
HOUSE BILL No. 1427

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2; IC 31-14-11-2.5; IC 31-16-6-1.5; IC 31-25-4-13.1.

Synopsis: Claiming child as dependent for tax purposes. Requires a court to specify in a child support order which parent of a child may claim the child as a dependent for purposes of federal and state taxes. Establishes factors the court must consider in determining which parent may claim the child as a dependent. Requires a court that specifies that the noncustodial parent of a child may claim the child as a dependent to order the custodial parent of the child to take all actions necessary to release the custodial parent's claim to the exemption in the manner required under federal law. Requires the court to order a parent who is ordered to pay child support to meet certain other requirements before the parent may claim the child as a dependent. Provides that a prosecuting attorney or private attorney who contracts or agrees to undertake activities required under Title IV-D is not required to mediate, resolve, or litigate a dispute between the parties relating to the assignment of the right to claim a child as a dependent for federal and state tax purposes.

Effective: July 1, 2011.

Sullivan, Kirchhofer

January 18, 2011, read first time and referred to Committee on Family, Children and Human Affairs.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1427



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 31-9-2-30 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 30. "Custodial parent",
3 for purposes of **IC 31-14-11-2.5**, IC 31-14-13-8, IC 31-14-15,
4 **IC 31-16-6-1.5**, IC 31-16-12.5, IC 31-17-2-22, and IC 31-17-4, means
5 the parent who has been awarded physical custody of a child by a court.

6 SECTION 2. IC 31-9-2-83 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 83. "Noncustodial
8 parent", for purposes of **IC 31-14-11-2.5**, IC 31-14-13-10, IC 31-14-15,
9 **IC 31-16-6-1.5**, and IC 31-17-4, means the parent who is not the
10 custodial parent.

11 SECTION 3. IC 31-14-11-2.5 IS ADDED TO THE INDIANA
12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2011]: **Sec. 2.5. (a) A court shall specify in a**
14 **child support order which parent of a child may claim the child as**
15 **a dependent for purposes of federal and state taxes.**

16 **(b) In determining which parent may claim the child as a**
17 **dependent under subsection (a), the court shall consider the**



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following:

- (1) The value of claiming the child as a dependent at the marginal tax rate of each parent.
- (2) The income of each parent.
- (3) The age of the child and the number of years that the child could be claimed as a dependent.
- (4) Each parent's percentage of the costs of supporting the child.
- (5) If applicable, the financial aid benefit for postsecondary education for the child.
- (6) If applicable, the financial burden each parent assumed under the property settlement in a dissolution proceeding.
- (7) Any other relevant factors.

(c) If a court specifies that the noncustodial parent of a child may claim the child as a dependent for purposes of federal and state taxes, the court shall order the custodial parent of the child to take all actions necessary to release the custodial parent's claim to the exemption in the manner required under Section 152(e) of the Internal Revenue Code.

(d) If a court determines that a parent who is ordered to pay child support may claim the child as a dependent under subsection (a), the court shall include in the order that the parent may only claim the child as a dependent for federal and state tax purposes if the parent:

- (1) has paid the parent's child support obligation for the calendar year for which the parent is ordered to claim the child as a dependent by December 31 of that year; and
- (2) has not been more than twelve (12) weeks in arrears on child support payments in the calendar year for which the parent is ordered to claim the child as a dependent.

SECTION 4. IC 31-16-6-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1.5. (a) A court shall specify in a child support order which parent of a child may claim the child as a dependent for purposes of federal and state taxes.**

(b) In determining which parent may claim the child as a dependent under subsection, the court shall consider the following:

- (1) The value of claiming the child as a dependent at the marginal tax rate of each parent.
- (2) The income of each parent.
- (3) The age of the child or children and the number of years that the child or children could be claimed as a dependent or

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dependents.

(4) Each parent's percentage of the costs of supporting the child or children.

(5) If applicable, the financial aid benefit for postsecondary education for the child or children.

(6) If applicable, the financial burden each parent assumed under the property settlement in a dissolution proceeding.

(7) Any other relevant factors.

