court under this article (or IC 31-1-11.5 before its repeal) are carried out as required by the court.

IC 31-15-6-9

Civil immunity

Sec. 9. Except for gross misconduct:

- (1) a guardian ad litem;
- (2) a court appointed special advocate;
- (3) an employee of a county guardian ad litem or court appointed special advocate program;

or

(4) a volunteer for a guardian ad litem or court appointed special advocate program; who performs duties in good faith is immune from any civil liability that may occur as a result of that person's performance.

IC 31-15-6-10

User fee; order for payment

Sec. 10. The court may order either or both parents of a child for whom a guardian ad litem or court appointed special advocate is appointed under this chapter (or IC 31-1-11.5-28 before its repeal) to pay a user fee for the services provided under this chapter.

IC 31-15-6-11

User fee; collection procedures

Sec. 11. The court shall establish one (1) of the following procedures to be used to collect the user fee:

(1) The court may order the clerk of the court to collect the user fee and deposit the user fee into the county's guardian ad litem fund or court appointed special advocate fund. The fiscal body of the county shall appropriate money collected as user fees under this chapter to the court having jurisdiction over custody actions for the court's use in providing guardian ad litem or court appointed special advocate services, including the costs of representation.

(2) The court may order either or both parents to pay the user fee to the:

(A) guardian ad litem program that provided the services; or

(B) court appointed special advocate program that provided the services.

(3) The court may order either or both parents to pay the user fee to the individual or attorney guardian ad litem that provided the services.

IC 31-15-6-12

Funds

Sec. 12. Money remaining in a county's:

(1) guardian ad litem fund; or

(2) court appointed special advocate fund;

at the end of the county's fiscal year does not revert to any other fund.

IC 31-15-6-13

User fee; report of receipt of payment

Sec. 13. If the court orders either or both parents to pay the user fee according to section 11(2) or 11(3) of this chapter, the program or the individual or attorney guardian ad litem shall report to the court the receipt of payment not later than thirty (30) days after receiving the payment.

Chapter 7. Disposition of Property and Maintenance

IC 31-15-7-1

Order for maintenance

Sec. 1. The court may order maintenance in:

(1) final dissolution of marriage decrees entered under IC 31-15-2-16; and

(2) legal separation decrees entered under IC 31-15-3-9;

after making the findings required by section 2 of this chapter.

IC 31-15-7-2

Findings concerning maintenance

Sec. 2. A court may make the following findings concerning maintenance:

(1) If the court finds a spouse to be physically or mentally incapacitated to the extent that the ability of the incapacitated spouse to support himself or herself is materially affected, the court

may find that maintenance for the spouse is necessary during the period of incapacity, subject to further order of the court.

(2) If the court finds that:

(A) a spouse lacks sufficient property, including marital property apportioned to the spouse, to provide for the spouse's needs; and

(B) the spouse is the custodian of a child whose physical or mental incapacity requires the custodian to forgo employment;

the court may find that maintenance is necessary for the spouse in an amount and for a period of time that the court considers appropriate.

(3) After considering:

(A) the educational level of each spouse at the time of marriage and at the time the action is commenced;

(B) whether an interruption in the education, training, or employment of a spouse who is seeking maintenance occurred during the marriage as a result of homemaking or child care responsibilities, or both;

(C) the earning capacity of each spouse, including educational background, training, employment skills, work experience, and length of presence in or absence from the job market; and

(D) the time and expense necessary to acquire sufficient education or training to enable the spouse who is seeking maintenance to find appropriate employment;

a court may find that rehabilitative maintenance for the spouse seeking maintenance is necessary in an amount and for a period of time that the court considers appropriate, but not to exceed three (3) years from the date of the final decree.

IC 31-15-7-3

Modification or revocation of order for maintenance

Sec. 3. Provisions of an order with respect to maintenance ordered under section 1 of this chapter (or IC 31-1-11.5-9(c) before its repeal) may be modified or revoked. Except as provided in IC 31-16-8-2, modification may be made only:

(1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or

(2) upon a showing that:

(A) a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines; and

(B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.

IC 31-15-7-4

Division of property

Sec. 4. (a) In an action for dissolution of marriage under IC 31-15-2-2, the court shall divide the property of the parties, whether:

(1) owned by either spouse before the marriage;

(2) acquired by either spouse in his or her own right:

(A) after the marriage; and

(B) before final separation of the parties; or

(3) acquired by their joint efforts.

(b) The court shall divide the property in a just and reasonable manner by:

(1) division of the property in kind;

(2) setting the property or parts of the property over to one (1) of the spouses and requiring either spouse to pay an amount, either in gross or in installments, that is just and proper;

(3) ordering the sale of the property under such conditions as the court prescribes and dividing the proceeds of the sale; or

(4) ordering the distribution of benefits described in IC 31-9-2-98(b)(2) or IC 31-9-2-98(b)(3) that are payable after the dissolution of marriage, by setting aside to either of the parties a percentage of those payments either by assignment or in kind at the time of receipt.

IC 31-15-7-5

Presumption for equal division of marital property; rebuttal

Sec. 5. The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

(1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.

(2) The extent to which the property was acquired by each spouse:

- (A) before the marriage; or
- (B) through inheritance or gift.

(3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.

(4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.

(5) The earnings or earning ability of the parties as related to:

- (A) a final division of property; and
- (B) a final determination of the property rights of the parties.

IC 31-15-7-6

Money judgment award to spouse for expenses of higher education

Sec. 6. If the court finds there is little or no marital property, the court may award either spouse a money judgment not limited to the property existing at the time of final separation. However, this award may be made only for the financial contribution of one (1) spouse toward tuition, books, and laboratory fees for the higher education of the other spouse.

IC 31-15-7-7

Tax consequences of property division

Sec. 7. The court, in determining what is just and reasonable in dividing property under this chapter, shall consider the tax consequences of the property disposition with respect to the present and future economic circumstances of each party.

IC 31-15-7-8

Security, bond, or other guarantee of division of property

Sec. 8. Upon entering an order under this chapter, the court may provide for the security, bond, or other guarantee that is satisfactory to the court to secure the division of property.

IC 31-15-7-9.1

Revocation or modification of property disposition orders; fraud

Sec. 9.1. (a) The orders concerning property disposition entered under this chapter (or IC 31-1-11.5-9 before its repeal) may not be revoked or modified, except in case of fraud.

(b) If fraud is alleged, the fraud must be asserted not later than six (6) years after the order is entered.

IC 31-15-7-10

Enforcement

Sec. 10. Notwithstanding any other law, all orders and awards contained in a dissolution of marriage decree or legal separation decree may be enforced by:

- (1) contempt;
- (2) assignment of wages or other income; or
- (3) any other remedies available for the enforcement of a court order;

except as otherwise provided by this article.

Chapter 8. Support of Children and Other Dependents

IC 31-15-8-1

Governing law

Sec. 1. The support of children and other dependents is governed by IC 31-16.

Chapter 9. Conciliation

IC 31-15-9-1

Authorized referrals

Sec. 1. Conciliation procedures may include referrals to any of the following:

- (1) The family relations division of the court, if established.
- (2) Public or private marriage counselors.
- (3) Family service agencies.
- (4) Community mental health centers.
- (5) Licensed psychologists.
- (6) Physicians.
- (7) Attorneys.
- (8) Clergy.
- (9) Mediators.

IC 31-15-9-2

Costs

Sec. 2. (a) Except as provided in subsection (b), the parties shall pay the costs of conciliation procedures that the court orders.

(b) If the court determines that the parties will be unable to pay the costs without prejudicing their financial ability to provide themselves and any minor children with economic necessities, the costs shall be paid from the budget of the court.

Chapter 9.4. Mediation

IC 31-15-9.4-1

Factors in determination

Sec. 1. Whenever the court issues an order under this article, other than an ex parte order, the court shall determine whether the proceeding should be referred to mediation. In making this determination, the court shall consider:

- (1) the ability of the parties to pay for the mediation services; and
- (2) whether mediation is appropriate in helping the parties resolve their disputes.

IC 31-15-9.4-2

Docketing; extension; report

Sec. 2. When a case is ordered to mediation, the case shall be placed on the court docket for final hearing. The mediation process must be completed not later than sixty (60) days after the mediation order is entered. However, the sixty (60) day period may be extended by the court upon the court's own motion, upon agreement of the parties, or upon the recommendation of the mediator, but may not be extended beyond the date set for final hearing. Upon completion of the mediation process, the mediator shall promptly file the mediation report.

Chapter 10. Costs and Attorney's Fees

IC 31-15-10-1

Costs and attorney's fees; order for direct payment to attorney

Sec. 1. (a) The court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney's

fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

(b) The court may order the amount to be paid directly to the attorney, who may enforce the order in the attorney's name.

IC 31-15-10-2

Exemption for agencies

Sec. 2. Neither costs or attorney fees may be taxed against an agency, or the agency's agents, that is authorized to maintain proceedings under this article by Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669) and IC 12-17-2-21.

