

Members:

Rep. Markt Lytle, Chairperson
Rep. Dale Sturtz
Rep. Cleo Duncan
Rep. Brent Steele
Sen. Richard Bray
Sen. David Ford
Sen. Billie Breaux
Sen. Anita Bowser



Laymembers

Bruce Pennamped
Karon Perkins
Carol Branham

INDIANA CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

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Authority: IC 33-2.1-10-1

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MEETING MINUTES

Meeting Date: September 30, 1998
Meeting Time: 11:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. Markt Lytle, Chairperson; Rep. Cleo Duncan; Sen. David Ford; Sen. Billie Breaux; Bruce Pennamped; Carol Branham.

Members Absent: Rep. Dale Sturtz; Rep. Brent Steele; Sen. Richard Bray; Sen. Anita Bowser; Karon Perkins.

I. Call to Order.

Chair Lytle called the meeting to order at approximately 11:10 am. Chair Lytle introduced the Committee members and referred to the Committee's charge to review child support and custody issues under Ind. Code 33-2.1-10.

II. Testimony

A. The Honorable E. Michael Hoff, Judge of Monroe Circuit Court #1, Domestic Relations Committee Member, discussed the Indiana Supreme Court's most recent amendments to the child support guidelines. Judge Hoff testified to the following:

□ The Domestic Relations Committee is a 12 member Committee that recently reviewed the child support guidelines for a period of slightly more than one year. They then submitted a report to the Indiana Supreme Court which outlined their suggestions. Dr. David Betson, an economist from Notre Dame, assisted with the review.

□ The Domestic Relations Committee examined the premises that underlie the guidelines. The guidelines are based upon the premise that after a divorce children should be as well off economically as when their families were intact. This premise is an effort to maintain a constant level of spending on children post-divorce.

□ The Domestic Relations Committee solicited written comments from the public, attorneys, and judges during its review of the guidelines. A public hearing was conducted for anyone in Indiana who wanted to comment on the guidelines. During the hearing some interesting comments were made, some of which were incorporated into the guidelines. There was testimony about the fact that children from intact families are expected to contribute more toward their higher educational expenses than children whose families do not remain intact. As a result, the commentary was amended to emphasize that children from nonintact families should contribute to their college educations.

□ The Domestic Relations Committee concluded that the child support guideline amounts are fair and reasonable and should not be revised. The tables for computing child support did not change and most of the commentary to the guidelines remained unchanged. However, the Committee fine-tuned the commentary. The Domestic Relations Committee also developed a worksheet for calculating college and trade school expenses. The worksheet was developed so that child support is calculated uniformly when children are away at school. Additional commentary was drafted to more adequately address the issue of fluctuations in irregular income such as overtime. The commentary suggests that the court should calculate the ratio of overtime income and reduce it to an annual figure which would be spread out evenly throughout the entire year. There is also a change in the way that health insurance payments are credited on the worksheet. More detailed information on the court's most recent changes to the guidelines may be obtained from Mr. Jeff Bercovitz, Indiana Judicial Center.

Committee Questions and Discussion

Senator Ford asked whether in most child support cases the guidelines are deviated from or followed. Judge Hoff stated that in most cases the guidelines are followed. Senator Ford referred to a judge's study of the deviations from the guidelines and asked which reasons for deviations from the guidelines were found in the cases that

were studied. Judge Hoff stated that reasons for deviations from the guidelines followed a few categories. Judge Hoff stated that two prominent reasons for guideline deviations were a large debt load and higher than usual medical expenses.

Mr. Bruce Pennamped asked what the lack of deviation from the guidelines could be attributed to and whether the Domestic Relations Committee considered placing reasons for deviation into the guidelines rather than into the commentary. Judge Hoff responded that the Domestic Relations Committee considered listing appropriate reasons for deviation within the guidelines but decided against it because they worried that in some cases the absence of a reason would cause a lack of deviation. Judge Hoff stated that perhaps there is too much of a sense that the guidelines should be followed.

Senator Breaux asked what the appropriate deviation from the guidelines would be with respect to the living expenses of a child who is living away from home as a postsecondary student. Judge Hoff responded that the weekly child support should be reduced by a percentage that is equal to the percentage of the year that the child is in school. In response to another question from Senator Breaux, Judge Hoff stated that Indiana is one of the few states that requires divorced parents to pay for their children's college educations as a component of child support.

