

Members

Rep. Randall Frye, Chairperson
Rep. Phyllis Pond
Rep. Vanessa Summers
Rep. John Day
Sen. Brent Steele
Sen. Susan Glick
Sen. Karen Tallian
Sen. Greg Taylor
Peter Nugent
Magistrate Kimberly D. Mattingly
Kathryn Hillebrands Burroughs
Bruce Pennamped



CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

Legislative Services Agency
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Authority: IC 33-24-11-1

MEETING MINUTES¹

Meeting Date: October 2, 2012
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Randall Frye, Chairperson; Rep. Phyllis Pond; Rep. Vanessa Summers; Sen. Brent Steele; Sen. Karen Tallian; Sen. Greg Taylor; Peter Nugent; Kathryn Hillebrands Burroughs; Bruce Pennamped.

Members Absent: Rep. John Day; Sen. Susan Glick; Magistrate Kimberly D. Mattingly.

Representative Randall Frye, Chairperson, called the second meeting of the Child Custody and Support Advisory Committee (Committee) to order at 10:10 A.M. The members of the Committee introduced themselves.

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

Consideration of Preliminary Draft 3246² (Educational child support)

Ms. Melissa Cohen, President of the Women Lawyers Association ("Association"), stated that the members of the Association had practical questions about the implementation of Senate Bill 18 (2012)³ and how the law would affect children. She said that the Association formed a committee to address concerns raised about Senate Bill 18. She indicated that the main concern involved the differences between the paternity statute (IC 31-14-11-18) and the dissolution statute (IC 31-16-6-6). She pointed out that there is language in the paternity statute that is not in the dissolution statute regarding petitioning for support for educational needs. She noted that there may be issues concerning equal protection under the law because of this disparity in the statutes.

Judge Elizabeth Tavitias of Lake County Superior Court, Civil Division, also expressed concern with the disparity between the paternity statute and the dissolution statute. She indicated that there are questions as to how a court should interpret this disparity and how to provide equal protection for all children when dissolution and paternity cases are treated differently. In response to Senator Karen Tallian's request, Judge Tavitias explained the changes the Association was recommending in Preliminary Draft (PD) 3246. She stated that under PD 3246 the duty to support a child would continue if the child was less than 21 years of age and a high school student or in a program leading to a general education development (GED) diploma. She also noted the language added to the dissolution statute in PD 3246 mirrored the language added in the paternity statute.

Mr. Bruce Pennamped, a member of the Committee, stated that he agreed with addressing the disparity between the paternity statute and dissolution statute but that he had concerns with the language in PD 3246 regarding continuing child support for a person who was still in high school or a GED program. He asked what it meant to be a high school student and what if the child is not attending. He also noted that a program leading to a GED is amorphous.

Senator Brent Steele stated that the Committee heard testimony last year regarding whether to stop child support when a child is 18 years of age or 19 years of age. He said that the Committee agreed to compromise on 19 years of age to address the issue of a child who is 19 years of age and still in high school. He noted that a very small percentage of children graduate from high school when they are 19 years of age. He also explained that he was aware that there was a disparity between the paternity statute and dissolution statute in Senate Bill 18. He said that he tried to correct the disparity in a conference committee report but one of the conferees did not sign the report.

Magistrate Nanette Raduenz of Lake County Superior Court clarified that the intent of the language in PD 3246 is to continue child support while a child is still in high school. She also noted the disparity between the paternity statute and the dissolution statute.

Judge John Sedia of Lake County Superior Court also discussed the disparity between the paternity statute and the dissolution statute and noted that the language in PD 3246 is an attempt to bring the statutes in line. He also requested that the changes in PD 3246 be effective retroactively.

Senator Steele again explained that there had been a conference committee report

² Exhibit A

³ Exhibit B

to fix the disparity between the statutes but that it had not been adopted because not all of the conferees signed the report. He stated that he was very disappointed that Senate Bill 18 had not been fixed.

