

# Children's Law Center of Indiana



## Indiana Statutes, Guidelines, and Case Law on Parenting Time and Visitation in Dissolution and Paternity Proceedings<sup>1</sup>

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### I. Introduction

Indiana statutes, the Indiana Supreme Court Parenting Time Guidelines, and case law provide direction for dissolution and paternity courts in making orders regarding noncustodial parents' access to children. Indiana dissolution and paternity statutes are similar but not identical in wording. In 2005 legislation, the term "parenting time" was substituted for the term "visitation" in dissolution and custody statutes. Indiana case law uses both terms.

### II. Statutes

Most dissolution statutes regarding parenting time are codified at IC 31-17-4. Paternity statutes regarding parenting time are codified at IC 31-14-14. Statutes are paraphrased in this document, with dissolution statutes cited first and paternity statutes cited second. A noncustodial parent is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development. IC 31-17-4-1(a); IC 31-14-14-1(a). The court may interview the child in chambers to assist the court in determining the child's perception of whether parenting time might endanger the child's physical health or significantly impair the child's

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emotional development. IC 31-17-4-1(b); IC 31-14-14-1(b). Although the statutes use the term “might”, Indiana Appellate Courts have interpreted the statutes to mean that a trial court may not restrict parenting time unless the parenting time would endanger the child’s physical health or well-being or significantly impair the child’s emotional development. Farrell v. Littell, 790 N.E.2d 612, 616 (Ind. Ct. App. 2003). The court may permit counsel to be present at the interview. If counsel is present, a record may be made of the interview and the interview may be made part of the record for purposes of appeal. IC 31-17-4-1(c); IC 31-14-14-1-(c). The court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child. IC 31-17-4-2; IC 31-14-14-2. A noncustodial parent who misses parenting time as a result of participation in an activity of the Indiana National Guard or a reserve component of the U.S. armed forces reserves may make up the lost parenting time. IC 31-17-4-10; IC 31-14-14-4.

There is a rebuttable presumption that the court shall order supervised parenting time for at least one year and not more than two years, or until the child is emancipated (whichever occurs first), immediately following a crime involving domestic or family violence if the court finds that the noncustodial parent has been convicted of a crime involving domestic or family violence that was witnessed or heard by the noncustodial parent’s child. IC 31-17-2-8.3; IC 31-14-14-5. Effective July 1, 2009 in paternity cases, there is a rebuttable presumption that a person who has been convicted of child molesting (IC 35-42-4-3) or child exploitation (IC 35-42-4-4(b)) might endanger the child’s physical health and well-being or significantly impair the child’s emotional development, and there is a rebuttable presumption that the person’s parenting time with the child must be supervised. IC 31-14-14-1(c)(d). There is no comparable dissolution statute, but arguably dissolution and paternity statutes are *in pari materia* and may be construed together. Sills v. Irelan, 663 N.E.2d 1210 (Ind. Ct. App. 1996). If the court requires supervision during parenting time or suspends parenting time, the court shall enter a conditional order naming a temporary custodian for the child. IC 31-17-2-11(a). The temporary custodian named by the court receives temporary custody upon the death of the custodial parent and may petition the probate court for temporary guardianship of the child. IC 31-17-2-11(b)(c).

### III. Indiana Parenting Time Guidelines

The Indiana Parenting Guidelines are based on the developmental stages of children and were developed by the Domestic Relations Committee of the Judicial Conference of Indiana. The Guidelines may be found at [www.in.gov/judiciary](http://www.in.gov/judiciary) and represent a minimum time that a parent should have to maintain frequent, meaningful, and continuing contact with a child.

The Indiana Supreme Court adopted the Indiana Parenting Time Guidelines with an effective date of March 31, 2001. The Scope of Application of the Guidelines states that the Guidelines are applicable to all custody situations, including paternity cases and cases involving joint legal custody where one parent has primary physical custody, but they are “not applicable to situations involving family violence, substance abuse, risk of flight with a child, or any other circumstances the court reasonably believes endanger the child’s physical health or safety, or significantly impair the child’s emotional development.” The Scope section further states that there is a “presumption that the Indiana Parenting Time Guidelines are applicable in all cases covered by these guidelines” and “deviation from these Guidelines by either the parties or the court must be accompanied by a written explanation indicating why the deviation is necessary or appropriate in the case.”