ARTICLE 16. FAMILY LAW: SUPPORT OF CHILDREN AND OTHER DEPENDENTS

Chapter 1. General Provisions

IC 31-16-1-1

Construction and application of IC 31-16-1 through IC 31-16-12

Sec. 1. This chapter and IC 31-16-2 through IC 31-16-12 shall be construed and applied to promote the purpose and policy of this chapter and IC 31-16-2 through IC 31-16-12.

IC 31-16-1-2

Purposes and policies of IC 31-16-1 through IC 31-16-12

Sec. 2. The purpose and policy of this chapter and IC 31-16-2 through IC 31-16-12 are to provide for child support.

Chapter 2. Actions for Child Support

IC 31-16-2-1

Applicability of Indiana Rules of Civil Procedure

Sec. 1. Proceedings under this chapter and IC 31-16-3 through IC 31-16-12 must comply with the Indiana Rules of Civil Procedure.

IC 31-16-2-2

Cause of action established

Sec. 2. A cause of action for child support is established.

IC 31-16-2-3

Caption; standing

Sec. 3. A proceeding for child support must be commenced by the filing of a petition entitled, "In Re the support of _____". The petition may be filed by any person entitled to receive child support payments.

IC 31-16-2-4

Verified petition; averments

Sec. 4. A petition for child support:

- (1) must be verified; and
- (2) must set forth the following:
 - (A) The relationship of the parties.
 - (B) The present residence of each party.
 - (C) The names and addresses of:
 - (i) each living child less than twenty-one (21) years of age; and
 - (ii) each incapacitated child;of the marriage.

(D) The relief sought.

**IC 31-16-2-5
Service of petition and summons**

Sec. 5. Whenever a petition is filed, a copy of the petition, including a copy of a summons, shall be served upon the person alleged to be responsible for child support in the same manner as service of summons in civil actions generally.

**IC 31-16-2-6
Residence**

Sec. 6. In an action for child support under section 2 of this chapter, one (1) of the parties must reside in the county at the time of the filing of the action.

**IC 31-16-2-7
Responsive pleading or counter petition**

Sec. 7. A responsive pleading or a counter petition may be filed under this chapter or IC 31-16-3 through IC 31-16-12.

**IC 31-16-2-8
Decree; findings; scope**

Sec. 8. (a) The court shall enter a decree in an action under section 2 of this chapter when the court finds:

- (1) that there is a duty to support by the person alleged to have the duty;
- (2) that the duty to support has not been fulfilled; and
- (3) that an order should be entered under IC 31-16-6-1.

(b) The decree may include orders as provided for in IC 31-16-3 through IC 31-16-12.

Chapter 3.5. Security to Secure Child Support

**IC 31-16-3.5-1
Bonds; requirements**

Sec. 1. A bond required under this article to secure the obligation of child support must:

- (1) be in writing; and
- (2) be secured by:
 - (A) at least one (1) resident freehold surety; or
 - (B) a commercial insurance company.

**IC 31-16-3.5-2
Bonds; form**

Sec. 2. A bond described in section 1 of this chapter may be prepared in substantially the following form:

STATE OF INDIANA)
) SS:
 COUNTY OF _____)
)
)
 IN THE MATTER OF:
)
)
 Name of Parent (As the Principal)
)
 Name of Parent (As the Oblige)
)
)

CHILD:

)
Name of Child

)
KNOW ALL MEN BY THESE PRESENTS, that we _____, as Principal, and _____, as Surety, are held and firmly bound unto _____, as Obligee, in the penal sum of _____ Dollars (\$_____), for the payment of which well and truly to be made we hereby bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, an Order was duly made and entered by the above Court in the State of Indiana, County of _____, dated _____, defining custody, parenting time, and support rights regarding the named children.

NOW THEREFORE, the conditions of this obligation are such that:

1. No right of action on this bond shall be granted for the use or benefit of any individual, partnership, corporation, or other entity, other than the named Obligee.

2. It is agreed that neither this bond nor the obligation of this bond, nor any interest in this bond, may be assigned without the prior express written consent of the Surety.

3. Payment under this bond shall be conditioned upon the Obligee's, or the representative of the Obligee's, filing a motion with the court seeking a declaration of forfeiture of the bond and the Court's finding and entry of a final judgment ordering the Principal and Surety to make such payment. A certified copy of the filing shall be provided to the Surety at its address of record. The Surety shall make payment within thirty (30) days of receiving notification of the final judgment directly to a Trustee appointed by the Court who shall administer the funds in a fiduciary capacity.

4. The Surety shall not be liable hereunder for any amount larger than the face amount of this bond.

5. This bond and the obligation hereunder shall terminate and be of no further effect if the Court order requiring it is modified in any way without the Surety's consent, the Court order expires, or this cause is removed to another jurisdiction.

6. The Surety may file a motion with the Court for discharge of this bond and its obligation hereunder for any good cause. Good cause includes, but is not limited to, misrepresentation or fraud in the initial application for this bond, nonpayment of premium, loss of collateral, or resignation of the Indemnitor. The Surety shall give notice of any such motion to the Obligee.

NOW THEREFORE, if the Principal faithfully complies with the requirements and conditions of the Court Order within the limitations and parameters set forth therein, then this Obligation shall be void, otherwise it shall remain in full force and effect.

In witness whereof, each party to this bond has caused it to be executed at the place and on the date indicated below.

Signed, sealed and dated on this _____ day of _____, 20____.

Principal: _____ Surety: _____

(Name and address of Principal)

(Name and address of Surety)

(Signature of Principal)

(Countersigned by attorney-in-fact)

(Surety seal)

Witness:

IC 31-16-3.5-3

Forfeiture; use of proceeds

Sec. 3. Upon forfeiture, the proceeds of the security, a bond, or other guarantee ordered to secure the obligation of child support, enforcement of a custody order, or enforcement of a parenting time order under this article may only be used to:

(1) reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order;

(2) locate and return the child to the residence as set forth in the court's order, if the security, bond, or guarantee covers custody or parenting time, or both; or

(3) reimburse reasonable fees and court costs to the court appointed trustee.

IC 31-16-3.5-4**Forfeiture; excess proceeds**

Sec. 4. The proceeds of the security, bond, or other guarantee ordered to secure the obligation of child support ordered under this article that are not applied to the expenses described in section 3 of this chapter must be applied toward:

- (1) the child's higher education; or
- (2) the support and maintenance of the child.

Chapter 6. Child Support Orders**IC 31-16-6-1****Child support orders; relevant factors; account at financial institution**

Sec. 1. (a) In an action for dissolution of marriage under IC 31-15-2, legal separation under IC 31-15-3, or child support under IC 31-16-2, the court may order either parent or both parents to pay any amount reasonable for support of a child, without regard to marital misconduct, after considering all relevant factors, including:

- (1) the financial resources of the custodial parent;
- (2) the standard of living the child would have enjoyed if:
 - (A) the marriage had not been dissolved; or
 - (B) the separation had not been ordered;
- (3) the physical or mental condition of the child and the child's educational needs; and
- (4) the financial resources and needs of the noncustodial parent.

(b) The court shall order a custodial parent or third party under IC 31-16-10-1 who receives child support to obtain an account at a financial institution unless:

- (1) the custodial parent or third party files a written objection before a child support order is issued; and
- (2) the court finds that good cause exists to exempt the custodial parent or third party from the account requirement.

A custodial parent or third party ordered to obtain an account shall provide the clerk of the circuit court or other person or entity acting as assignee or trustee for remittance with an account number and any other information necessary to transfer funds to the account.

(c) In accordance with its policies, a financial institution may restrict or deny services to a person ordered to obtain an account under this section.

(d) This section may not be construed to require the clerk of the circuit court to remit child support payments by electronic funds transfer.

IC 31-16-6-2**Expenses for child's education and health care; Title IV-D fees**

Sec. 2. (a) The child support order or an educational support order may also include, where appropriate:

(1) amounts for the child's education in elementary and secondary schools and at institutions of higher learning, taking into account:

- (A) the child's aptitude and ability;
- (B) the child's reasonable ability to contribute to educational expenses through:
 - (i) work;
 - (ii) obtaining loans; and
 - (iii) obtaining other sources of financial aid reasonably available to the child and each parent; and

(C) the ability of each parent to meet these expenses;

(2) special medical, hospital, or dental expenses necessary to serve the best interests of the child; and

(3) fees mandated under Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669).

(b) If the court orders support for a child's educational expenses at an institution of higher learning under subsection (a), the court shall reduce other child support for that child that:

- (1) is duplicated by the educational support order; and
- (2) would otherwise be paid to the custodial parent.

IC 31-16-6-3

Setting aside parent's property

Sec. 3. As part of the child support order the court may set apart the part of the property of either parent or both parents that appears necessary and proper for the support of the child.

IC 31-16-6-4

Health and hospitalization insurance coverage

Sec. 4. (a) A child support order may also include, where appropriate, basic health and hospitalization insurance coverage for the child.

