SENATE BILL No. 289

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-37-2-9; IC 29-1-2-7; IC 31-14.

Synopsis: Parenthood. Specifies that a birth certificate must record the names of a child's biological parents. Specifies that if the biological parents are unknown, that the names of the presumptive parents determined under law must be recorded. Removes provisions using the age of a child at the time of the alleged father's death that govern when a paternity action must be filed for inheritance purposes. Repeals the statement that the general assembly favors the policy of establishing the paternity of a child born out of wedlock under IC 31-14. Provides that the policy of the state of Indiana is that a child's biological parents are the child's legal parents unless and until the child is adopted. Specifies certain rights and duties of biological parents. Provides that a child born out of wedlock during the lifetime of the alleged father may file a paternity action for purposes of inheritance on the child's paternal side: (1) during the lifetime of the alleged father; or (2) not later than five months after the death of the alleged father. Resolves a conflict between the probate law and the paternity action law in favor of the probate law by specifying that a child born out of wedlock after the death of the alleged father may file a paternity action for purposes of inheritance on the child's paternal side not more than 11 months after the death of the alleged father. Provides that to presume that a man is a child's biological father in the context of a marriage or attempted marriage between the man and the child's biological mother both the man and the child's biological mother must affirm under penalty of perjury that they believe the man to be the child's biological father. Provides the following concerning maternity and the rights and obligations of birth mothers: (1) That a woman who gives birth to a child is presumed to be the child's biological mother. (2) That the

(Continued next page)

Effective: July 1, 2021.

Tomes

January 11, 2021, read first time and referred to Committee on Judiciary.

presumption of maternity is overcome through a blood or genetic test indicating that another woman is the biological mother of the child. (3) That a birth mother cannot disclaim maternity unless another woman comes forward and proves biological maternity. (4) That a birth mother who is not the biological mother of the child has the right to petition the court for visitation of the child.

Introduced

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE BILL No. 289

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 16-37-2-9, AS AMENDED BY P.L.138-2019, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 9. (a) The local health officer shall make a permanent record of the following from a birth certificate:

(1) Name.
(2) Sex.
(3) Date of birth.
(4) Place of birth.
(5) ~~Name~~ **The names** of the **biological** parents. **If the biological parents are unknown, the names of the presumptive parents as determined under IC 31-14-7-1 and IC 31-14-7-1.1.**
(6) Birthplace of the parents.
(7) The date of filing of the certificate of birth.
(8) The person in attendance at the birth.
(9) Location of the birth, including whether the birth occurred at

a hospital, licensed health care facility, home, or other non-health care facility.

(b) Except as provided in subsection (c), the permanent record shall be open to public inspection. Upon request by an individual, a paper copy of the permanent record in subsection (a) must be provided by the local health officer.

(c) The birth record of an adopted child remains subject to the confidentiality provisions of IC 31-19 regarding the release of adoption information.

(d) The permanent record of the information required under this section may be maintained in the Indiana birth registration system (IBRS).

SECTION 2. IC 29-1-2-7, AS AMENDED BY P.L.190-2016, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 7. (a) For the purpose of inheritance (on the maternal side) to, through, and from a child born out of wedlock, the child shall be treated as if the child's mother were married to the child's father at the time of the child's birth, so that the child and the child's issue shall inherit from the child's mother and from the child's maternal kindred, both descendants and collaterals, in all degrees, and they may inherit from the child. The child shall also be treated as if the child's mother were married to the child's father at the time of the child's birth, for the purpose of determining homestead rights and the making of family allowances.

(b) For the purpose of inheritance (on the paternal side) to, through, and from a child born out of wedlock, the child shall be treated as if the child's father were married to the child's mother at the time of the child's birth, if one (1) of the following requirements is met:

~~(1) The paternity of a child who was at least twenty (20) years of age when the father died has been established by law in a cause of action that is filed during the father's lifetime.~~

~~(2)~~ **(1)** The paternity of a child ~~who was less than twenty (20) years of age when the father died~~ **born during the father's lifetime** has been established by law in a cause of action that is filed:

(A) during the father's lifetime; or

(B) within five (5) months after the father's death.

~~(3)~~ **(2)** The paternity of a child born after the father died has been established by law in a cause of action that is filed within eleven (11) months after the father's death.

~~(4)~~ **(3)** The putative father marries the mother of the child and acknowledges the child to be his own.

~~(5)~~ **(4)** The putative father executed a paternity affidavit in accordance with IC 31-6-6.1-9(b) (before its repeal).

~~(6)~~ **(5)** The putative father executes a paternity affidavit as set forth in IC 16-37-2-2.1.

(c) The testimony of the mother may be received in evidence to establish such paternity and acknowledgment, but no judgment shall be made upon the evidence of the mother alone. The evidence of the mother must be supported by corroborative evidence or circumstances.