Mr. Andrew Soshnick, representing the Indiana State Bar Association, Family and Juvenile Law Section, also noted the disparity between the paternity statute and dissolution statute. He also requested that the paternity statute and dissolution statute be identical. He also expressed concern with the language in PD 3246 regarding educational needs being determined in accordance with the child support guidelines adopted by the Indiana Supreme Court and including a child's room and board even if the child resides with a custodial parent. He stated that there is a great deal of common law on educational expenses.

Mr. Pennamped stated that he also had concerns with the language and requested that the Committee consider a simple fix of adding the language to the dissolution statute that was added to the paternity statute in Senate Bill 18.

Mr. Robert Monday with the Children's Rights Council stated that children who are wards of the state are also not treated the same, as their support is cut off at 18 years of age. He said that Senate Bill 18 had been supported last year by individuals who wanted to reduce the age for child support to make Indiana look better with regards to child support collections. He indicated that extending the language to 21 would be a disservice to those individuals.

In response to a question from Senator Tallian, Judge Sedia stated that wards of the state are not cut off at 18 years of age and that there is a program to help children who were wards of the state with housing and school.

Mr. Peter Nugent, a member of the Committee, indicated that he had concerns with some of the changes in PD 3246 as well. He agreed that the paternity statute and dissolution statute should be the same but that PD 3246 went beyond this change.

Senator Steele moved that the Committee adopt a bill draft to add the same language in the dissolution statute that was added into the paternity statute in Senate Bill 18 and to make the bill draft retroactive to the date that Senate Bill 18 became effective.

Senator Steele's motion was adopted by a vote of 8 to 0.

Senator Tallian discussed an email she received from a contract software developer who has concerns about the computer system used to collect and disburse child support in Indiana. Mr. Pennamped noted that there are some tracking issues with the software. Ms. Brady Brooks, Legislative Director of the Department of Child Services, stated that she believed that discussions on updating the system were already occurring but that she would be happy to provide Senator Tallian with more information.

Final Report

The Committee received a copy of the draft final report.⁴ The Committee approved the final report by a vote of 9 to 0.

Representative Frye adjourned the meeting at 11:05 A.M.

⁴ Exhibit C



Child Custody and Support
Advisory Committee

Exhibit A

Oct. 2, 2012

**PRELIMINARY DRAFT
No. 3246**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2013 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 31-14-11-18; IC 31-16-6-6.

Synopsis: Educational child support. Provides that the duty to support a child extends beyond 19 years of age if the child is less than 21 years of age and attending high school or participating in a GED program. Specifies that a child who was: (1) at least 19 years of age and less than 21 years of age on July 1, 2012; and (2) entitled to child support under a pre-July 1, 2012 order; may petition for educational needs until the child becomes 21 years of age. Provides that a child who: (1) was less than 19 years of age on July 1, 2012; and (2) is entitled to child support under an order issued after June 30, 2012; may file a petition for educational needs until the child becomes 19 years of age. Conforms certain similar provisions in the dissolution of marriage statute and the paternity statute.

Effective: July 1, 2013.



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 31-14-11-18, AS AMENDED BY P.L.111-2012,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 18. (a) The duty to support a child under this
4 article (or IC 31-6-6.1 before its repeal), which does not include
5 support for educational needs, ceases when the child becomes nineteen
6 (19) years of age unless ~~either~~ **any** of the following conditions occurs:

7 (1) The child is emancipated before the child becomes nineteen
8 (19) years of age. If this occurs, the child support, except for
9 educational needs, terminates at the time of emancipation.
10 However, an order for educational needs may continue in effect
11 until further order of the court.

12 (2) The child is incapacitated. If this occurs, the child support
13 continues during the incapacity or until further order of the court.

14 **(3) The child is less than twenty-one (21) years of age and is:**

15 **(A) a high school student; or**

16 **(B) in a program leading to a general educational
17 development (GED) diploma.**

18 **The duty to support a child described in this subdivision
19 continues until the child becomes twenty-one (21) years of age,
20 is no longer a high school student or in a program leading to
21 a GED diploma, or has graduated or obtained a GED
22 diploma.**

23 (b) A child who:

24 **(1) before July 1, 2012, was at least nineteen (19) years of age
25 but less than twenty-one (21) years of age; and**

26 **(2) is receiving or was entitled to child support under an order
27 issued before July 1, 2012;**

28 may file a petition for educational needs until the child becomes
29 twenty-one (21) years of age.

