

**ANNUAL REPORT
OF THE
INDIANA CHILD CUSTODY AND SUPPORT
ADVISORY COMMITTEE**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 2004

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2004

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Sarah Brooks
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted legislation directing the Committee to review custody and educational expenses related to the welfare of a child of a family that is no longer intact and to study the child support guidelines adopted by the Indiana Supreme Court. Specifically, the Committee is to consider the following in studying the child support guidelines:

- (1) The mathematics pertaining to the child support guideline chart.
- (2) The actual costs of supporting a child.
- (3) Whether it is appropriate to calculate child support guideline amounts based primarily upon the ability of the parent to pay rather than the financial needs of the child.
- (4) Equality of child support awards for the children of the parties, regardless of birth order.
- (5) A mechanism that may be employed to modify the amount of support to be paid due to a change in financial circumstances or a change in the number of children being supported by either parent.
- (6) The age of a child to the extent that the child may require different amounts of support at different ages.
- (7) Clarification regarding under what circumstances, if any, support may be abated.
- (8) A mechanism that may be employed to ensure that the guidelines are applied flexibly.
- (9) The application of the guidelines to a split custody situation.
- (10) Whether it is appropriate to base child support guidelines upon the premise that the child should enjoy the same standard of living that the child would have enjoyed had the family remained intact.

Additionally, the Indiana General Assembly passed resolutions requiring the Committee to study child support and higher education expenses for children enrolled in college and to study the implementation of the Title IV-D program.

II. INTRODUCTION AND REASONS FOR STUDY

See Section I above.

III. SUMMARY OF WORK PROGRAM

The Committee met three times during the 2004 interim.

The first meeting was held at the State House on August 25, 2004. The Committee discussed joint legal custody in paternity actions and great-grandparents and the grandparent visitation statute. The Committee also approved proposed legislation concerning parenting time and arbitration in family law.

The second meeting was held at the State House on September 21, 2004. The Committee discussed the child support guidelines, custody and education expenses including higher education expenses, and the Title IV-D program.

The third meeting was held at the State House on October 4, 2004. The Committee discussed

proposed legislation mandating that the Indiana Family and Social Services Agency ("FSSA") seek a waiver so that a private attorney could work on Title IV-D cases at the same time as a Title IV-D attorney. The Committee did not vote on this proposed legislation because the Committee was informed that a Title IV-D prosecutor is permitted to remain on a Title IV-D case when a private attorney is also working on the case. The Committee also approved the final report by a voice vote.

IV. SUMMARY OF TESTIMONY

Joint Legal Custody in Paternity Actions

Testimony was given that under Indiana law joint legal custody is permitted in dissolution of marriages, but not in situations in which parents are not married but paternity has been established.

Great-Grandparents and the Grandparent Visitation Statute

Testimony was given that the grandparents visitation statute should be extended to allow great-grandparents to petition a court for visitation of great-grandchildren.

Child Support Guidelines

The Indiana Supreme Court approved new child support guidelines that became effective January 1, 2004. Testimony was provided that because the guidelines are relatively new, the Committee should wait at least a year before making suggestions to the Supreme Court. Testimony was also given about the new child support calculators on the Supreme Court's website.

Custody and Education Expenses including Higher Education Expenses

Testimony was given that a parent could be required to pay child support after a child is twenty-one years old if the parent has been ordered to pay the child's higher education expenses. It is unclear what all the expenses are that a parent is required to pay as a part of a education support order if the child is over twenty-one years old and in college.

Title IV-D Program

Testimony was given about the history and the structure of the Title IV-D program in Indiana. While Indiana has the most cost effective Title IV-D program in the country, Indiana does not collect as much money as other states. Parts of the Title IV-D program are managed by FSSA, but most of the program is run through prosecutors' offices. Prosecutors generally feel that their Title IV-D programs are understaffed and underfunded.

Title IV-D Prosecutors and Private Attorneys

The Committee was informed that the Child Support Bureau within FSSA received guidance from the Federal Office of Child Support Enforcement that a Title IV-D prosecutor may work on a Title IV-D case at the same time that a private attorney is working on the case. The Committee therefore did not vote on proposed legislation concerning this issue.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee did not make any findings of facts.

The Committee made the following recommendation:

That the Indiana State Bar Association, FSSA, the Indiana Continuing Education Forum, and the Indiana Prosecuting Attorney's Council provide information to attorneys who work on child support stating that a private attorney is permitted to work on Title IV-D cases at the same time as a Title IV-D prosecutor.

Preliminary Drafts

PD 3114-Parenting Time

This draft replaces references to "visitation" with "parenting time" in parental custody statutes. The Committee approved this draft in a roll call vote, 8-0.

PD 3026-Arbitration in Family Law

This draft requires binding arbitration in family law arbitrations to be irrevocable and provides procedures for family law arbitration cases. The Committee approved this draft in a roll call vote, 8-0.

PD 3380-Title IV-D Waiver.

This draft requires FSSA to seek a waiver to permit a private attorney to be able to work on Title IV-D cases while a prosecutor is also working on the case. The Committee did not vote on this draft.

WITNESS LIST

John Brandt, Attorney at Law
June Lyle, American Association of Retired Persons
James Ross
Scott Cook, Marion County Prosecutor's Office
Pam Baker
Steve Johnson, Indiana Prosecuting Attorney's Council
Michael Scopelitis, St. Joseph Superior Court
Annette Biesecker, FSSA
Michael Gotsch, St. Joseph Circuit Court