

Children's Law Center of Indiana



2010 Legislative Changes to the Paternity Affidavit Statute¹

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Legislation effective July 1, 2010, amended the paternity affidavit statute, IC 16-37-2-2.1. IC 16-37-2-2.1(f) was completely re-written and provides that the affidavit must contain the following statements:

1. A statement that, if the mother and the man who believes he is the child's biological father (affiant father) check a box on the affidavit and sign on signature lines below the box, the mother and affiant father agree to share joint legal custody of the child.
2. A statement that, if the mother and affiant father do not agree to share joint legal custody, the mother has sole legal custody of the child unless another determination is made by a court in a proceeding under IC 31-14 (paternity proceeding).
3. A statement that, if the mother and affiant father agree to share joint legal custody (on the paternity affidavit), the mother has primary physical custody of the child unless another determination is made by a court in a proceeding under IC 31-14 (paternity proceeding).
4. A statement that, if the mother and affiant father agree to share joint legal custody (on the paternity affidavit), the agreement to share joint legal custody is void unless the result of a genetic test performed by an accredited laboratory indicates that the affiant

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father is the biological father of the child and the result of genetic test is submitted to a local health officer not later than 60 days after the child's birth.

5. A statement with signature lines that affirms that a mother or an affiant father who is under the age of eighteen has had an opportunity to consult with an adult chosen by the mother or affiant father regarding the contents of the paternity affidavit before signing the affidavit.

IC 16-37-2-2.1(h) (formerly IC 16-37-2-21.(g)) was amended to define the affiant father's parenting time rights as parenting time in accordance with the parenting time guidelines adopted by the Indiana Supreme Court. (new language underlined). This statute formerly used the term "reasonable parenting time rights."

IC 16-37-2-2.1(o) provides that if the mother and affiant father check the joint legal custody box and sign where indicated for joint legal custody, the mother and affiant father shall share joint legal custody and have equal access to the child's school and medical records. An action to establish custody or parenting time of a party who has agreed to share joint legal custody on the paternity affidavit shall be tried de novo.

IC 16-37-2-2.1(q) provides that an agreement to share joint legal custody on the paternity affidavit is void if either of the following applies:

- (1) A genetic test performed by an accredited laboratory indicates that the affiant father is not the child's biological father; or
- (2) The affiant father fails to submit to a local health officer within 60 days the result of a genetic test performed by an accredited laboratory that indicates the affiant father is the child's biological father.

A new subsection, IC 16-37-2-2.1(p), provides that, before a paternity affidavit is signed, it must be presented separately to the mother and the man who reasonably appears to be the child's biological father so that each party may review the affidavit alone and without the presence of the other party. A signed paternity affidavit is voidable if this requirement is not satisfied.

A new subsection, IC 16-37-2-2.1(r), provides that the mother or the affiant father must have an opportunity to consult with any adult chosen by the mother or affiant father if the mother or affiant father is under the age of eighteen. The consultation regarding the contents of the paternity affidavit must take place before the paternity affidavit is signed. A signed paternity affidavit is voidable if the mother or affiant father does not have the opportunity to consult with a chosen adult.