

FAMILY LAW FOCUS

Paternity Court in Marion County Finds Permanent Space

After years of borrowed space, the Marion County Circuit Court, Paternity Division, moved into its permanent space in October of 2002.

Located on the first floor of the City-County Building (Room E-156) in Indianapolis, the Paternity Court calls home the area previously occupied by the Mayor's Action Council.

The Paternity Division handles all new paternities filed by private counsel as well as modifications of prior paternity orders.

It also oversees protective orders with their basis in paternity actions, Title IV-D child support enforcement or modifications arising out of prior paternity orders and requests to enforce paternity judgments under the Uniform Interstate Family Support Act.

Paternity matters and child support enforcement actions are no longer heard in the conference room T-242, the public assembly room, the hearing room W-503 or in Circuit Court. Therefore, any party to a paternity case should report to E-156 for a court appearance. ♦

Health Records Open to Non-Custodial Parent

While helping families through difficult divorce or custody situations, the attorneys at **Newton Becker Reichert** often field questions regarding parents' rights to access medical and mental health records of their children.



*Non-custodial parent
has right to access child's medical
and mental health records*

We have found that one of the most common Family Law misconceptions centers around this issue. Often, non-custodial parents believe they have no right to seek copies of their children's medical or mental health records from health care providers.

Obligation to Provide Records

Likewise, custodial parents frequently instruct physicians not to release information to their former spouses or believe they have no obligation to provide the records themselves. Even physicians and health care providers confuse the law and refuse cop-

ies of the records to non-custodial parents unless a release is signed by the custodial parent.

They are all wrong.

Indiana Law Mandates

The Indiana legislature mandated that each parent, regardless of custodial status, has the right to receive the medical and mental health records for their children. (See Indiana Code Sections 16-39-1-7 and 16-39-2-9.)

The only exception to this general rule exists if a court has issued an order, based on the best interests of the children, expressly prohibiting the release of records to a parent and the health care

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Protective Order Law Includes Domestic Family Violence

SECOND IN A SERIES

As we reported in our last *Family Law Focus*, Indiana has enacted a number of changes in its protective order statute, effective July 1, 2002.

In order to aid you in responding to clients who are victimized by domestic or workplace violence, we would like to familiarize you with various aspects of the new law as well as provide helpful website references and supportive contacts for such situations.



Does conduct cause person "to feel terrorized, frightened, intimidated or threatened"?

To come within the domestic violence provisions of the new law, the person seeking a protective order must have been a victim of domestic family violence, stalking or a sex offense. (The definition of domestic family violence also encompasses attempted or threatened violence.)

For the purposes of this statute, the alleged abuser must be a family or household member of the one who is seeking protection or a per-

son who has committed a stalking or a sex offense against the victim.

Everyone in the family or in the household of the victim can be covered by the order. And, if the alleged abuser is a juvenile (under the age of 18), the matter could well be transferred to Juvenile Court.

Stalking Included in Law

Stalking is defined by Indiana statute as "*a knowing or intentional course of conduct involved and repeated or continued harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated or threatened . . .*"

The conduct must actually cause the victim to feel terrorized or threatened, and the course of conduct requires two or more incidents.

To be encompassed within the scope of the protective order statute, a sex offense is defined as one or more of the following crimes: rape, criminal deviate conduct, child molesting, child exploitation, vicarious sexual gratification, child solicitation, child seduction, sexual battery or sexual conduct with a minor.

Pleadings under New Law

The basic pleadings utilized by a court under the new protective order statute are:

- Petition for Order for Protection
- Request for a Hearing
- A confidential form that becomes

part of the computer database for law enforcement personnel.

In addition, if the alleged abuser wants a hearing, then he or she would file a Verified Request for Hearing.

Court Action without Hearing

Not all cases require a hearing before a protective order is issued. The court may prohibit the following conduct without a hearing:

- Commission or threat of domestic or family violence
- Stalking
- Commission of sex offense
- Making annoying telephone or other contact
- Allowing the alleged abuser to come near the residence, school, place of employment or other places in which the protected person is found or in which the members of the protected person's household regularly may be found.

Helpful Information

For helpful information and support, contact the Indiana Coalition Against Domestic Violence at 1-800-538-3393 or www.violenceresource.org/, the Protective Order Pro Bono Project of Greater Indianapolis at 1-317-638-POP or www.popbp.org and the National Coalition Against Domestic Violence at 1-800-799-SAFE (7233) or www.ncadv.org. ♦

Spousal Abuse and Child Abuse Related**Statute Looks at Parenting Time in View of Family Violence**

Common sense and dozens of studies dealing with social behavior tell us that parents who abuse their spouses are more likely to abuse their children. Likewise, children often suffer significant stress when spending time with a parent who, in the presence of the children, violently abuses the other parent.

