

## SENATE BILL No. 254

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 31-14-14-4.5; IC 31-17.

**Synopsis:** Noncustodial parents' rights. Provides that a noncustodial parent may receive custody of the children if a court finds in a contempt hearing or a hearing to enforce an injunction or restraining order that a custodial parent has prevented court ordered visitation between the noncustodial parent and any child on three separate occasions.

**Effective:** July 1, 2003.

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### Young R Michael

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January 9, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

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## SENATE BILL No. 254



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

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

- 1 SECTION 1. IC 31-14-14-4.5 IS ADDED TO THE INDIANA
- 2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2003]: **Sec. 4.5. (a) A noncustodial parent**
- 4 **may file in a court of competent jurisdiction a petition seeking**
- 5 **custody of a child if a court has entered three (3) prior unrelated**
- 6 **contempt orders against a custodial parent for barring a**
- 7 **noncustodial parent from exercising visitation ordered for the**
- 8 **noncustodial parent and a child covered under the visitation order.**
- 9 **(b) If the court finds by clear and convincing evidence that the**
- 10 **custodial parent has three (3) prior unrelated contempt findings**
- 11 **under subsection (a), a rebuttable presumption is created that the**
- 12 **noncustodial parent shall be awarded custody of the child.**
- 13 **(c) The presumption is rebutted upon a showing that awarding**
- 14 **the noncustodial parent custody of the child might endanger the**
- 15 **child's physical health or significantly impair the child's emotional**
- 16 **development.**
- 17 **(d) The noncustodial parent has the burden of proof at a**



1 hearing under this section.

2 (e) The court must appoint a guardian ad litem or court  
3 appointed special advocate for the child at a hearing under this  
4 section.

5 (f) The court may order the custodial parent to pay reasonable  
6 attorney's fees, costs, and expenses if the court enters an order  
7 granting custody of the child to the noncustodial parent.

8 SECTION 2. IC 31-17-4-8.5 IS ADDED TO THE INDIANA CODE  
9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
10 1, 2003]: Sec. 8.5. (a) A noncustodial parent may file in the court  
11 that has jurisdiction over a dissolution of marriage a petition  
12 seeking custody of a child if the court has found three (3) prior  
13 unrelated violations under section 8 of this chapter against the  
14 custodial parent.

15 (b) If the court finds by clear and convincing evidence that the  
16 custodial parent has three (3) prior unrelated violations under  
17 section 8 of this chapter, a rebuttable presumption is created that  
18 the noncustodial parent shall be awarded custody of the child.

19 (c) The presumption is rebutted upon a showing that awarding  
20 the noncustodial parent custody of the child might endanger the  
21 child's physical health or significantly impair the child's emotional  
22 development.

23 (d) The noncustodial parent has the burden of proof at a  
24 hearing under this section.

25 (e) The court must appoint a guardian ad litem or court  
26 appointed special advocate for the child at a hearing under this  
27 section.

28 (f) The court may order the custodial parent to pay reasonable  
29 attorney's fees, costs, and expenses if the court enters an order  
30 granting custody of the child to the noncustodial parent.

31 SECTION 3. IC 31-17-6-1 IS AMENDED TO READ AS  
32 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. A court in a  
33 proceeding under IC 31-17-2, IC 31-17-4, **IC 31-17-4-8.5**, this chapter,  
34 or IC 31-17-7 may appoint a guardian ad litem, a court appointed  
35 special advocate, or both, for a child at any time.

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