

Indiana Family Law- Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP– March 31, 2021

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Custody Determination - Jurisdiction

IC 31-21-5-1

(a) Except as otherwise provided in section 4 of this chapter, an Indiana court has jurisdiction to make an initial child custody determination only if one (1) of the following applies:

(1) Indiana is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six (6) months before the commencement of the proceeding, and the child is absent from Indiana but a parent or person acting as a parent continues to live in Indiana.

(2) A court of another state does not have jurisdiction under subdivision (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that Indiana is the more appropriate forum under section 8 or 9 of this chapter, and:

(A) the child and the child's parents, or the child and at least one (1) parent or person acting as a parent, have a significant connection with Indiana other than mere physical presence; and

(B) substantial evidence is available in Indiana concerning the child's care, protection, training, and personal relationships.

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that an Indiana court is the more appropriate forum to determine the custody of the child under section 8 or 9 of this chapter.

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).

(b) The jurisdictional requirements described in this section provide the exclusive jurisdictional basis for making a child custody determination by an Indiana court.

[Research note: This is the state's adoption of the Uniform Child Custody and Jurisdiction Enforcement Act ("UCCJEA"). Many jurisdictions adopt this (or something similar)].

Temporary Emergency Jurisdiction

IC 31-21-5-4

(a) An Indiana court has temporary emergency jurisdiction if the child is present in Indiana and:

(1) the child has been abandoned; or

(2) it is necessary in an emergency to protect the child because:

(A) the child;

(B) the child's sibling; or

(C) the child's parent;

is subjected to or threatened with mistreatment or abuse.

(b) If:

(1) there is no previous child custody determination that is entitled to be enforced under this article; and

(2) a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 1 through 3 of this chapter;

a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 1 through 3 of this chapter.

IC 31-21-3-1 Sec. 1.

A child custody determination made by an Indiana court that has jurisdiction under this article binds each person who has:

- (1) been served with notice in accordance with Indiana law;
- (2) been notified in accordance with section 3 of this chapter; or
- (3) submitted to the jurisdiction of the court;

and who has been given an opportunity to be heard. A child custody determination described in this section is conclusive as to the decided issues of law and fact except to the extent the determination is modified.

Custody Determination – Service/Notification Requirements

See Custody Determination - Jurisdiction Section.

Paternity and Child Support Proceeding – Jurisdiction

Proceeding to Establish, Enforce, Modify Support Order or Determine Parentage – AL. St. 30-3D-201

IC 31-16-2-6.

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 31-16-2-1.

Proceedings under this chapter and IC 31-16-3.5 through IC 31-16-12 must comply with the Indiana Rules of Civil Procedure.

IC 31-18.5-2-1.

Personal Jurisdiction:

(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, an Indiana tribunal may exercise personal jurisdiction over a nonresident individual or the individual's guardian or custodian if:

- (1) the individual is personally served with a summons, notice, or subpoena within this state;
- (2) the individual submits to the jurisdiction of Indiana by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) the individual resided with the child in Indiana;
- (4) the individual resided in Indiana and provided prenatal expenses or support for the child;
- (5) the child resides in Indiana as a result of the acts or directives of the individual;
- (6) the individual engaged in sexual intercourse in Indiana and the child may have been conceived by that act of intercourse;
- (7) the individual asserted parentage of a child in the putative father registry administered in Indiana by the state department of health; or
- (8) there is any other basis consistent with the constitutions of Indiana and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) or in any other Indiana law may not be used to acquire personal jurisdiction for an Indiana tribunal to modify a child support order of another

state unless the requirements of IC 31-18.5-6-11 are met, or, in the case of a foreign support order, unless the requirements of IC 31-18.5-6-15 are met.

Paternity and Child Support Proceeding – Service/Notification Requirements

See Paternity and Child Support Proceeding Jurisdiction Section.

Child Abuse/Neglect Proceeding – Jurisdiction

In a true emergency situation, juvenile court has subject-matter jurisdiction under section but the jurisdiction must be invoked properly and a court does not acquire jurisdiction over a juvenile case in which the jurisdictional prerequisites are completely ignored. Matter of Lemond, 1980, 413 N.E.2d 228, 274 Ind. 505.

Child Abuse/Neglect Proceeding – Service/Notification Requirements

See Child Abuse/Neglect Proceeding - Jurisdiction Section.