The Indiana Legislature acknowledged these correlations when it adopted Indiana Code 31-17-2-8.3, which became effective on July 1, 2002.

Is There Conviction of Crime?

The new law *“applies if a court finds that a noncustodial parent has been convicted of a crime involving domestic or family violence that was witnessed or heard by the noncustodial parent’s child.”*

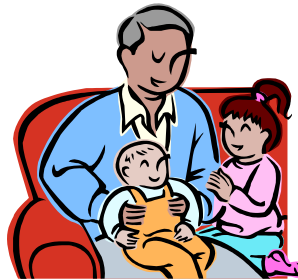
In such a situation, the court presumes that the non-custodial parent’s time with the child must be supervised for at least one year following the crime of domestic violence. However, the supervised parenting time will not last more than two years following the crime or beyond the child’s emancipation.

The new law applies to both initial parenting time determinations through divorce or paternity actions, and it may be the basis to modify an existing parenting time order.

Parenting Time vs. Family Violence

Because the statute is new, some questions regarding application of the statute exist. For example, if the conviction of family violence occurred before July 1, 2002, but the custody or parenting time hearing is after July 1, will the terms of the statute apply? And, since the statute requires a conviction for family violence, how will judges balance the best interests of children in homes of

domestic violence when criminal proceedings often take months or even years to resolve?



How will judges balance the best interests of children in homes of domestic violence when criminal proceedings often take months or even years to resolve?

Newton Becker Reichert will continue to keep the readers of *Family Law Focus* informed as courts apply and interpret the new statute in the coming months. If you are victim of family violence and believe the law may be useful in helping to protect your children, please call **Newton Becker Reichert** or the attorney of your choice. ♦

Health Records Accessible

Continued from page 1

provider has received a copy of the court’s order.

Some situations warrant a limitation of a parent’s ability to receive health care information. Assume, for example, that a child is a victim of abuse at the hands of one of his parents. The child then participates in counseling to help heal the emotional wounds caused by the abuse. A court would likely deny the abuser access to those counseling records.

More commonly, however, courts promote equal access to records by both parents. If parents are being denied their statutory right to receive medical and mental health information regarding their children, either by the other parent or the health care provider, they should contact **Newton Becker Reichert** or the attorney of their choice. ♦

Modification in Custody Demands Substantial Change

Lack of Cooperation Usually Not Grounds for Custody Modification

If you seek a change of custody in Indiana, the law provides that a Custody Order may not be modified unless two hurdles have been cleared. You must show that there has been a substantial change in one or more of the factors used by the court in its determination of custody and that the change you want is in the best interests of the child.

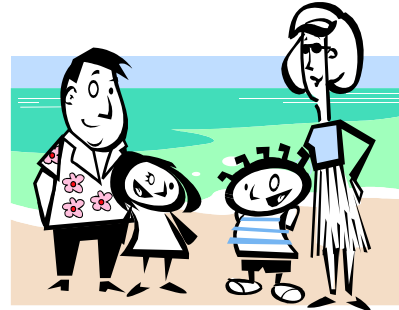
Wishes of 14-Year-Old Considered

In its initial consideration of custody, a court looks at such factors as the age and sex of the child, the wishes of the child's parent or parents, and the wishes of the child. (More consideration is given to the child's wishes, if the child is at least 14 years of age.)

The interaction and relationship of the child with his or her parents or parent, his or her siblings, and any other person who may significantly effect his or her best interests are also evaluated. The child's adjustment to his or her home, school and community are weighed as well as the mental and physical health of all individuals involved.

Any Evidence of Domestic Violence?

Evidence of a pattern of domestic violence by either parent and evidence that a *de facto* custodian has cared for the child are also taken into account by the court. The Indiana Court of Appeals, during the



What has changed since court's initial determination of child custody?

summer of 2002, addressed a few of the factors that are properly considered. In a case arising in Warrick County, it stated “[g]enerally, a lack of cooperation is not an appropriate ground for changing custody.” It also concluded that changes in residence, as the result of damage to the home or moving to a better school district, are not compelling factors for modification.

Efforts to Disparage Other Parent Examined

More persuasive factors were a parent's newfound desire to obtain custody and a showing that the child's educational needs were better met by a particular parent—as evidenced by demonstrating his or her schoolwork was vastly improved after spending time with that parent.

The court's finding that “it is appropriate for a trial court to consider a parent's effort to disparage the other parent in modifying custody” is most helpful. “The existence and display of . . . disparagement does not equate to a mere lack of cooperation,” it concluded, after hearing evidence of a mother's antagonistic attempts to “poison” the father in the mind of their child. ♦

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