

FAMILY LAW FOCUS

Newly Passed Legislation Affects Domestic Law

As the closing days of the 2003 Regular Session of the Indiana General Assembly approached, legislative activity by the political parties in both the House and the Senate intensified.

By the time the gavel had dropped and each house had been adjourned at the end of April, hundreds of bills had been introduced for possible passage.

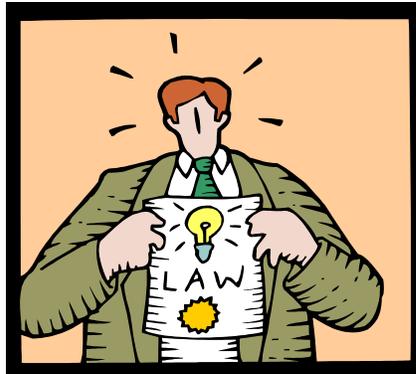
Among the bills the attorneys at **Newton Becker Reichert** have been following are those that may impact you, your clients or the practice of Family Law.

The final disposition of these measures was unavailable at press time, but you can check on the fate of various bills by consulting the website maintained by Indiana's government: http://www.in.gov/serv/lssa_billinfo. There you can learn not only the history of a particular bill but whether it was signed into law.

ADOPTION (SB 517)

This bill would allow a petitioner for adoption to have temporary custody of the child sought to be adopted, pending final resolution of the adoption.

Procedures for contesting an adoption would be revised by this piece of legislation, and the circumstances in which a person may withdraw a con-



Check legislative update for latest on Family Law measures.

sent to adoption would be amended. Senate Bill 517 also would require notice of a petition for adoption to a person other than a putative father.

According to this legislation, a woman would commit a Class A misdemeanor, if she presents herself as a birth mother and accepts adoption expenses with no intention of placing the child for adoption.

CHILD ABUSE (HB 1761)

If this bill passed in the form in which it was referred to the Committee on Criminal and Civil and Public Policy, it would strengthen the guidelines dealing with the reporting of child abuse.

House Bill 1761 would provide that Child Protective Services (CPS) shall conduct in-home visits at least once every 30 days to ensure compliance with (1) a voluntary services

referral agreement; or (2) a program of informal adjustment.

The measure would provide that a CPS report that is compiled following an investigation of child abuse or neglect may conclude that abuse or neglect is indicated. (Current practice allows only substantiated and unsubstantiated findings.)

PROTECTIVE ORDER (HB 1816)

This bill, if enacted, would require the Clerk of a Court that issues a workplace violence Restraining Order to provide a copy of the Order and the confidential sheet to the employer.

House Bill 1816 also would amend the definitions of (1) domestic or family violence; (2) family or household member; (3) employee; and (4) employer.

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Court can be avoided in various divorce cases.

A newspaper article describing “a divorce court on wheels” that

Streamlined Process Is Available For Certain Dissolution Situations

is operating in Miami, Florida, recently appeared in *The Indianapolis Star*. As the reporter explained, it was the hope of the Florida attorneys that they might bring more efficiency and convenience to their clients.

Streamlined Process

Well . . . we in Indiana are even more service-oriented. Depending on

the circumstances of the dissolution matter, no one concerned with the case ever has to go to court.

If a dissolution of marriage action is settled—for preliminary terms while the case is pending and for final matters such as custody, parenting time, support and property division—neither party has to darken the doorway of a courthouse.

Comprehensive Agreement

A comprehensive agreement addressing all issues is written and signed by the parties. It is then approved by their counsel, if they are represented, and sent to the court.

A Waiver of Final Hearing is required for final dissolution agreements and decrees. All of these various documents are then mailed to the court.

The judge will examine the papers, and if they are acceptable (which occurs in most cases), they are approved, file marked, made a part of the court record and returned by mail.

Saves Time and Money

Given the efficiency of this process, both parties are able to save time and money that would otherwise be spent on the often lengthy and contentious legal process.

This is yet one more reason for them to retain control of their cases and work toward a settlement. ♦

Legislative Bills Impact Domestic Measures

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This legislation would also provide that a parent in a paternity or divorce action may seek a Protective Order against the other parent from the Court in which the paternity or divorce matter is pending.

CHILD NEGLECT (SB 300)

If passed in its present form, Senate Bill 300 would make neglect of a dependent a Class A felony, if the neglect results in the death of the dependent who is less than 14 years of age and is committed by a person at least 18 years of age.

In addition, the bill would provide that consent to adoption would not be required from a parent convicted of neglect of a dependent as a Class A felony.

Moreover, passage of this bill would mean that reasonable attempts at reunification in a Child in Need of Services (CHINS) pro-

ceeding are not required, if a parent, guardian or custodian has been convicted of neglect of a dependent as a Class A felony.

CHILD CUSTODY (HB 1447)

This measure addresses a variety of family law issues. Among them is establishing a rebuttable presumption that joint legal custody and joint physical custody are “in the best interests of a child” in dissolution of marriage and paternity cases.