(d) If paternity is established as described in this section, the child shall be treated as if the child's father were married to the child's mother at the time of the child's birth, so that the child and the child's issue shall inherit from the child's father and from the child's paternal kindred, both descendants and collateral, in all degrees, and they may inherit from the child. The child shall also be treated as if the child's father were married to the child's mother at the time of the child's birth, for the purpose of determining homestead rights and the making of family allowances.

SECTION 3. IC 31-14-1-1 IS REPEALED [EFFECTIVE JULY 1, 2021]. ~~Sec. 1. The general assembly favors the public policy of establishing paternity under this article of a child born out of wedlock.~~

SECTION 4. IC 31-14-1-1.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 1.1. (a) It is the policy of the state of Indiana that a child's biological parents are the child's legal parents unless and until the child is adopted under IC 31-19.**

(b) A child's biological parent's have both a right to petition a court for custody or visitation of the child under IC 31-17 and a duty to support the child under IC 31-18.5. These rights may not be waived or abrogated except by judicial termination of parental rights, including by adoption. Any contract purporting to waive parental rights and duties of biological parents is unenforceable.

(c) Nothing in this article should be interpreted to give a biological parent a right to seek custody or visitation of a child if:

(1) the biological parent has been convicted of rape under IC 35-42-4-1; and

(2) the rape resulted in the birth of the child.

SECTION 5. IC 31-14-5-3, AS AMENDED BY P.L.206-2015, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3. (a) This section does not apply to an action filed by the department or its agents under section 4 of this chapter (or IC 31-6-6.1-6(c) before its repeal).

(b) The mother, a man alleging to be the child's father, or the

department or its agents must file a paternity action not later than two (2) years after the child is born, unless:

(1) both the mother and the alleged father waive the limitation on actions and file jointly;

(2) support has been furnished by the alleged father or by a person acting on his behalf, either voluntarily or under an agreement with:

(A) the mother;

(B) a person acting on the mother's behalf; or

(C) a person acting on the child's behalf;

(3) the mother, the department, or a prosecuting attorney operating under an agreement or contract described in IC 31-25-4-13.1 files a petition after the alleged father has acknowledged in writing that he is the child's biological father;

(4) the alleged father files a petition after the mother has acknowledged in writing that he is the child's biological father;

(5) the petitioner was incompetent at the time the child was born; or

(6) a responding party cannot be served with summons during the two (2) year period.

(c) If any of the conditions described in subsection (b) exist, the paternity petition must be filed not later than two (2) years after the condition described in subsection (b) ceases to exist.

(d) A child born out of wedlock during the lifetime of the alleged father may file a paternity action for purposes of inheritance on the child's paternal side under IC 29-1-2-7(b):

(1) during the lifetime of the alleged father; or

(2) not later than five (5) months after the death of the alleged father.

(e) A child born out of wedlock after the death of the alleged father may file a paternity action for purposes of inheritance on the child's paternal side under IC 29-1-2-7(b) not later than eleven (11) months after the death of the alleged father.

SECTION 6. IC 31-14-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5. ~~Notwithstanding any other provision~~ **Except as provided by section 3(e)** of this chapter, an action must be filed:

(1) during the lifetime of the alleged father; or

(2) not later than five (5) months after his death.

SECTION 7. IC 31-14-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. A man is presumed to be a child's biological father if:

(1) the:

(A) man and the child's biological mother are or have been married to each other; ~~and~~

(B) child is born during the marriage or not later than three hundred (300) days after the marriage is terminated by death, annulment, or dissolution; **and**

(C) the man and the child's biological mother both affirm under penalty of perjury that they believe the man to be the child's biological father;

(2) the:

(A) man and the child's biological mother attempted to marry each other by a marriage solemnized in apparent compliance with the law, even though the marriage:

(i) is void under IC 31-11-8-2, IC 31-11-8-3, IC 31-11-8-4, or IC 31-11-8-6; or

(ii) is voidable under IC 31-11-9; ~~and~~

(B) child is born during the attempted marriage or not later than three hundred (300) days after the attempted marriage is terminated by death, annulment, or dissolution; **and**

(C) the man and the child's biological mother both affirm under penalty of perjury that they believe the man to be the child's biological father; or

(3) the man undergoes a genetic test that indicates with at least a ninety-nine percent (99%) probability that the man is the child's biological father.

SECTION 8. IC 31-14-7-1.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 1.1. (a) A woman who gives birth to a child is presumed to be the child's biological mother. The presumption of maternity is overcome through a blood or genetic test indicating that another woman is the biological mother of the child. The birth mother cannot disclaim maternity unless another woman comes forward and proves biological maternity.**

(b) A birth mother who is not the biological mother of the child has the right to petition the court for visitation of the child under IC 31-17-4.