(b) If, however, the Title IV-D agency initiates action to establish a support obligation and petitions the court to include basic health and hospitalization insurance coverage in the support order, the court shall include a provision addressing insurance coverage for the child.

(c) In an action initiated by the Title IV-D agency or other parties, the court may order the parent who is ordered to pay child support to provide the insurance coverage for the child if the insurance coverage:

(1) is available to the parent ordered to pay child support or the dependents of the parent as part of the parent's employee benefit plan; or

(2) is available at reasonable cost to the parent ordered to pay child support.

IC 31-16-6-5

Security, bond, or other guarantees

Sec. 5. Upon entering an order under section 1 of this chapter, the court may provide for such security, bond, or other guarantee that is satisfactory to the court to secure the obligation to make child support payments.

IC 31-16-6-6

Termination or modification of child support; emancipation of child

Sec. 6. (a) The duty to support a child under this chapter ceases when the child becomes twenty-one (21) years of age unless any of the following conditions occurs:

(1) The child is emancipated before becoming twenty-one (21) years of age. In this case the child support, except for the educational needs outlined in section 2(a)(1) of this chapter, terminates at the time of emancipation, although an order for educational needs may continue in effect until further order of the court.

(2) The child is incapacitated. In this case the child support continues during the incapacity or until further order of the court.

(3) The child:

(A) is at least eighteen (18) years of age;

(B) has not attended a secondary or postsecondary school for the prior four (4) months and is not enrolled in a secondary or postsecondary school; and

(C) is or is capable of supporting himself or herself through employment.

In this case the child support terminates upon the court's finding that the conditions prescribed in this subdivision exist. However, if the court finds that the conditions set forth in clauses (A) through (C) are met but that the child is only partially supporting or is capable of only partially supporting himself or herself, the court may order that support be modified instead of terminated.

(b) For purposes of determining if a child is emancipated under subsection (a)(1), if the court finds that the child:

(1) has joined the United States armed services;

(2) has married; or

(3) is not under the care or control of:

(A) either parent; or

(B) an individual or agency approved by the court;

the court shall find the child emancipated and terminate the child support.

IC 31-16-6-7

Effect of child's emancipation or death of parent obligated to pay support

Sec. 7. (a) Unless otherwise agreed in writing or expressly provided in the order, provisions for child support are terminated:

- (1) by the emancipation of the child; but
- (2) not by the death of the parent obligated to pay the child support.

(b) If the parent obligated to pay support dies, the amount of support may be modified or revoked to the extent just and appropriate under the circumstances on petition of representatives of the parent's estate.

Chapter 6.4. Mediation

IC 31-16-6.4-1

Factors in determination

Sec. 1. Whenever the court issues an order under this article, other than an ex parte order, the court shall determine whether the proceeding should be referred to mediation. In making this determination, the court shall consider:

- (1) the ability of the parties to pay for the mediation services; and
- (2) whether mediation is appropriate in helping the parties resolve their disputes.

IC 31-16-6.4-2

Docketing; extension; report

Sec. 2. When a case is ordered to mediation, the case shall be placed on the court docket for final hearing. The mediation process must be completed not later than sixty (60) days after the mediation order is entered. However, the sixty (60) day period may be extended by the court upon the court's own motion, upon agreement of the parties, or upon the recommendation of the mediator, but may not be extended beyond the date set for final hearing. Upon completion of the mediation process, the mediator shall promptly file the mediation report.

Chapter 8. Modification of Child Support or Maintenance Orders

IC 31-16-8-1

Modification or revocation of child support order or maintenance order

Sec. 1. Provisions of an order with respect to child support or an order for maintenance ordered under IC 31-16-7-1 (or IC 31-1-11.5-9(c) before its repeal) may be modified or revoked. Except as provided in section 2 of this chapter, modification may be made only:

(1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or

(2) upon a showing that:

(A) a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines; and

(B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.

IC 31-16-8-2

Health and hospitalization coverage

Sec. 2. The court shall consider modifying a support order to include basic health and hospitalization coverage for the child if a Title IV-D agency, authorized under the federal Social Security Act (42 U.S.C. 651 through 669) and IC 12-17-2-21, petitions for the modification and the coverage is:

(1) available to the parent ordered to pay child support or the dependents of the parent as part of the parent's employee benefit plan; or

(2) available at reasonable cost to the parent ordered to pay child support.

IC 31-16-8-3

Security, bond, or guarantee

Sec. 3. The court may provide in a modification of a support order for the security, bond, or other guarantee that is satisfactory to the court to secure the obligation to make support payments.

Chapter 9. Method of Payment of Support

IC 31-16-9-1

Clerk as trustee for remittance

Sec. 1. Upon entering an order for support in:

- (1) a dissolution of marriage decree under IC 31-15-2;
- (2) a legal separation decree under IC 31-15-3; or
- (3) a child support decree under IC 31-16-2;

the court shall require that support payments be made through the clerk of the circuit court as trustee for remittance to the person entitled to receive payments, unless the court has reasonable grounds for providing or approving another method of payment.

IC 31-16-9-2

Records; accounting

Sec. 2. (a) The clerk of the circuit court shall maintain records listing the following:

- (1) The amount of the payments.
- (2) The date when payments are required to be made.
- (3) The names and addresses of the parties affected by the order.
- (4) The information required to be submitted to the clerk under sections 3 and 4 of this chapter.

(b) If the clerk elects under IC 5-13-6-4(a) not to follow the accounting and depository procedures required by IC 5-13-6, the clerk shall comply with IC 5-13-6-4(b).

IC 31-16-9-3

Notice of change of address, federal assistance, and other conditions affecting support order

Sec. 3. At the time of the issuance or modification of a support order, the parties affected by the order shall inform the clerk of the court of:

- (1) any change of address or other conditions that may affect the administration of the order;
- (2) whether any of the parties is receiving or has received assistance under the federal Aid to Families with Dependent Children program (42 U.S.C. 601 et seq.); and
- (3) the Social Security number of any child affected by the order.

The Social Security number required under subdivision (3) shall be kept confidential and used only to carry out the purposes of the Title IV-D program.

IC 31-16-9-4

Duty to furnish Social Security number and employer information

Sec. 4. The custodial parent and the noncustodial parent shall furnish the following information to the clerk of the court at the time of the issuance or modification of a child support order:

- (1) The parent's Social Security number.
- (2) The name and address of the parent's employer.

IC 31-16-9-5

Duty of noncustodial parent to furnish employer and health insurance information and Social Security number

Sec. 5. In all cases administered by the Title IV-D agency, the court shall order the noncustodial parent to inform the Title IV-D agency and the court of the following:

- (1) The name and address of the noncustodial parent's current employer.
- (2) Access to health insurance.

- (3) Specific health insurance policy information.
- (4) The noncustodial parent's Social Security number.

IC 31-16-9-6

Accounting of future expenditures

Sec. 6. At the time of entering an order for support or at any subsequent time, the court may order, upon a proper showing of necessity, the spouse or other person receiving support payments to provide an accounting to the court of future expenditures upon such terms and conditions as the court decrees.

Chapter 10. Child Support Payments to Third Parties

IC 31-16-10-1

Payments of child support to third persons

Sec. 1. Upon entering an order under IC 31-16-6-1 or at any subsequent time, the court may order, upon the proper showing that a person other than the person awarded custody under IC 31-17-2-8 (or IC 31-1-11.5-21 before its repeal) should receive payments, that the clerk of the circuit court or the person obligated to make the payments transmit those payments to any third person agreed upon by the parties and approved by the court or appointed by the court, including the following:

- (1) A trustee.
- (2) The guardian of the estate of the child.
- (3) Any third person.
- (4) The county office of family and children or any appropriate social service agency.
- (5) The state agency administering Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669).
- (6) The township trustee.

IC 31-16-10-2

Forwarding of payments to Title IV-D agency

Sec. 2. (a) If the clerk of the court is notified by the Title IV-D agency or the agency's designee that:

- (1) the child who is the beneficiary of a support order is receiving assistance under the federal Aid to Families with Dependent Children program (42 U.S.C. 601 et seq.); and
 - (2) an assignment of support rights in favor of the state is in effect against the person obligated to make child support payments;
- the clerk of the court shall forward the child support payments directly to the Title IV-D agency without further order of the court.

(b) The Title IV-D agency shall disburse the payments in accordance with federal regulations governing the Title IV-D program.

IC 31-16-10-3

Use of child support exclusively for child's benefit; Title IV-D disbursements and fees

Sec. 3. (a) Any person or agency named in section 1 or 2 of this chapter is entitled to receive the child support payments from the clerk of the circuit court or the person obligated to make the payments. The payments shall be used solely for the benefit of the child entitled to receive the payments.

(b) If the payment has been assigned to the state agency administering Title IV-D of the federal Social Security Act (42

U.S.C. 651 through 669), the payments shall be disbursed in accordance with federal regulations governing the Title IV-D program. The court may allow the agency to receive a reasonable fee for services provided under this chapter. The agency shall make financial reports in connection with such services at the time and in the manner that is prescribed by the court or required by law.