30 (c) A child who:

31 **(1) before July 1, 2012, was less than nineteen (19) years of**



1 **age; and**
 2 **(2) is receiving entitled to** child support under an order issued
 3 after June 30, 2012;
 4 may file a petition for educational needs until the child becomes
 5 nineteen (19) years of age.

6 **(d) Educational needs must be determined in accordance with**
 7 **the child support guidelines adopted by the Indiana supreme court.**
 8 **However, a court may include the child's room and board as an**
 9 **educational expense even if the child resides with the custodial**
 10 **parent.**

11 SECTION 2. IC 31-16-6-6, AS AMENDED BY P.L.111-2012,
 12 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2013]: Sec. 6. (a) The duty to support a child under this
 14 chapter, which does not include support for educational needs, ceases
 15 when the child becomes nineteen (19) years of age unless any of the
 16 following conditions occurs:

17 (1) The child is emancipated before becoming nineteen (19) years
 18 of age. In this case the child support, except for the educational
 19 needs outlined in section 2(a)(1) of this chapter, terminates at the
 20 time of emancipation, although an order for educational needs
 21 may continue in effect until further order of the court.

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

24 (3) The child:

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

26 (B) has not attended a secondary school or postsecondary
 27 educational institution for the prior four (4) months and is not
 28 enrolled in a secondary school or postsecondary educational
 29 institution; and

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

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

38 **(4) The child is less than twenty-one (21) years of age and is:**

39 **(A) a high school student; or**

40 **(B) in a program leading to a general educational**
 41 **development (GED) diploma.**

42 **The duty to support a child described in this subdivision**
 43 **continues until the child becomes twenty-one (21) years of age,**
 44 **is no longer a high school student or in a program leading to**
 45 **a GED diploma, or has graduated or obtained a GED**
 46 **diploma.**



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

3 (1) is on active duty in the United States armed services;

4 (2) has married; or

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

6 (A) either parent; or

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

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

10 (c) A child who:

11 (1) before July 1, 2012, was at least nineteen (19) years of age
 12 but less than twenty-one (21) years of age; and

13 (2) is or was entitled to child support under an order issued
 14 before July 1, 2012;

15 may file a petition for educational needs until the child becomes
 16 twenty-one (21) years of age.

17 (d) A child who:

18 (1) before July 1, 2012, was less than nineteen (19) years of
 19 age; and

20 (2) is entitled to child support under an order issued after
 21 June 30, 2012;

22 may file a petition for educational needs until the child becomes
 23 nineteen (19) years of age.

24 (e) A child may file a petition for educational needs if the child
 25 is at least nineteen (19) years of age but less than twenty-one (21)
 26 years of age at the time of the filing of the parents' initial petition
 27 for dissolution of marriage.

28 (f) Educational needs must be determined in accordance with
 29 the child support guidelines adopted by the Indiana supreme court.
 30 However, a court may include the child's room and board as an
 31 educational expense even if the child resides with the custodial
 32 parent.



Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 18

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:

SECTION 1. IC 31-14-11-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 18. (a) The duty to support a child under this article (or IC 31-6-6.1 before its repeal), **which does not include support for educational needs**, ceases when the child becomes ~~twenty-one (21)~~ **nineteen (19)** years of age unless either of the following conditions occurs:

- (1) The child is emancipated before the child becomes ~~twenty-one (21)~~ **nineteen (19)** years of age. If this occurs, the child support, except for educational needs, terminates at the time of emancipation. However, an order for educational needs may continue in effect until further order of the court.
 - (2) The child is incapacitated. If this occurs, the child support continues during the incapacity or until further order of the court.
- (b) **A child who is receiving child support under an order issued before July 1, 2012, may file a petition for educational needs until the child becomes twenty-one (21) years of age.**
- (c) **A child who is receiving child support under an order issued after June 30, 2012, may file a petition for educational needs until the child becomes nineteen (19) years of age.**