The Indiana Court of Appeals has issued several opinions on the applicability of and definitions within the Guidelines. In Saalfrank v. Saalfrank, 899 N.E.2d 671 (Ind. Ct. App. 2008), the Court opined that the Guidelines demonstrate a preference for sharing in transportation costs where the distance between parents is significant and that the trial court did not abuse its discretion in requiring the custodial parent to contribute eighty hours of driving time annually to meet the relocating noncustodial parent half-way for parenting time exchanges. In Shelton v. Shelton, 835 N.E.2d 513 (Ind. Ct. App. 2005), summarily affirmed at 840 N.E. 2d 835 (Ind. 2006), the Court clarified that the definition of “family member” for purposes for section I.C.3. of the Guidelines must be limited to a person within the same household as the parent with physical custody. When the parent with physical custody or a responsible member of the parent’s household cannot care for the child, the noncustodial parent is to be offered the right of first refusal to care for the child, regardless of whether a non-

household member can care for the child without cost. In Haley v. Haley, 771 N.E.2d 743 (Ind. Ct. App. 2002), the Court opined that, even if the original custody determination was made before the Guidelines went into effect, the Guidelines apply to a modification of custody. In Kaplan v. Cunningham, 757 N.E.2d 1026 (Ind. Ct. App. 2001), the Court opined that adherence to the Guidelines is not mandated in cases that involve modification of visitation orders that were in existence prior to the effective date of the Guidelines

#### IV. Case Law

##### A. Burden of Proof

1. Stewart v. Stewart, 521 N.E.2d 956, 963 (Ind. Ct. App. 1988) (party seeking to terminate noncustodial parent's visitation is obligated to prove case by preponderance of the evidence), *trans. denied*.

##### B. Standard of Review

1. Appolon v. Faught, 796 N.E.2d 297, 299 (Ind. Ct. App. 2003) (Court of Appeals will reverse trial court's determination of a visitation issue only when trial court manifestly abused discretion).
2. Hanson v. Spolnik, 685 N.E.2d 71, 79 (Ind. Ct. App. 1997) (without reweighing evidence or judging witness credibility, Court examines record to determine whether it discloses evidence or reasonable inferences therefrom which rationally support trial court findings), *trans. denied*.

##### C. Hearing Required

1. Burkett v. W.T., 857 N.E.2d 1031, 1033 (Ind. Ct. App. 2006) (in paternity visitation case, court's decision to deny father's visitation with son without a hearing due to father's forty year incarceration for sex crimes against child's mother reversed and remanded; trial court was required to conduct an evidentiary hearing).
2. Pence v. Pence, 667 N.E.2d 798, 802 (Ind. Ct. App. 1996) (an ex parte order terminating visitation is a temporary, extreme remedy; court is required to hold a hearing and afford father the opportunity to be heard).

#### D. Evidence on Modification

1. Gomez v. Gomez, 887 N.E.2d 977, 983-84 (Ind. Ct. App. 2008) (trial court's denial of father's petition to modify parenting time to allow for overnight stays during midweek affirmed; mother had not acquiesced in and repeatedly protested father's refusal to return children from midweek parenting time).
2. Duncan v. Duncan, 843 N.E.2d 966, 969 (Ind. Ct. App. 2006) (principle that testimony regarding parent's conduct prior to dissolution decree is inadmissible in proceeding on petition to modify parenting time is necessary corollary to requirement of change of conditions for modification of parenting time because it prevents relitigation of issues decided at original dissolution hearing), *trans. denied*.
3. Stewart v. Stewart, 521 N.E.2d 956, 963 (Ind. Ct. App. 1988) (parent may obtain modification of visitation so long as evidence is presented which shows change in circumstances since last visitation order was entered), *trans. denied*.

#### E. Child's Interview with Judge

1. Truden v. Jacquay, 480 N.E.2d 974, 979 (Ind. Ct. App. 1985) (trial court's failure to ask children questions proposed by father was not an abuse of discretion; father's attempt to direct questions to children would put children in adversative position the statute seeks to avoid).

#### F. Child's Refusal to Visit

1. Malicoat v. Wolf, 792 N.E.2d 89, 92 (Ind. Ct. App. 2003) (Court quoted Indiana Parenting Time Guideline I. E. 3. that "[i]n no event shall a child be allowed to make the decision on whether scheduled parenting time takes place").
2. Hartzell v. Norman T.L., 629 N.E.2d 1292, 1295 (Ind. Ct. App. 1994) (thirteen-year-old's refusal to cooperate with scheduled visitation cannot divest court of its authority to enforce visitation orders), *trans. denied*.