Chapter 11. Costs and Attorney's Fees

IC 31-16-11-1

Costs of proceeding and attorney's fees

Sec. 1. (a) The court periodically may order a party to pay a reasonable amount for:

- (1) the cost to the other party of maintaining or defending any proceeding under this chapter, IC 31-16-2 through IC 31-16-10, or IC 31-16-12;
- (2) attorney's fees; and
- (3) mediation services;

including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

(b) The court may order the amount to be paid directly to the attorney, who may enforce the order in the attorney's name.

IC 31-16-11-2

Exemption for Title IV-D agencies

Sec. 2. Neither costs or attorney's fees may be taxed against an agency, or the agency's agents, that is authorized to maintain proceedings under this chapter, IC 31-16-2 through IC 31-16-10, or IC 31-16-12 by Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669) and IC 12-17-2-21.

Chapter 12. Enforcement of Child Support Orders

IC 31-16-12-1

Enforcement remedies

Sec. 1. Notwithstanding any other law, all orders and awards contained in a child support decree or an order directing a person to pay a child support arrearage may be enforced by:

- (1) contempt, including the provisions under section 6 of this chapter;
- (2) assignment of wages or other income; or
- (3) any other remedies available for the enforcement of a court order;

except as otherwise provided by IC 31-16-2 through IC 31-16-11 or this chapter.

IC 31-16-12-2

Delinquent child support payments; interest charges

Sec. 2. The court may, upon a request by the person or agency entitled to receive child support payments, order interest charges of not more than one and one-half percent (1 1/2%) per month to be paid on any delinquent child support payment. The person or agency may apply for interest if support payments are not made in accordance with the support order. Accrued interest charges may be collected in the same manner as support payments under IC 31-16-9.

IC 31-16-12-3

Arrearages; court orders

Sec. 3. (a) The obligation of a person to pay child support arrearages does not terminate when the person's duty to support a child ceases under IC 31-16-6-6 (or IC 31-1-11.5-12(e) before its repeal). The statutes applicable to the collection of child support obligations are applicable to the collection of child support arrearages described in this section.

(b) The court, upon request of a person or an agency entitled to receive child support payments, may issue an order that contains any of the following:

- (1) A determination of the amount of child support arrearage due to a person or an agency entitled to receive child support payments.
- (2) An order directing a person to pay the child support arrearage.
- (3) The schedule and other terms on which a person is to pay a child support arrearage.
- (4) Any other provision that the court determines to be appropriate.

An order issued under this subsection is enforceable to the same extent as an order or award in a child support decree.

IC 31-16-12-4**Enforcement of judgment; income withholding order**

Sec. 4. Upon application to the court for enforcement of an order for support, the court may:

- (1) enforce a judgment created under IC 31-16-16-2 (or IC 31-2-11-8 before its repeal) against the person obligated to pay support;
- (2) issue an income withholding order as provided in IC 31-16-15-1; or
- (3) activate an income withholding order as provided in IC 31-16-15-5 or IC 31-16-15-6.

IC 31-16-12-5**Additional remedies**

Sec. 5. The enforcement remedies provided under this chapter are in addition to other remedies available for collecting delinquent support.

IC 31-16-12-6**Contempt**

Sec. 6. (a) If the court finds that a party is delinquent as a result of an intentional violation of an order for support, the court may find the party in contempt of court. If an action or request to enforce payment of a child support arrearage is commenced not later than ten (10) years after:

- (1) the child becomes eighteen (18) years of age; or
- (2) the emancipation of the child;

whichever occurs first, the court may, upon a request by the person or agency entitled to receive child support arrearages, find a party in contempt of court.

(b) The court may order a party who is found in contempt of court under this section to:

- (1) perform community restitution or service without compensation in a manner specified by the court; or
- (2) seek employment.

IC 31-16-12-7**Suspension of delinquent person's driving privileges**

Sec. 7. If a court finds that a person is delinquent (as defined in IC 12-17-2-1.5) as a result of an intentional violation of an order for support, the court shall issue an order to the bureau of motor vehicles:

- (1) stating that the person is delinquent; and
- (2) ordering the following:

(A) If the person who is the subject of the order holds a driving license or permit on the date of issuance of the order, that the driving privileges of the person be suspended until further order of the court.

(B) If the person who is the subject of the order does not hold a driving license or permit on the date of issuance of the order, that the bureau may not issue a driving license or permit to the person until the bureau receives a further order of the court.

IC 31-16-12-8**Suspension or denial of delinquent person's professional license**

Sec. 8. If a court finds that a person who is an applicant (as defined in IC 25-1-1.2-1), a practitioner (as defined in IC 25-1-1.2-6), an attorney, or a licensed teacher is delinquent (as defined in IC 12-17-2-1.5) as a result of an intentional violation of an order for support, the court shall issue an order to the board regulating the practice of the person's profession or occupation:

- (1) requiring that the person's or practitioner's license be suspended until further order of the court; or
- (2) ordering the board not to issue a license to the person who is the subject of the order if the person does not currently hold a license.

IC 31-16-12-9**Suspension of delinquent person's horse racing commission or gaming commission license**

Sec. 9. If a court finds that a person who holds a license issued under IC 4-31-6 or IC 4-33 is delinquent (as defined in IC 12-17-2-1.5) as a result of an intentional violation of an order for child support, the court shall issue an order to:

(1) the Indiana horse racing commission if the person holds a license issued under IC 4-31-6;
or

(2) the Indiana gaming commission if the person holds a license issued under IC 4-33; requiring that the person's license be suspended until further order of the court.

IC 31-16-12-10

Suspension, denial, or nonrenewal of delinquent person's insurance, recovery, or bail agent's license

Sec. 10. If a court finds that a person who holds a license or who is an applicant for a license issued under IC 27-1-15.6, IC 27-1-15.8, or IC 27-10-3 is delinquent (as defined in IC 12-17-2-1.5) as a result of an intentional violation of an order for child support, the court shall issue an order to the commissioner of the department of insurance:

- (1) requiring that the person's license be suspended until further order of the court;
- (2) ordering the commissioner not to issue a license to the person who is the subject of the order if the person does not currently hold a license; or
- (3) ordering the commissioner not to renew the license of a person who is the subject of the order.

IC 31-16-12-11

Payment of arrearage; stay of order to licensing authority

Sec. 11. Notwithstanding section 7, 8, 9, or 10 of this chapter, the court may stay the issuance of an order under section 7, 8, 9, or 10 of this chapter (or IC 31-1-11.5-13(j), IC 31-1-11.5-13(k), IC 31-1-11.5-13(l), or IC 31-1-11.5-13(m) before the repeal of IC 31-1-11.5-13) if:

- (1) the person pays the child support arrearage in full; or
- (2) an income withholding order under IC 31-16-15 (or IC 31-2-10 before its repeal) is activated and a payment plan to pay the arrearage is established.

IC 31-16-12-12

Registration of child support order

Sec. 12. (a) This section applies if:

- (1) the parent who is entitled to receive child support; and
 - (2) the parent who is ordered to pay child support;
- are both present in Indiana.

(b) The parent who is entitled to receive child support may register a child support order issued by another Indiana court or foreign court for the sole purpose of enforcement in accordance with IC 31-18-6-1 through IC 31-18-6-8 of the Uniform Interstate Family Support Act.

Chapter 12.5. Seizure of State Income Tax Refunds for Delinquent Child Support

IC 31-16-12.5-1

Exception

Sec. 1. This chapter does not apply to a support order entered in a Title IV-D case.

IC 31-16-12.5-2

Petition; procedure; intervention

Sec. 2. (a) A custodial parent may file a petition for a setoff of child support from a state income tax refund payable to a child support obligor in:

- (1) the court that entered the original child support order; or
- (2) a court of competent jurisdiction located in the county of residence of the custodial parent.

(b) The petition must be verified and must include all of the following:

- (1) The full name of:
 - (A) the obligor;

- (B) the custodial parent; and
- (C) each child to whom the obligor owes child support.
- (2) An averment that:
 - (A) the obligor's aggregate child support arrearage on the date the petition is filed is at least one thousand five hundred dollars (\$1,500); and
 - (B) the obligor has intentionally violated the terms of the most recent child support order.
- (3) An indication of whether the custodial parent:
 - (A) has received or is receiving assistance under the Title IV-A program; or
 - (B) has assigned child support payments under IC 12-14-7-1;
during the period of time for which child support is owed by the obligor.
- (c) The court shall notify the child support bureau of the division of family and children of the pendency of an action under this chapter if the petition:
 - (1) indicates under subsection (b)(3)(A) that the custodial parent has received or is receiving assistance; or
 - (2) indicates under subsection (b)(3)(B) that an assignment has occurred.
- (d) The state has a right to intervene as a party in a hearing under this chapter if the custodial parent has received or is receiving assistance as described in subsection (b)(3)(A) or if an assignment as described in subsection (b)(3)(B) has occurred.