Professor Robert Billingham, Associate Professor, Indiana University-Bloomington, stated that he conducted a survey of his students on the issue of who was paying for their college expenses. Professor Billingham found that 100% of his students surveyed who were from nonintact families had court orders with parental responsibilities for payment of their college expenses. The survey showed that 3% of children from intact families had parents who paid all of their college expenses. The survey also showed that in 17% of the cases in which the student was from an intact family, the student paid for the all of the student's own college expenses. Professor Billingham stated that the concern of children of intact families was that they had to perform at a certain level for their parents to continue paying for their college educations. Judge Hoff stated that the commentary states that an order for payment of college expenses should include some sort of minimum performance standard.

Representative Lytle asked whether there are any assurances that child support will be used for the child. Judge Hoff responded that there is an existing statute that allows for an accounting if a need is shown. Judge Hoff further stated that it would not be a good idea to require an accounting in every case because it is difficult to account for everything that is spent on a child.

B. Ms. Miriam Petit, Hamilton County Deputy Prosecutor, Child Support Division, stated that the Title IV-D office is responsible for enforcing child support orders and further testified to the following:

- ✓ The recent development of the college expenses worksheet will make things simpler. Court orders for the payment of college expenses generally require a child's parents to pay for a percentage of the child's

college expenses with the remainder to be paid by the child. Some courts order the child to pay for 10% of the expenses and other courts require the child to pay for one-third of the expenses. It is up to the discretion of the court. Payment of educational expenses is more of an issue for middle class parents than for lower income families because the lower income families tend to be able to obtain grants. Often there are problems with getting the noncustodial parent to pay for the child's college expenses. Therefore, in some cases the courts increase the weekly amount of a child support order instead of having the noncustodial parent pay a lump sum of money to the university.

✓ Title IV-D offices operate out of most prosecutor's offices to collect and enforce child support. The child support enforcement procedures include income withholding orders, lottery and tax intercepts, and contempt orders which include incarceration. In spite of these enforcement tools it is difficult to enforce all of the child support orders. It is difficult to locate some noncustodial parents. In addition, some noncustodial parents are employed in a cash business which can make the exchange of money difficult to track.

✓ It was advised that when legislators have a constituent with a child support collection complaint, the constituent should be directed to send a letter to their Title IV-D office listing the complaints and asking for an appointment.

Committee Questions and Discussion

Senator Ford stated that some counties do a better job in collecting child support than other counties. Senator Ford asked how levels of child support collection could become more consistent throughout the state. Ms. Petit responded that custodial parents are allowed to go to a county of nonresidence for their collection of child support in order to pursue a better result.

Representative Duncan discussed a case in which one of her constituents was ordered to pay 100% of the child's college expenses. Ms. Petit stated that it sounded like there was a problem with the quality of her constituent's lawyer.

C. Mr. Jim Hmurovich, Director, Division of Family and Children, testified concerning a three year study of a statewide automated system for collecting child support. The study was conducted beginning in 1995 and ending in 1998 and showed that there has been an 87% increase in child support collections in counties where both the clerk and the prosecutor are on the statewide automated system. Mr. Hmurovich further stated that there was a 31% increase in child support collections in counties in which either the clerk or the prosecutor are on the statewide automated system. Mr. Hmurovich stated that approximately 87 prosecutors from the Title IV-D offices and 38 clerks are currently using the statewide automated system. Mr. Hmurovich stated that although the system has not been without its faults, some of the

major issues raised by the clerks are being addressed. Mr. Hmurovich stated that approximately \$228 - 230 million dollars in child support is being collected in Indiana on an annual basis.

D. Mr. David Cousert, Professor, University of Southern Indiana, Social Work Department, testified to the following:

- ◆ Numerous studies have been conducted with respect to the psychological impact on children of having a primary caretaking parent. The Good Dads Association believes that as a starting point in child custody cases both parents should be involved with their children on an equal basis.
- ◆ The Good Dads Association is not just interested in child custody arising out of divorce but are concerned about fathers being involved with their children in all situations. The Good Dads Association is based in Evansville and many female members are part of the association.
- ◆ Joint custody is beginning to be awarded more frequently in southwestern Indiana. However, many of the joint custodian fathers are paying child support at levels that are as high as if they only had access to their children every other weekend. In many cases, the fathers had to agree to pay these high amounts in order to get the mother to agree to the joint custody situation.
- ◆ Fourteen states already have presumptive joint custody laws. It is an emerging trend throughout the country. There are numerous grass roots organizations that address joint custody. Presumptive joint custody should not preclude flexibility.