Divorce and Legal Separation – Jurisdiction

IC 31-15-2-6.

(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) Except as provided in subsection (c), 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.

(c) If a court has authorized a guardian to file a petition under section 4 of this chapter on behalf of an incapacitated person under IC 29-3-9-12.2, the guardian may file the petition for dissolution in the guardian's county of residence if the guardian has resided in that county for at least three (3) months immediately preceding the filing of the petition.

IC 31-15-2-1. Proceedings under this article must comply with the Indiana Rules of Civil Procedure.

Where the petitioner has complied with the notice provisions, the assumption of jurisdiction by a forum meeting the jurisdictional provisions of the Uniform Act satisfies the “traditional notions of fair play and substantial justice” In re Marriage of Hudson, 434 N.E.2d 107, 119 (Ind. Ct. App. 1982)

Divorce and Legal Separation – Service/Notification Requirements

See Divorce and Legal Separation Jurisdiction Section.

Adoption Proceeding – Jurisdiction

31-19-1-1 Adoptions subject to Interstate Compact on the Placement of Children

Sec. 1. Except as provided in IC 31-28-4, the adoption of a child who is born in one (1) state by a person in another state is subject to the Interstate Compact on the Placement of Children under IC 31-28-4. IC 31-28-4 is the Interstate Compact on the Placement of Children.

31-19-2-14 Jurisdiction over child

Sec. 14. (a) If a petition for adoption and a paternity action are pending at the same time for a child sought to be adopted, the court in which the petition for adoption has been filed has exclusive jurisdiction over the child, and the paternity proceeding must be consolidated with the adoption proceeding.

(b) If the petition for adoption is dismissed, the court hearing the consolidated adoption and paternity proceeding shall determine who has custody of the child under IC 31-19-11-5.

(c) Following a dismissal of the adoption petition under subsection (b), the court may:

- (1) retain jurisdiction over the paternity proceeding; or
- (2) return the paternity proceeding to the court in which it was originally filed.

If the paternity proceeding is returned to the court in which it was originally filed, the court assumes jurisdiction over the child, subject to any provisions of the consolidated court's order under IC 31-19-11-5.

Adoption Proceeding – Service/Notification Requirements

See Adoption Proceeding - Jurisdiction Section.

Domestic Violence – Jurisdiction

IC 34-26-5-9 Ex parte orders; authority and jurisdiction of court; relief available; notification and effectiveness of order; subsequent case or hearings

Jurisdiction – Manner of seeking and filing protective orders.

Sec. 9. (a) If it appears from a petition for an order for protection or from a petition to modify an order for protection that domestic or family violence has occurred or that a modification of an order for protection is required, a court may:

- (1) without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte; or
- (2) upon notice and after a hearing, whether or not a respondent appears, issue or modify an order for protection.

(b) If it appears from a petition for an order for protection or from a petition to modify an order for protection that harassment has occurred, a court:

- (1) may not, without notice and a hearing, issue an order for protection ex parte or modify an order for protection ex parte; but
- (2) may, upon notice and after a hearing, whether or not a respondent appears, issue or modify an order for protection.

A court must hold a hearing under this subsection not later than thirty (30) days after the petition for an order for protection or the petition to modify an order for protection is filed.

(c) A court may grant the following relief without notice and hearing in an ex parte order for protection or in an ex parte order for protection modification under subsection (a):

- (1) Enjoin a respondent from threatening to commit or committing acts of domestic or family violence against a petitioner and each designated family or household member.