#### G. Visitation Restricted or Denied Due to Parent's Disability or Illness

1. Clark v. Madden, 725 N.E.2d 100, 105 (Ind. Ct. App. 2000) (trial court's requirement that visually impaired father be accompanied by another

responsible adult at all times when two-year-old child was with him was improper in absence of finding that child would be endangered otherwise).

2. Stewart v. Stewart, 521 N.E.2d 956, 966 (Ind. Ct. App. 1988) (trial court's decision to deny visitation to father because he was HIV positive was reversed and remanded for further evidence, including medical evidence).

#### H. Parenting Time/Visitation Denied

1. Duncan v. Duncan, 843 N.E.2d 966, 970-72 (Ind. Ct. App. 2006) (denial of parenting time for father with sons affirmed based on evidence of daughter's testimony regarding years of sexual abuse and threats with gun by father, DFC substantiation of the sexual abuse, father's denial of wrong-doing and pressuring older son to quit therapy, sons' wishes not to spend time with father, and younger son's behavioral problems for which he was receiving therapy and medication), *trans. denied*.
2. Doe v. Donahue, 829 N.E.2d 99, 108-11 (Ind. Ct. App. 2005) (Court affirmed trial court's summary judgment in favor of the Department of Correction regarding Executive Directive which allowed Correction to restrict incarcerated sexual abuse offenders whose victims were under the age of eighteen from visits with children).
3. Appolon v. Faught, 796 N.E.2d 297, 299-300 (Ind. Ct. App. 2003) (denial of father's visitation in dissolution case affirmed due to evidence of father's physical abuse and rape of mother, father's admission that he had molested children, and father's threats to abscond with children; supervised visitation not the lowest common denominator).
4. Carter v. Dec, 480 N.E.2d 564, 566-67 (Ind. Ct. App. 1985) (denial of visitation for incarcerated father with three-year-old child affirmed on evidence that visit had a negative effect on child, who was at times afraid and cried even in presence of mother; father's plan was that child would be transported to prison by strangers).

#### I. Parenting Time/Visitation Supervised

1. In Re Paternity of H.R.M., 864 N.E.2d 442 (Ind. Ct. App. 2007) (order modifying father's visitation to supervised visitation reversed and remanded

due to trial court's erroneous admission of child hearsay statements to clinical social worker and visitation records which were not certified under oath as required by Ind. Evidence Rule 902(9)).

2. Shady v. Shady, 858 N.E.2d 128, 143 (Ind. Ct. App. 2006) (order that parenting time for father with five-year-old daughter be supervised by mother or maternal relatives affirmed on evidence of risk that father, an Egyptian national, would abduct daughter, resulting in devastating, permanent separation from mother and inability to retrieve child from Egypt).
3. J.M. v. N.M., 844 N.E.2d 590, 600 (Ind. Ct. App. 2006) (order requiring supervised parenting time for father based on father's negative behavior toward child, testimony of child's counselor and GAL, father's counselor, and father's mental health treatment records affirmed), *trans. denied*.
4. Lasater v. Lasater, 809 N.E.2d 380, 401-02 (Ind. Ct. App. 2004) (order which denied mother visitation for ninety days, followed by supervised visitation pending psychologist's report on mother's progress due to risk of emotional harm to child affirmed).
5. Farrell v. Lytle, 790 N.E.2d 612 (Ind. Ct. App. 2003) (order suspending father's visitation with hearing and speech impaired child pending evaluation for sexual abuse reversed because no criminal charges were filed, there was no physical evidence of abuse, the court made no finding that visitation would endanger child's health or impair her emotional development, the court was uncertain whether there had been inappropriate sexual conduct, the father denied abusing child, and the allegations of sexual abuse began when child was receiving care from a new caregiver who understood little of child's signing language).
6. Hanson v. Spolnik, 685 N.E.2d 71, 79 (Ind. Ct. App. 1997) (order that mother's visitation be supervised affirmed on evidence that mother's behavior and animosity towards father and her failure to get adequate counseling for half-sibling who had inappropriately touched child endangered child's well-being; trial court had recently extended amount of time authorized for mother's supervised visitation and allowed for periodic reevaluation of visitation schedule), *trans. denied*.