SECTION 2. IC 31-16-6-6, AS AMENDED BY P.L.80-2010, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) The duty to support a child under this

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chapter, which does not include support for educational needs, ceases when the child becomes ~~twenty-one (21)~~ **nineteen (19)** years of age unless any of the following conditions occurs:

- (1) The child is emancipated before becoming ~~twenty-one (21)~~ **nineteen (19)** 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 school or postsecondary educational institution for the prior four (4) months and is not enrolled in a secondary school or postsecondary educational institution; 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) is on active duty in 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.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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SEA 18 — Concur+



Child Custody and Support Advisory Committee

Membership Roster

Representatives

PAM LANDWER WILL INSERT THESE NAMES

Senators

Legislative Services Agency Staff

PAM LANDWER WILL INSERT THESE NAMES

November 1, 2012

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.in.gov/legislative/>.

FINAL REPORT

Child Custody and Support Advisory Committee

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted IC 33-24-11-6 directing the Committee to do the following:

(a) The committee shall review the child support guidelines adopted by the supreme court. The committee shall make recommendations, if appropriate, concerning any amendments to the guidelines. In reviewing the guidelines and formulating recommendations, the committee shall consider all relevant matters, including the following:

- (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 if the family remained intact.

(b) In addition to the duties set forth in subsection (a), the committee shall review custody and educational expenses and other items relating to the welfare of a child of a family that is no longer intact.

The Legislative Council assigned to the Committee the additional responsibility of studying the termination of parenting rights of an individual with respect to a child who was conceived as a result of an act of rape by the individual. (SEA 190).

II. SUMMARY OF WORK PROGRAM

The Committee met two times during the 2012 interim, on August 22 and October 2. The meetings were held at the State House in Indianapolis.

III. SUMMARY OF TESTIMONY

For a more detailed account, minutes from the Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>

The first reference to a witness includes the name of the witness and the person or organization the witness represents. For brevity, any subsequent reference includes only the name of the witness. A witness list is included at the end of the report.

August 22, 2012 Meeting

Equal Access to School Information for Custodial and Noncustodial Parents

Representative Pond testified that a constituent believed that IC 20-33-7-2 (requiring that custodial and noncustodial parents receive equal access to certain school information) was not being followed. Representative Pond contacted the school in question and determined that the constituent's concerns were the result of a misunderstanding. She requested that the Committee take no action on this issue.

SB 190-2012

Representative Frye introduced SB 190 (dealing with the parental rights of a rapist with respect to a child who is the result of the rape) and noted that the Legislative Council had assigned this topic to the Committee.

Andrew Hedges, Legislative Services Agency Attorney, distributed a copy of the introduced version of the bill and gave an overview of certain issues relating to SB 190 that were raised during the 2012 session.

Peter Nugent, Laymember, and Senator Tallian suggested the issue addressed in SB 190 was very limited - perhaps involving one case - and could be addressed using current law.

Representative McMillin, testifying as a witness, agreed that this legislation was perhaps not necessary and that he could not imagine that a court would grant a rapist parental rights. He and Representative Pond also expressed concern that the bill could be misused in custody disputes.

Senator Tallian, Representative Summers, and Representative Pond stated that removing the discretion of the court was often a bad idea. Bruce Pennamped, Laymember, noted that courts have discretion concerning custody and parenting time but that courts cannot terminate parental rights.

Senator Glick testified that termination of parental rights was a good policy and that SB 190 would be helpful because it would give courts the ability to terminate parental rights.

Following further discussion, the Committee recommended 7-1 that the General Assembly not enact a bill similar to SB 190-2012 because existing remedies are adequate to address the problem.

SEA 18-2012

Senator Tallian informed the Committee that a group of attorneys in her district had pointed to certain inconsistencies in SEA 18-2012 (reducing the age of emancipation to 19 for child support purposes), and Representative Frye placed this issue on the agenda for the following meeting.

October 2, 2012 Meeting

SEA 18-2012

Preliminary Draft (PD) 3246

Other Business

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee made the following findings of fact:

The Committee made the following recommendations:

Draft

WITNESS LIST

Draft