If enacted, House Bill 1447 would change the factors that the Court uses in making its determination as to whether to order joint physical and joint legal custody. The measure would repeal certain provisions concerning joint legal custody.

It also would provide grounds for a custody modification, if a person, who has been awarded joint physical or joint legal custody, moves outside the state or at least 100 miles away. ♦

Recording Telephone Chats Can Raise Wiretap Issue



Think twice about recording conversations in custody disputes.

The Indiana Court of Appeals recently addressed itself to a decision of the Marion County Superior Court in which the trial court failed to admit a father's recording of a conversation between his child and the child's mother (father's ex-wife) into evidence.

This decision, however, was based upon a narrow issue and should not be taken as authority to record conversations in general.

Federal Wiretap Act

In its opinion, the Court of Appeals looked first to the Federal Wiretap Act. This statute prohibits the interception and introduction into evidence of telephone communications—unless one party to the communications gives consent or a court order is obtained authorizing the interception of the telephone conversations.

According to a definitive Seventh Circuit case on this point, parents cannot be subjected to criminal and civil penalties under the Federal Wiretap Act “for recording their minor child’s

phone conversations out of concern for the child’s well-being.”

For this “extension telephone exemption” to apply, though, a parent’s worry for a child’s welfare must be the purpose in tape-recording the phone conversation. The Court, in fact, emphasized that it was a parent’s motivation, rather than the child’s actual well-being, that was important in determining this issue.

Indiana Wiretap Act

The Court of Appeals next examined the Indiana Wiretap Act that, like its Federal counterpart, also contains an exclusionary rule.

Under this state statute, the recording of a telephone conversation is not an “interception,” if it is done with the consent of either the sender or receiver of the communication.

Because the law permits parents of a minor the power to execute consents or waivers of notice on behalf of a minor—and, in this case, the ex-husband was a parent with joint legal custody—his tape recording did not qualify as an “interception” because it was motivated out of concern for his child.

Joint Legal Custody

“As a parent with joint legal custody,” the Court wrote, “[the ex-husband] had the power to consent to the recording of his minor daughter’s telephone conversation. . . . Thus, we hold that the recording did not violate the Indiana Wiretap Act and that the trial court abused its discretion in ex-



Tape-recordings can cause problems.

cluding the tape recording and its contents.”

Please contact us if you would like to have a copy of this opinion: *Apter v. Ross*, 781 N.E.2d 744 (Ind. App. 2003). ♦

REALITY CHECKS:

- ✓ It will take longer than you think to get over your divorce.
- ✓ Going through a divorce will take a toll on your body.
- ✓ You will never get over wanting to be your child’s favorite parent.
- ✓ Getting a divorce won’t mend the flaws in your “ex.”
- ✓ The amount of time you spend with your child is not tied to child support.
- ✓ Unlike a marriage, divorce is forever when children are a part of the picture.
- ✓ Depending upon how it is handled, there is still such a thing as a “good divorce.” ♦

Don't Forget Those Summer Parenting Time Guidelines

As warmer weather approaches, many Hoosiers erase from their minds thoughts of the long winter. However with summer coming quickly, separated parents must remember a few important rules and guidelines regarding their children:

- Non-custodial parents must provide notice of their intent to exercise extended summer parenting time, based on the Indiana Parenting Time Guidelines or the terms of their divorce/paternity decree.
- Each parent should apprise the other of information concerning his or her travel plans with the children. This includes itineraries as well as contact information.

Reluctance to Talk about Money Can Cause Difficulties for Couples

According to a recent survey undertaken by a credit card company, nearly a third of all adults have never had a conversation about financial matters with their spouse or significant other. That reluctance to talk about basic money issues can very often lead to problems.

If you find yourself in this situation, you might consider the following resources to help you start this conversation. Nearly 50 fact sheets on financial topics—including information about pensions and Social Security—are available at <http://www.wiser.heinz.org> or from WISER, 1920 North St. N. W., Suite 300, Washington, DC 20036.

For guidance in organizing your finances with an eye toward retirement, visit <http://www.aarp.scudder.com> or call (800) 253-2277 for a free “Legacy Planner Kit.”♦

If a fishing trip is part of your summer plans, make sure to consult with other parent.



• Both parents should consider those activities that are important to their children, such as attending day camps or sporting leagues, when arranging summer parenting time.

• Non-custodial parents who are current in their support and who pay support by income-withholding should notify their employers as to their extended summer parenting time. This will allow them to take advantage of a 50% reduction in their support during the period of extended parenting time.

• Children should always be encouraged to participate in extended summer parenting time in order to promote a healthy relationship between the children and each of their parents.

• Parents should structure a parenting time schedule together, without involving the children in the decision-making process—and without asking the children to make choices regarding parenting time.

If you have questions regarding summer parenting time rights or obligations, please contact **Newton Becker Reichert** or your attorney of choice.♦

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