7. Truden v. Jacquay, 480 N.E.2d 974, 980 (Ind. Ct. App. 1985) (order for supervised visitation for father with his three children affirmed on evidence of verbal aggression and potential for physical or psychological damage to older child and emotional difficulties of younger two children; court need not find children have been beaten and bloodied before concluding physical health endangered or emotional development significantly impaired).

J. Parenting Time/Visitation Restricted

1. Walker v. Nelson, 911 N.E.2d 124, 130 (Ind. Ct. App. 2009) (order restricting parenting time to one weekend per month for a Gary resident mother with child who lived in Indianapolis reversed and remanded because trial court had not included findings sufficient to support visitation restriction in its order).
2. Barger v. Pate, 831 N.E.2d 758, 763 (Ind. Ct. App. 2005) (order giving mother discretion to restrict father's parenting time based on mother's determination of potential harm from a sibling in father's custody reversed because it was clearly erroneous).
3. In Re Paternity of G.R.G., 829 N.E.2d 114 (Ind. Ct. App. 2005) (order deviating from Guidelines for midweek visitation due to father's rotating work schedule and child's need for structure during the week affirmed).
4. Higginbotham v. Higginbotham, 822 N.E.2d 609, 613 (Ind. Ct. App. 2004) (court did not err in suspending father's midweek parenting time with thirteen-year-old daughter because father was not assisting child with homework, was not giving child her anxiety medication regularly, and child's scholastic and emotional difficulties were partly attributable to father's midweek visits).
5. A.G.R. Ex Rel. Conflenti v. Huff, 815 N.E.2d 120 (Ind. Ct. App. 2004) (order prohibiting father from encouraging or allowing child to participate in holiday-related activities and denying father parenting time with the child on Christmas Eve or Day due to child's religious beliefs affirmed), *trans. denied*.
6. In Re Paternity of V.A.M.C., 768 N.E.2d 990, 1001-02 (Ind. Ct. App. 2002), rehearing at 773 N.E.2d 359 (Ind. Ct. App. 2002) (order restricting father from allowing child to have contact with father's fiancée during father's parenting time reversed and remanded).

7. Marlow v. Marlow, 702 N.E.2d 733, 736 (Ind. Ct. App. 1998) (orders restricting father from overnight visitation with children if non blood-related persons were also in house overnight and prohibiting father from taking children to any social, religious or educational functions sponsored by or promoting homosexual lifestyle affirmed on evidence of children's behavior problems consistent with emotional distress and counselor's recommendations).
8. Pennington v. Pennington, 596 N.E.2d 305, 307 (Ind. Ct. App. 1992) (order restricting father's visitation with six-year-old son by requiring that father's adult male friend not be present because of injury to child's emotional development affirmed).
9. Hunt v. Whalen, 565 N.E.2d 1109, 1113-14 (Ind. Ct. App. 1991) (order restricting mother's visitation with one-year-old child to custodial paternal grandparents' home affirmed on evidence that mother's home environment was permeated with substance abuse and violence).

K. Parenting Time/Visitation Not Tied to Payment of Child Support

1. Farmer v. Farmer, 735 N.E.2d 285, 290 (Ind. Ct. App. 2000) (trial court's orders conditioning father's visitation rights with thirteen-year-old daughter on continued payment of child support and threatening to revoke father's suspended sentence for failure to pay child support if father did not continue visitation reversed; child support and visitation are separate issues that should not be commingled).
2. Warner v. Warner, 725 N.E.2d 975, 981 (Ind. Ct. App. 2000) (order that father's payments of child support are contingent upon his receiving visitation with eighteen-year-old daughter reversed).
3. Rendon v. Rendon, 692 N.E.2d 889, 897 (Ind. Ct. App. 1998) (order authorizing father to hold all future child support payments in trust to compel mother's compliance with court ordered visitation for father with child reversed; father's duty to support child separate and distinct from mother's obligation to permit visitation).

L. Therapist Cannot Determine Visitation

1. In Re Paternity of A.R.R., 634 N.E.2d 786, 789 (Ind. Ct. App. 1994) (paternity visitation order reversed and remanded because court impermissibly endowed supervised visitation agency with judicial powers by authorizing agency to determine when supervised visitation was no longer needed and when frequency of visitation could be increased).