**IC 31-16-12.5-3
Prohibition**

Sec. 3. A custodial parent may not bring an action under this chapter with respect to an obligor's state income tax refund for a calendar year if the child support bureau has initiated an action under IC 6-8.1-9.5 to set off the obligor's tax refund for that calendar year.

**IC 31-16-12.5-4
Determination of refund eligibility and filing status**

Sec. 4. (a) A court that receives a petition under section 2 of this chapter shall send an order requiring the department of state revenue to determine the obligor's eligibility for a state income tax refund, whether the obligor filed a joint state income tax return, and if the obligor filed a joint state income tax return, the name and address of the individual with whom the obligor filed the joint state income tax return, if the court preliminarily determines that probable cause exists to believe that the obligor named in the petition:

- (1) was at least one thousand five hundred dollars (\$1,500) in arrears on child support payments at the time the custodial parent filed the petition under section 2 of this chapter; and
 - (2) has intentionally violated the terms of the most recent support order.
- (b) The department of state revenue, upon receiving an order under subsection (a), shall notify the court whether the obligor named in the order:
- (1) is eligible for a state income tax refund; and
 - (2) has filed a joint state income tax return, and if the obligor has filed a joint state income tax return, the name and address of the individual with whom the obligor filed the joint state income tax return.

**IC 31-16-12.5-5
Hearing; notice**

Sec. 5. (a) If the court receives notification under section 4(b) of this chapter that the obligor is eligible for a state income tax refund, the court shall set the matter for a hearing at least thirty (30) days after the date that the court receives notification under section 4(b) of this chapter.

(b) If the court sets the matter for a hearing under subsection (a), the court must send notice of the hearing by certified mail, return receipt requested, to the most recent address of the obligor. The notice must include the date of the hearing and a copy of the petition filed under section 2 of this chapter.

(c) If the court receives notification under section 4(b) of this chapter that the obligor filed a joint state income tax return, the court shall send a notice to the individual with whom the obligor filed a joint state income tax return by certified mail, return receipt requested, and inform the individual:

- (1) of the hearing date;

(2) that the court may order the individual's and obligor's joint state income tax refund to be intercepted for the obligor's past due child support payments; and

(3) that the individual may petition the court or provide testimony at the hearing that the individual believes that part of the individual's and obligor's joint state income tax refund should not be intercepted for the obligor's child support and should be paid to the individual.

IC 31-16-12.5-6

Final order; deadline

Sec. 6. (a) The court shall issue a final order for a state income tax refund setoff following a hearing under this chapter if the court determines by clear and convincing evidence that the obligor named in the petition:

(1) is at least one thousand five hundred dollars (\$1,500) in arrears on child support payments; and

(2) has intentionally violated the terms of the most recent child support order applying to the obligor.

(b) The final order must include the amount of child support arrearage that the department of state revenue shall withhold from the obligor's state income tax refund and the obligor's Social Security number.

(c) In order for the setoff to take effect with respect to a state income tax refund, the final order of the court must be received by the department of state revenue before November 1 of the taxable year for which the tax refund is payable.

IC 31-16-12.5-7

Distribution of refund

Sec. 7. (a) The department of state revenue shall submit the refund amount set forth in the final order to the clerk of the circuit court for distribution.

(b) If the custodial parent:

(1) has received or is receiving assistance under the Title IV-A program; or

(2) has assigned child support payments under IC 12-14-7-1;

during the period of time for which child support is owed by the obligor, the court shall determine whether a portion of the refund must be distributed to the state under subsection (c).

(c) If the court determines that an amount is owed to the state under subsection (b), the court shall order the clerk of the circuit court to distribute the refund:

(1) to the state in an amount determined by the court; and

(2) to the custodial parent in any amount remaining after distribution under subdivision (1).

IC 31-16-12.5-8

Interest charges

Sec. 8. A final order issued under section 6 of this chapter may include interest charges in an amount determined under IC 31-14-12-1 or IC 31-16-12-2.

Chapter 13. Registration of Child Support Orders for Enforcement Purposes

IC 31-16-13-1

Registration of child support order

Sec. 1. If:

(1) the parent who is entitled to receive child support; and

(2) the parent who is ordered to pay child support;

are both present in Indiana, the parent who is entitled to receive child support may register a child support order issued by another Indiana court or foreign court for the sole purpose of enforcement in accordance with IC 31-18-6-1 through IC 31-18-6-8 of the Uniform Interstate Family Support Act.

Chapter 14. Actions for Support of Dependents by Dependent Spouse

IC 31-16-14-1

Grounds for bringing action

Sec. 1. (a) A dependent spouse may bring an action in a circuit or superior court to obtain support from the other spouse for the benefit of the dependent spouse and the dependent children in the custody of the dependent spouse if:

(1) the other spouse has deserted the dependent spouse or dependent children without cause and without sufficient support;

(2) the other spouse has:

(A) been convicted of a felony;

(B) been imprisoned; and

(C) left the dependent spouse or dependent children without sufficient support;

(3) the other spouse:

(A) becomes incapacitated; or

(B) neglects to provide support for the dependent spouse or dependent children;

because the other spouse is a habitual drunkard;

(4) the other spouse:

(A) joins a sect or denomination that requires a renunciation of the marriage or that forbids the spouses to cohabit as husband and wife; and

(B) renounces the marriage or refuses to live with the dependent spouse in a marital relationship; or

(5) the other spouse has been adjudged insane.

(b) A dependent spouse may join other persons as codefendants in an action brought under subsection (a) if the other persons:

(1) are indebted to either spouse; or

(2) have rights, credits, or choses in action that belong to either spouse and that are in the possession or control of the other persons.

IC 31-16-14-2

Commencement of action; contents of complaint

Sec. 2. (a) A dependent spouse may bring an action under section 1 of this chapter by filing a complaint against the other spouse and against other persons who may be joined as codefendants in the action under section 1(b) of this chapter. The complaint must contain the following:

(1) An allegation of the marriage of the dependent spouse and the other spouse.

(2) The name and age of each dependent child living with or in the custody of the dependent spouse.

(3) A statement that the dependent spouse may bring the action for a reason described in section 1(a) of this chapter.

(4) The most specific possible description of the real and personal property of the other spouse that is in Indiana.

(5) An allegation of the probable value of the real and personal property of the other spouse that is in Indiana.

(6) The circumstances and mode of life of the dependent spouse and other spouse.

(7) The amount necessary to support the dependent spouse and dependent children.

(b) If other persons are joined as codefendants in the action under section 1(b) of this chapter, the complaint described in subsection (a) must also contain the following:

(1) An allegation that the other persons:

(A) are indebted to either spouse; or

(B) have rights, credits, or choses in action that belong to either spouse and that are in the possession or control of the other persons.

(2) An allegation of the amount of indebtedness under subdivision (1)(A).

(3) An allegation of the value of the rights, credits, and choses in action described in subdivision (1)(B).

IC 31-16-14-3

Process

Sec. 3. Process in actions brought under this chapter is the same as in other civil actions.

IC 31-16-14-4

Hearing; determination; order to pay money; judicial sale or lease; receivership

Sec. 4. The court shall hold a hearing on the complaint and make a determination. If the court finds that the allegations in the complaint are true, the court may do any of the following:

(1) Order the defendant spouse to pay an amount that is just, equitable, and in the best interests of the dependent spouse and dependent children.

(2) Order the defendant spouse's real or personal property, or both, to be sold to the highest bidder on terms and upon notice as directed by the court.

(3) Order:

(A) the defendant spouse's real property or a part of the defendant spouse's real property to be leased; and

(B) the proceeds of the lease to be applied to the support of the dependent spouse and dependent children.

(4) Appoint a receiver of the defendant spouse's estate, require the receiver to take an oath and obtain a bond, and order the receiver to:

(A) reduce the estate to possession;

(B) collect the defendant spouse's rights, credits, and choses in action;

(C) manage, sell, mortgage, or lease the defendant spouse's real property; and

(D) sell the defendant spouse's personal property.

(5) Order other parties who are joined in the action under section 1(b) of this chapter to:

(A) pay indebtedness owed to the defendant spouse; or

(B) relinquish possession or control of the defendant spouse's rights, credits, and choses in action or other property;

to provide support for the dependent spouse and dependent children.

IC 31-16-14-5

Dependent spouse's collection of other spouse's debts; lease or mortgage of other spouse's real property; disposition of proceeds

Sec. 5. If the court orders support to be paid under this chapter, the court may, without appointing a receiver, authorize the dependent spouse to:

(1) collect debts owed to the other spouse; and

(2) lease or mortgage any part of the other spouse's real property and apply the proceeds of the mortgage or lease to the support of the dependent spouse and dependent children.

IC 31-16-14-6

Action to modify order made under this chapter

Sec. 6. An action to modify an order made under this chapter may be initiated by filing a complaint and providing notice in accordance with sections 2 and 3 of this chapter.