(c) If a court designates that the noncustodial parent of a child may claim the child as a dependent for purposes of federal and state taxes, the court shall order the custodial parent of the child to take all actions necessary to release the custodial parent's claim to the exemption in the manner required under Section 152(e) of the Internal Revenue Code.

(d) If a court determines that a parent who is ordered to pay child support may claim the child as a dependent under subsection (a), the court shall include in the order that the parent may only claim the child as a dependent for federal and state tax purposes if the parent:

- (1) has paid the parent's child support for the calendar year for which the parent is ordered to claim the child as a dependent by December 31 of that year; and**
- (2) has not been more than twelve (12) weeks in arrears on child support payments in the calendar year for which the parent is order to claim the child as a dependent.**

SECTION 5. IC 31-25-4-13.1, AS ADDED BY P.L.146-2006, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13.1. (a) This section applies after December 31, 2006.

(b) The bureau shall make the agreements necessary for the effective administration of the plan with local governmental officials within Indiana. The bureau shall contract with:

- (1) a prosecuting attorney;**
- (2) a private attorney or private entity if the bureau determines that a reasonable contract cannot be entered into with a prosecuting attorney and the determination is approved by at least two-thirds (2/3) of the Indiana child custody and support advisory committee (established by IC 33-24-11-1); or**
- (3) a collection agency licensed under IC 25-11 to collect arrearages on child support orders under which collections have not been made on arrearages for at least two (2) years;**

in each judicial circuit to undertake activities required to be performed

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1 under Title IV-D of the federal Social Security Act (42 U.S.C. 651),
 2 including establishment of paternity, establishment, enforcement, and
 3 modification of child support orders, activities under the Uniform
 4 Reciprocal Enforcement of Support Act (IC 31-2-1, before its repeal)
 5 or the Uniform Interstate Family Support Act (IC 31-18, or IC 31-1.5
 6 before its repeal), and if the contract is with a prosecuting attorney,
 7 prosecutions of welfare fraud.

8 (c) The hiring of a private attorney or private entity by an agreement
 9 or a contract made under this section is not subject to the approval of
 10 the attorney general under IC 4-6-5-3. An agreement or a contract made
 11 under this section is not subject to IC 4-13-2-14.3 or IC 5-22.

12 (d) Subject to section 14.1 of this chapter, a prosecuting attorney
 13 with which the bureau contracts under subsection (b):

- 14 (1) may contract with a collection agency licensed under IC 25-11
 15 to provide child support enforcement services; and
 16 (2) shall contract with a collection agency licensed under
 17 IC 25-11 to collect arrearages on child support orders under
 18 which collections have not been made on arrearages for at least
 19 two (2) years.

20 (e) A prosecuting attorney or private attorney entering into an
 21 agreement or a contract with the bureau under this section enters into
 22 an attorney-client relationship with the state to represent the interests
 23 of the state in the effective administration of the plan and not the
 24 interests of any other person. An attorney-client relationship is not
 25 created with any other person by reason of an agreement or contract
 26 with the bureau.

27 (f) At the time that an application for child support services is made,
 28 the applicant must be informed that:

- 29 (1) an attorney who provides services for the child support bureau
 30 is the attorney for the state and is not providing legal
 31 representation to the applicant; and
 32 (2) communications made by the applicant to the attorney and the
 33 advice given by the attorney to the applicant are not confidential
 34 communications protected by the privilege provided under
 35 IC 34-46-3-1.

36 (g) A prosecuting attorney or private attorney who contracts or
 37 agrees under this section to undertake activities required to be
 38 performed under Title IV-D is not required to mediate, resolve, or
 39 litigate a dispute between the parties relating to:

- 40 (1) the amount of parenting time or parenting time credit; **or**
 41 (2) **the assignment of the right to claim a child as a dependent**
 42 **for federal and state tax purposes.**

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1 (h) An agreement made under subsection (b) must contain
2 requirements stipulating service levels a prosecuting attorney or private
3 entity is expected to meet. The bureau shall disburse incentive money
4 based on whether a prosecuting attorney or private entity meets service
5 levels stipulated in an agreement made under subsection (b).

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