- (2) Prohibit a respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with a petitioner.
- (3) Remove and exclude a respondent from the residence of a petitioner, regardless of ownership of the residence.
- (4) Order a respondent to stay away from the residence, school, or place of employment of a petitioner or a specified place frequented by a petitioner and each designated family or household member.
- (5) Order that a petitioner has the exclusive possession, care, custody, or control of any animal owned, possessed, kept, or cared for by the petitioner, respondent, minor child of either the petitioner or respondent, or any other family or household member.
- (6) Prohibit a respondent from removing, transferring, injuring, concealing, harming, attacking, mistreating, threatening to harm, or otherwise disposing of an animal described in subdivision (5).
- (7) Order possession and use of the residence, an automobile, and other essential personal effects, regardless of the ownership of the residence, automobile, and essential personal effects. If possession is ordered under this subdivision or subdivision (5), the court may direct a law enforcement officer to accompany a petitioner to the residence of the parties to:
 - (A) ensure that a petitioner is safely restored to possession of the residence, automobile, animal, and other essential personal effects; or
 - (B) supervise a petitioner's or respondent's removal of personal belongings and animal.
- (8) Order other relief necessary to provide for the safety and welfare of a petitioner and each designated family or household member.
 - (d) A court may grant the following relief after notice and a hearing, whether or not a respondent appears, in an order for protection or in a modification of an order for protection:
 - (1) Grant the relief under subsection (c).
 - (2) Specify arrangements for parenting time of a minor child by a respondent and:
 - (A) require supervision by a third party; or
 - (B) deny parenting time;if necessary to protect the safety of a petitioner or child.
 - (3) Order a respondent to:
 - (A) pay attorney's fees;
 - (B) pay rent or make payment on a mortgage on a petitioner's residence;
 - (C) if the respondent is found to have a duty of support, pay for the support of a petitioner and each minor child;
 - (D) reimburse a petitioner or other person for expenses related to the domestic or family violence or harassment, including:
 - (i) medical expenses;
 - (ii) counseling;
 - (iii) shelter; and
 - (iv) repair or replacement of damaged property;
 - (E) pay the costs and expenses incurred in connection with the use of a GPS tracking device under subsection (j); or
 - (F) pay the costs and fees incurred by a petitioner in bringing the action.
 - (4) Prohibit a respondent from using or possessing a firearm, ammunition, or a deadly weapon specified by the court, and direct the respondent to surrender to a specified law enforcement agency the firearm, ammunition, or deadly weapon for the duration of the order for protection unless another date is ordered by the court.
 - (5) Permit the respondent and petitioner to occupy the same location for any purpose that the court determines is legitimate or necessary. The court may impose terms and conditions upon a respondent when granting permission under this subdivision.An order issued under subdivision (4) does not apply to a person who is exempt under 18 U.S.C. 925.
 - (e) The court shall:

- (1) cause the order for protection to be delivered to the county sheriff for service;
- (2) make reasonable efforts to ensure that the order for protection is understood by a petitioner and a respondent if present;
- (3) electronically notify each law enforcement agency:
 - (A) required to receive notification under IC 5-2-9-6; or
 - (B) designated by the petitioner;
- (4) transmit a copy of the order to the clerk for processing under IC 5-2-9;
- (5) indicate in the order if the order and the parties meet the criteria under 18 U.S.C. 922(g)(8); and
- (6) require the clerk of court to enter or provide a copy of the order to the Indiana protective order registry established by IC 5-2-9-5.5.
- (f) An order for protection issued ex parte or upon notice and a hearing, or a modification of an order for protection issued ex parte or upon notice and a hearing, is effective for two (2) years after the date of issuance unless another date is ordered by the court. The sheriff of each county shall provide expedited service for an order for protection.
- (g) A finding that domestic or family violence or harassment has occurred sufficient to justify the issuance of an order under this section means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household. Upon a showing of domestic or family violence or harassment by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence. The relief may include an order directing a respondent to surrender to a law enforcement officer or agency all firearms, ammunition, and deadly weapons:
 - (1) in the control, ownership, or possession of a respondent; or
 - (2) in the control or possession of another person on behalf of a respondent;for the duration of the order for protection unless another date is ordered by the court.
- (h) An order for custody, parenting time, or possession or control of property issued under this chapter is superseded by an order issued from a court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties.
- (i) The fact that an order for protection is issued under this chapter does not raise an inference or presumption in a subsequent case or hearings between the parties.
- (j) Upon a finding of a violation of an order for protection, the court may:
 - (1) require a respondent to wear a GPS tracking device; and
 - (2) prohibit the respondent from approaching or entering certain locations where the petitioner may be found. If the court requires a respondent to wear a GPS tracking device under subdivision (1), the court shall, if available, require the respondent to wear a GPS tracking device with victim notification capabilities.
- (k) The court may permit a victim, a petitioner, another person, an organization, or an agency to pay the costs and expenses incurred in connection with the use of a GPS tracking device under subsection (j).

Domestic Violence– Service/Notification Requirements

See Domestic Violence - Jurisdiction Section.

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