IC 31-16-14-7

Sales of real property

Sec. 7. If real property is sold under this chapter:

(1) the sale must be made by a receiver or commissioner appointed by the court for that purpose;

(2) the sale must be of the entire fee;

(3) the court may confirm the sale;

(4) the court may order deeds;

(5) the court may require the purchaser to:

(A) obtain a mortgage; or

(B) provide security; and

(6) the purchaser's title may not be questioned collaterally if:

(A) the defendant spouse had personal service of process; or

(B) the defendant spouse:

(i) left Indiana or could not be found; and

(ii) received service of process by publication.

ARTICLE 17. FAMILY LAW: CUSTODY AND VISITATION RIGHTS

Chapter 1. General Provisions

IC 31-17-1-1

Construction and application

Sec. 1. This chapter, IC 31-17-2, IC 31-17-4, IC 31-17-6, and IC 31-17-7 shall be construed and applied to promote the purpose and policy of this chapter, IC 31-17-2, IC 31-17-4, IC 31-17-6, and IC 31-17-7.

IC 31-17-1-2

Purpose and policy

Sec. 2. The purpose and policy of this chapter, IC 31-17-2, IC 31-17-4, IC 31-17-6, and IC 31-17-7 are to provide for child custody.

Chapter 2. Actions for Child Custody and Modification of Child Custody Orders

IC 31-17-2-1

Jurisdiction

Sec. 1. Jurisdiction of a child custody proceeding under:
(1) this chapter, IC 31-17-4, IC 31-17-6, and IC 31-17-7; or
(2) IC 31-17-3; shall be determined under IC 31-17-3.

IC 31-17-2-2

Application of Indiana Rules of Civil Procedure

Sec. 2. Proceedings under this chapter, IC 31-17-4, IC 31-17-6, and IC 31-17-7 must comply with the Indiana Rules of Civil Procedure.

IC 31-17-2-3

Commencement of proceeding

Sec. 3. A child custody proceeding is commenced in the court by:
(1) a parent by filing a petition under IC 31-15-2-4, IC 31-15-3-4, or IC 31-16-2-3; or
(2) a person other than a parent by filing a petition seeking a determination of custody of the child.

IC 31-17-2-4

Notice of intent to move residence

Sec. 4. If the party seeking custody intends to move the party's residence:
(1) at the time of or after the granting of a final order under IC 31-15-2-16, IC 31-15-3-9, or IC 31-16-2-8 (or IC 31-1-11.5-9 before its repeal); and
(2) to a place:
(A) outside Indiana; or
(B) at least one hundred (100) miles from the residence specified in the party's pleadings;
the party must file a notice of that intent with the clerk of the court and send a copy of the notice to the other party.

IC 31-17-2-5

Responsive pleading or counter petition

Sec. 5. A responsive pleading or a counter petition may be filed under this chapter, IC 31-17-4, IC 31-17-6, or IC 31-17-7.

IC 31-17-2-6

Hearing

Sec. 6. Custody proceedings must receive priority in being set for hearing.

IC 31-17-2-7

Court to determine law and facts

Sec. 7. The court without a jury shall determine questions of law and fact.

IC 31-17-2-8

Custody order

Sec. 8. The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no 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 parent or 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 parent or parents;
 - (B) the child's sibling; and
 - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
 - (A) home;
 - (B) school; and
 - (C) 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 8.5(b) of this chapter.

IC 31-17-2-8.3

Supervised parenting time; crime involving domestic or family violence

Sec. 8.3. (a) This section applies if a court finds that a noncustodial parent has been convicted of a crime involving domestic or family violence that was witnessed or heard by the noncustodial parent's child.

(b) There is created a rebuttable presumption that the court shall order that the noncustodial parent's parenting time with the child must be supervised:

- (1) for at least one (1) year and not more than two (2) years immediately following the crime involving domestic or family violence; or
- (2) until the child becomes emancipated; whichever occurs first.

IC 31-17-2-8.5

Consideration of de facto custodian factors

Sec. 8.5. (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 8 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 now 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.

IC 31-17-2-9

Court interview of child in chambers

Sec. 9. (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. If counsel is present:

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

IC 31-17-2-10

Professional personnel; court consultation; cross-examination

Sec. 10. (a) The court may seek the advice of professional personnel even if the professional personnel are not employed on a regular basis by the court. The advice shall be given in writing and made available by the court to counsel upon request.

(b) Counsel may call for cross-examination of any professional personnel consulted by the court.

IC 31-17-2-11

Temporary custodian

Sec. 11. (a) If, in a proceeding for custody or modification of custody under IC 31-15, this chapter, IC 31-17-4, IC 31-17-6, or IC 31-17-7, the court:

- (1) requires supervision during the noncustodial parent's parenting time privileges; or
- (2) suspends the noncustodial parent's parenting time privileges;

the court shall enter a conditional order naming a temporary custodian for the child.

(b) A temporary custodian named by the court under this section receives temporary custody of a child upon the death of the child's custodial parent.

(c) Upon the death of a custodial parent, a temporary custodian named by a court under this section may petition the court having probate jurisdiction over the estate of the child's custodial parent for an order under IC 29-3-3-6 naming the temporary custodian as the temporary guardian of the child.

IC 31-17-2-12

Investigation and report concerning custodial arrangements for child

Sec. 12. (a) In custody proceedings after evidence is submitted upon the petition, if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by any of the following:

- (1) The court social service agency.
- (2) The staff of the juvenile court.
- (3) The local probation department or the county office of family and children.
- (4) A private agency employed by the court for the purpose.
- (5) A guardian ad litem or court appointed special advocate appointed for the child by the court under IC 31-17-6 (or IC 31-1-11.5-28 before its repeal).

(b) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the child's potential custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian. However, the child's consent must be obtained if the child is of sufficient age and capable of forming rational and independent judgments. If the requirements of subsection (c) are fulfilled, the investigator's report:

- (1) may be received in evidence at the hearing; and

(2) may not be excluded on the grounds that the report is hearsay or otherwise incompetent.

(c) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days before the hearing. The investigator shall make the following available to counsel and to any party not represented by counsel:

- (1) The investigator's file of underlying data and reports.
- (2) Complete texts of diagnostic reports made to the investigator under subsection (b).
- (3) The names and addresses of all persons whom the investigator has consulted.

(d) Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party to the proceeding may not waive the party's right of cross-examination before the hearing.

IC 31-17-2-13

Joint legal custody; finding required for award

Sec. 13. 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.

IC 31-17-2-14

Joint legal custody; division of physical custody

Sec. 14. An award of joint legal custody under section 13 of this chapter does not require an equal division of physical custody of the child.

IC 31-17-2-15

Joint legal custody; matters considered in making award

Sec. 15. In determining whether an award of joint legal custody under section 13 of this chapter 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 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 custody;
- (2) whether the persons awarded joint 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; and
- (4) whether the child has established a close and beneficial relationship with both of the persons awarded joint custody;
- (5) whether the persons awarded joint custody:
 - (A) live in close proximity to each other; and
 - (B) plan to continue to do so; and
- (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

IC 31-17-2-16

Counseling for child

Sec. 16. Upon:

- (1) the court's own motion;
- (2) the motion of a party;
- (3) the motion of the child;
- (4) the motion of the child's guardian ad litem; or
- (5) the motion of the court appointed special advocate;

the court may order the custodian or the joint custodians to obtain counseling for the child under such terms and conditions as the court considers appropriate.

IC 31-17-2-17

Custodian may determine child's upbringing

Sec. 17. (a) Except:

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

(2) as provided in subsection (b);
the custodian may determine the child's upbringing, including the child's education, health care, and religious training.

(b) If the court finds after motion by a noncustodial parent that, in the absence of a specific limitation of the custodian's authority, the child's:

- (1) physical health would be endangered; or
- (2) emotional development would be significantly impaired;

the court may specifically limit the custodian's authority.

IC 31-17-2-18

Continuing supervision

Sec. 18. If both parents or all contestants agree to the order or if the court finds that, in the absence of the order, the child's physical health might be endangered or the child's emotional development significantly impaired, the court may order:

- (1) the court social service agency;
- (2) the staff of the juvenile court;
- (3) the local probation department;
- (4) the county office of family and children; or
- (5) a private agency employed by the court for that purpose;

to exercise continuing supervision over the case to assure that the custodial or parenting time terms of the decree are carried out.

IC 31-17-2-19

Travel and other expenses of witnesses

Sec. 19. The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court considers necessary to determine the best interests of the child.

IC 31-17-2-20

Confidentiality of interview, report, or investigation

Sec. 20. If the court finds it necessary to protect the child's welfare that the record of any interview, a report, or an investigation in a custody proceeding not be a public record, the court may make an appropriate order accordingly.

IC 31-17-2-21

Modification of child custody order

Sec. 21. (a) The court may not modify a child custody order unless:

- (1) the 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 8 and, if applicable, section 8.5 of this chapter.

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

(c) The court shall 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 by section 8 and, if applicable, section 8.5 of this chapter.

IC 31-17-2-21.5

Security, bond, or guarantee

Sec. 21.5. The court may provide in:

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

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

IC 31-17-2-21.7

Security, bond, or guarantee; determinations

Sec. 21.7. (a) The court shall consider requiring security, a bond, or another guarantee under section 21.5 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.

IC 31-17-2-22

Custodial parent's violation of injunction or temporary restraining order considered in custody modification

Sec. 22. An intentional violation by a custodial parent of an injunction or a temporary restraining order issued under IC 31-17-4-4 or IC 31-17-4-5 (or IC 31-1-11.5-26 before its repeal) may be considered a relevant factor under section 8 of this chapter that the court must consider in a proceeding for a custody modification under section 21 of this chapter.

IC 31-17-2-23

Notice of intent to move residence; hearing to review and modify custody, parenting time, and support orders

Sec. 23. (a) If an individual who has been awarded custody of a child under this chapter intends to move to a residence:

- (1) other than a residence specified in the custody order; and
- (2) that is outside Indiana or at least one hundred (100) miles from the individual's county of residence;

the individual must file a notice of the intent to move with the clerk of the court that issued the custody order and send a copy of the notice to a parent who was not awarded custody and who has been granted parenting time rights under IC 31-17-4 (or IC 31-1-11.5-24 before its repeal).

(b) Upon request of either party, the court shall set the matter for a hearing for the purposes of reviewing and modifying, if appropriate, the custody, parenting time, and support orders. The court shall take into account the following in determining whether to modify the custody, parenting time, and support orders:

- (1) The distance involved in the proposed change of residence.

- (2) The hardship and expense involved for noncustodial parents to exercise parenting time rights.
- (c) Except in cases of extreme hardship, the court may not award attorney's fees.

**IC 31-17-2-24
Notice of passport application for child**

Sec. 24. (a) If either party to the 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).

Chapter 2.4. Mediation

**IC 31-17-2.4-1
Factors in determination**

Sec. 1. Whenever the court issues an order under this article, other than an ex parte order, the court shall determine whether the proceeding should be referred to mediation. In making this determination, the court shall consider:

- (1) the ability of the parties to pay for the mediation services; and
- (2) whether mediation is appropriate in helping the parties resolve their disputes.

**IC 31-17-2.4-2
Docketing; extension; report**

Sec. 2. When a case is ordered to mediation, the case shall be placed on the court docket for final hearing. The mediation process must be completed not later than sixty (60) days after the mediation order is entered. However, the sixty (60) day period may be extended by the court upon the court's own motion, upon agreement of the parties, or upon the recommendation of the mediator, but may not be extended beyond the date set for final hearing. Upon completion of the mediation process, the mediator shall promptly file the mediation report.

Chapter 3.5. Security to Secure Custody and Parenting Time Orders

**IC 31-17-3.5-1
Bonds; requirements**

Sec. 1. A bond required under this article to secure enforcement of a custody order or parenting time order must:

- (1) be in writing; and
- (2) be secured by:
 - (A) at least one (1) resident freehold surety; or
 - (B) a commercial insurance company.

**IC 31-17-3.5-2
Bonds; form**

Sec. 2. A bond described in section 1 of this chapter may be prepared in substantially the following form:

STATE OF INDIANA)
) SS:
COUNTY OF _____)
)
)
IN THE MATTER OF:
)

)
Name of Parent (As the Principal)

)
Name of Parent (As the Obligee)

)
CHILD:

)
Name of Child

)

KNOW ALL MEN BY THESE PRESENTS, that we _____, as Principal, and _____, as Surety, are held and firmly bound unto _____, as Obligee, in the penal sum of _____ Dollars (\$_____), for the payment of which well and truly to be made we hereby bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, an Order was duly made and entered by the above Court in the State of Indiana, County of _____, dated _____, defining custody, parenting time, and support rights regarding the named children.

NOW THEREFORE, the conditions of this obligation are such that:

1. No right of action on this bond shall be granted for the use or benefit of any individual, partnership, corporation, or other entity, other than the named Obligee.
2. It is agreed that neither this bond nor the obligation of this bond, nor any interest in this bond, may be assigned without the prior express written consent of the Surety.
3. Payment under this bond shall be conditioned upon the Obligee's, or the representative of the Obligee's, filing a motion with the court seeking a declaration of forfeiture of the bond and the Court's finding and entry of a final judgment ordering the Principal and Surety to make such payment. A certified copy of the filing shall be provided to the Surety at its address of record. The Surety shall make payment within thirty (30) days of receiving notification of the final judgment directly to a Trustee appointed by the Court who shall administer the funds in a fiduciary capacity.
4. The Surety shall not be liable hereunder for any amount larger than the face amount of this bond.
5. This bond and the obligation hereunder shall terminate and be of no further effect if the Court order requiring it is modified in any way without the Surety's consent, the Court order expires, or this cause is removed to another jurisdiction.
6. The Surety may file a motion with the Court for discharge of this bond and its obligation hereunder for any good cause. Good cause includes, but is not limited to, misrepresentation or fraud in the initial application for this bond, nonpayment of premium, loss of collateral, or resignation of the Indemnitor. The Surety shall give notice of any such motion to the Obligee.

NOW THEREFORE, if said Principal shall faithfully comply with the requirements and conditions of said Court Order within the limitations and parameters set forth therein, then this Obligation shall be void, otherwise it shall remain in full force and effect.

In witness whereof, each party to this bond has caused it to be executed at the place and on the date indicated below.

Signed, sealed and dated on this _____ day of _____, 20____.

Principal: _____
Surety: _____

(Name and address of Principal)
(Name and address of Surety)

(Signature of Principal)
(Countersigned by attorney-in-fact)
(Surety seal)

Witness:

**IC 31-17-3.5-3
Forfeiture; use of proceeds**

Sec. 3. Upon forfeiture, the proceeds of security, a bond, or other guarantee ordered to secure enforcement of a custody order or parenting time order under this article may only be used to:

- (1) reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order;
- (2) locate and return the child to the residence as set forth in the court's order; or
- (3) reimburse reasonable fees and court costs to the court appointed trustee.

IC 31-17-3.5-4

Forfeiture; excess proceeds

Sec. 4. Upon forfeiture, the proceeds of the security, a bond, or other guarantee ordered to secure enforcement of a custody order or parenting time order under this article that are not applied to the expenses described in section 3 of this chapter must be applied toward:

- (1) the child's higher education; or
- (2) the support and maintenance of the child.

Chapter 4. Parenting Time Rights of Noncustodial Parent

IC 31-17-4-1

Parenting time rights; in chambers interview of child

Sec. 1. (a) A parent not granted custody of the child is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

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

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

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

IC 31-17-4-2

Modification or denial; restriction of parenting time rights

Sec. 2. The court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child. However, the court shall not restrict a parent's parenting time rights unless the court finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development.

IC 31-17-4-2.5

Security, bond, or guarantee

Sec. 2.5. The court may provide in:

- (1) a parenting time order; or
- (2) a modification to a parenting time order;

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

IC 31-17-4-3

Attorney's fees, court costs, and litigation expenses

Sec. 3. (a) In any action filed to enforce or modify an order granting or denying parenting time rights, a court may award:

- (1) reasonable attorney's fees;
- (2) court costs; and
- (3) other reasonable expenses of litigation.

(b) In determining whether to award reasonable attorney's fees, court costs, and other reasonable expenses of litigation, the court may consider among other factors:

- (1) whether the petitioner substantially prevailed and whether the court found that the respondent knowingly or intentionally violated an order granting or denying rights; and
- (2) whether the respondent substantially prevailed and the court found that the action was frivolous or vexatious.

IC 31-17-4-4**Permanent injunction against custodial parent**

Sec. 4. A noncustodial parent who:

- (1) has been granted parenting time rights with a child who lives with the custodial parent;
- (2) regularly pays support ordered by a court for the child; and
- (3) is barred by a custodial parent from exercising parenting time rights ordered for the noncustodial parent and the child;

may file, in the court that has jurisdiction over the dissolution of marriage, an application for an injunction against the custodial parent under Rule 65 of the Indiana Rules of Trial Procedure.

IC 31-17-4-5**Temporary restraining order against custodial parent**

Sec. 5. (a) If an application for an injunction has been filed under section 4 of this chapter (or IC 31-1-11.5-26 before its repeal), the court may grant, without notice, upon affidavit of the noncustodial parent, a temporary restraining order restraining the custodial parent from further violation of the parenting time order.

(b) In the affidavit, the noncustodial parent must state under penalties for perjury that:

- (1) the noncustodial parent has been granted parenting time rights with the child; and
- (2) the noncustodial parent regularly pays the support ordered by a court for the child.

IC 31-17-4-6**Hearing**

Sec. 6. A hearing upon the restraining order must be held at the earliest convenience of the court.

IC 31-17-4-7**Security**

Sec. 7. (a) This section does not apply to an order under section 2.5 of this chapter.

(b) A court may not require an applicant for a temporary restraining order or an injunction under section 4 of this chapter (or IC 31-1-11.5-26 before its repeal) to give security.

IC 31-17-4-8**Contempt**

Sec. 8. A court that finds an intentional violation without justifiable cause by a custodial parent of an injunction or a temporary restraining order issued under this chapter (or IC 31-1-11.5-26 before its repeal):

- (1) shall find the custodial parent in contempt of court;
- (2) shall order the exercise of parenting time that was not exercised due to the violation under this section at a time the court considers compatible with the schedules of the noncustodial parent and the child;
- (3) may order payment by the custodial parent of reasonable attorney's fees, costs, and expenses to the noncustodial parent; and
- (4) may order the custodial parent to perform community restitution or service without compensation in a manner specified by the court.

IC 31-17-4-9**Additional remedies**

Sec. 9. The remedies in this chapter are in addition to and do not limit other civil or criminal remedies available to the noncustodial parent.

IC 31-17-4-10**Missed parenting time; parent in military**

Sec. 10. A noncustodial parent who misses parenting time as the result of participation in an activity of:

- (1) the Indiana National Guard; or
- (2) a reserve component of the armed forces of the United States;

may make up the lost parenting time as provided in IC 10-16-7-22.

Chapter 5. Grandparent's Visitation

IC 31-17-5-1

Right to seek visitation

Sec. 1. (a) A child's grandparent may seek visitation rights if:

- (1) the child's parent is deceased;
- (2) the marriage of the child's parents has been dissolved in Indiana; or
- (3) subject to subsection (b), the child was born out of wedlock.

(b) A court may not grant visitation rights to a paternal grandparent of a child who is born out of wedlock under subsection (a)(3) if the child's father has not established paternity in relation to the child.

IC 31-17-5-2

Best interest of the child; in chambers interview of the child

Sec. 2. (a) The court may grant visitation rights if the court determines that visitation rights are in the best interests of the child.

(b) In determining the best interests of the child under this section, the court may consider whether a grandparent has had or has attempted to have meaningful contact with the child.

(c) The court may interview the child in chambers to assist the court in determining the child's perception of whether visitation by a grandparent is in the best interests of the child.

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

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

IC 31-17-5-3

Petition

Sec. 3. A proceeding for grandparent's visitation must be commenced by the filing of a petition entitled, "In Re the visitation of _____". The petition must:

- (1) be filed by a grandparent entitled to receive visitation rights under this chapter;
- (2) be verified; and
- (3) set forth the following:

(A) The names and relationship of:

- (i) the petitioning grandparent or grandparents;
- (ii) each child with whom visitation is sought; and
- (iii) the custodial parent or guardian of each child.

(B) The present address of each person named in clause (A).

(C) The date of birth of each child with whom visitation is sought.

(D) The status under section 1 of this chapter upon which the grandparent seeks visitation.

(E) The relief sought.

IC 31-17-5-4

Venue

Sec. 4. A grandparent seeking visitation rights shall file a petition requesting reasonable visitation rights:

(1) in a circuit or superior court of the county in which the child resides in a case described in section 1(a)(1), 1(a)(3), or 10 of this chapter; or

(2) in the court having jurisdiction over the dissolution of the parents' marriage in a case described in section 1(a)(2) of this chapter.

IC 31-17-5-5**Service of petition and summons**

Sec. 5. Whenever a petition is filed, a copy of the petition, together with a copy of a summons, shall be served upon the custodial and noncustodial parent or guardian of each child with whom visitation is sought in the same manner as service of summons in civil actions generally.

IC 31-17-5-6**Decree**

Sec. 6. Upon hearing evidence in support of and opposition to a petition filed under this chapter, the court shall enter a decree setting forth the court's findings and conclusions.

IC 31-17-5-7**Modification of order**

Sec. 7. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child.

IC 31-17-5-8**Paternity proceedings; effect on visitation rights**

Sec. 8. (a) This section applies to a child born out of wedlock.

(b) Visitation rights provided for in section 1 or 10 of this chapter survive the establishment of paternity of a child by a court proceeding other than an adoption proceeding.

IC 31-17-5-9**Adoption; effect on visitation rights**

Sec. 9. Visitation rights provided for in section 1 or 10 of this chapter survive the adoption of the child by any of the following:

- (1) A stepparent.
- (2) A person who is biologically related to the child as:
 - (A) a grandparent;
 - (B) a sibling;
 - (C) an aunt;
 - (D) an uncle;
 - (E) a niece; or
 - (F) a nephew.

IC 31-17-5-10**Marriage of child's parents dissolved in another state; right to seek visitation**

Sec. 10. If the marriage of the child's parents has been dissolved in another state, the child's maternal or paternal grandparent may seek visitation rights if:

- (1) the custody decree entered in the action for dissolution of marriage does not bind the grandparent under IC 31-17-3-12; and
- (2) an Indiana court would have jurisdiction under IC 31-17-3-3 or IC 31-17-3-14 to grant visitation rights to the grandparent in a modification decree.

Chapter 6. Appointment of Guardians Ad Litem and Court Appointed Special Advocates**IC 31-17-6-1****Appointment**

Sec. 1. A court in a proceeding under IC 31-17-2, IC 31-17-4, this chapter, or IC 31-17-7 may appoint a guardian ad litem, a court appointed special advocate, or both, for a child at any time.

IC 31-17-6-2**Persons ineligible for appointment**

Sec. 2. A court may not appoint a party to the proceedings, the party's employee, or the party's representative as the:

- (1) guardian ad litem;
- (2) court appointed special advocate;
- (3) guardian ad litem program; or
- (4) court appointed special advocate program;

for a child who is involved in the proceedings.

IC 31-17-6-3

Protection of best interests of child; term of appointment

Sec. 3. A guardian ad litem or court appointed special advocate shall represent and protect the best interests of the child. A guardian ad litem or court appointed special advocate serves until the court enters an order for removal.

IC 31-17-6-4

Officers of the court

Sec. 4. The guardian ad litem or the court appointed special advocate, or both, are considered officers of the court for the purpose of representing the child's interests.

IC 31-17-6-5

Representation by attorney

Sec. 5. The guardian ad litem or the court appointed special advocate may be represented by an attorney. If necessary to protect the child's interests, the court may appoint an attorney to represent the guardian ad litem or the court appointed special advocate.

IC 31-17-6-6

Subpoena powers; presentation of evidence

Sec. 6. A guardian ad litem or court appointed special advocate appointed by a court under this chapter may subpoena witnesses and present evidence regarding:

- (1) the supervision of the action; or
- (2) any investigation and report that the court requires of the guardian ad litem or court appointed special advocate.

IC 31-17-6-7

Continuing supervision

Sec. 7. The court may order a guardian ad litem or court appointed special advocate appointed by a court under this chapter (or IC 31-1-11.5-28 before its repeal) to exercise continuing supervision over the child to assure that the custodial or parenting time terms of an order entered by the court under IC 31-17-2 or IC 31-17-4 (or IC 31-1-11.5 before its repeal) are carried out as required by the court.

IC 31-17-6-8

Civil immunity

Sec. 8. Except for gross misconduct:

- (1) a guardian ad litem;
- (2) a court appointed special advocate;
- (3) an employee of a county guardian ad litem or court appointed special advocate program;

or

- (4) a volunteer for a guardian ad litem or court appointed special advocate program;

who performs duties in good faith is immune from any civil liability that may occur as a result of the person's performance.

IC 31-17-6-9

User fee; funds

Sec. 9. (a) The court may order either or both parents of a child for whom a guardian ad litem or court appointed special advocate is appointed under this chapter to pay a user fee for the services provided under this chapter. The court shall establish one (1) of the following procedures to be used to collect the user fee:

(1) The court may order the clerk of the court to collect the user fee and deposit the user fee into the county's guardian ad litem fund or court appointed special advocate fund. The fiscal body of the county shall appropriate money collected as user fees under this chapter to the court having jurisdiction over custody actions for the court's use in providing guardian ad litem or court appointed special advocate services, including the costs of representation.

(2) The court may order either or both parents to pay the user fee to the:

(A) guardian ad litem program that provided the services; or

(B) court appointed special advocate program that provided the services.

(3) The court may order either or both parents to pay the user fee to the individual or attorney guardian ad litem that provided the services.

(b) Money remaining in a county's:

(1) guardian ad litem fund; or

(2) court appointed special advocate fund;

at the end of the county's fiscal year does not revert to any other fund.

(c) If the court orders either or both parents to pay the user fee according to subsection (a)(2) or (a)(3) the program or the individual or attorney guardian ad litem shall report to the court the receipt of payment not later than thirty (30) days after receiving the payment.

Chapter 7. Costs and Attorney's Fees

IC 31-17-7-1

Costs and attorney's fees; order for direct payment to attorney

Sec. 1. (a) The court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under IC 31-17-2, IC 31-17-4, IC 31-17-6, or this chapter and for attorney's fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

(b) The court may order the amount to be paid directly to the attorney, who may enforce the order in the attorney's name.

IC 31-17-7-2

Exemption for agencies

Sec. 2. Neither costs nor attorney's fees may be taxed against an agency or its agents that is authorized to maintain proceedings under IC 31-17-2, IC 31-17-4, IC 31-17-6, or this chapter by Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669) and IC 12-17-2-21.