Mr. Cousert distributed several handouts to the Committee which set forth Mr. Cousert's testimony in more detail. The handouts are entitled "Good Dads Association Recommendations for the Indiana Legislative Session 1998-1999,"¹ "The Good Dads Association (GDA) - Advantages of Joint Custody,"² and "The Good Dads Association (GDA) - Joint Custody Facts".³

Committee Questions and Discussion

¹ This document is on file in the Legislative Information Center, Room 230, Statehouse, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 W. Washington St., Suite 301, Indianapolis, Indiana 46204-2789.

² This document is on file in the Legislative Information Center (see footnote 1).

³ This document is on file in the Legislative Information Center (see footnote 1).

Senator Ford asked how joint custody would work if the mother and father lived some distance apart. Mr. Cousert responded that if the mother and father do not live too far apart then they should share equal time with the child. Mr. Cousert stated that the farther the couple lived from one another the more inconvenient it would be for joint custody to work. Mr. Cousert stated that it is in the best interests of children to try to keep them within their own environment.

Senator Ford stated that even in an intact family it is difficult to keep up with all the activities of children, and therefore, with joint custody it would seem to be even more complicated to manage the children's various activities. Mr. Cousert responded that it is more complicated, but it is not that different from families in which both parents work outside the home. Mr. Cousert further stated that it would depend upon the maturity levels and the willingness of the parents to cooperate. Mr. Cousert stated that the parents must decide that they want to be equal parents. Mr. Cousert noted that studies have shown that joint custody is a fairly positive situation.

E. Ms. Linda Meier, Attorney at Law, Chair of the Family and Juvenile Law Section, Indiana State Bar Association, stated that 99% of her law practice is concentrated in the area of domestic relations and she spends an equal amount of her practice representing men and women so she believes that she has a balanced perspective. Ms. Meier testified as follows:

- ◆ Indiana's current custody statute lists at least eight factors for a court to consider when determining child custody. There are approximately five or six additional factors for a court to consider when awarding joint custody.
- ◆ A significant number of parents want to have shared parenting. However, presumptive joint custody is likely to create more trials for custody since a parent would have to rebut the presumption if the parent opposes joint custody. Joint custody would not work if the parents do not live in close proximity to one another. In intact families there is already a parent who acts more as a primary parent by being more accessible emotionally and physically to the couple's child. This is also true in separated families. In some families, a parent may want to be a weekend parent. The parent may never have been involved in the child's life or may have only been minimally involved. Presumptive joint custody could cause children to be used as pawns.
- ◆ Currently, the Domestic Relations Committee is doing a year long study to decide if Indiana should have visitation guidelines. The statewide visitation guidelines would apply when there is a custodial and a noncustodial parent. The purpose is to make the exercise of visitation more uniform throughout the state. Currently, each county has its own visitation guidelines. Consideration is being given to forming visitation guidelines that are age sensitive. Studies have shown that a child who is less than three years of age has no mental capacity to form long term memory. Thus, the guidelines are age appropriate with babies and

toddlers having more contact with the noncustodial parent throughout the week and having no overnights because it is not in the best interests of a child when the child is a baby.

Committee Questions and Discussion

Mr. Pennamped asked about the position of the Indiana State Bar Association, Family Law Section, with respect to presumptive joint legal custody. Ms. Meier responded that the Family Law Section opposes it. Ms. Meier stated that in situations where presumptive joint legal custody is likely to work, the parents are going to choose the option of joint custody regardless of whether presumptive joint custody exists in the law.

Mr. Pennamped stated that perhaps divorce workshops that address communication issues should shift the focus to joint decision making. Ms. Meier stated that courts are moving toward giving parents joint decision making.

Senator Ford briefly discussed the fact that family matters do not function well in the adversarial system. Senator Ford asked whether cooperation could be incorporated into domestic matters. Ms. Meier responded that while the dissolution is pending, or post-dissolution, the court can require the parties to go to mediation. Ms. Meier said that it would also be helpful to have unified family courts, and that the family court system should be studied. Senator Ford stated that it would be helpful to consider how to take some of the animosity out of the family court system.

F. Dr. Robert Billingham, Associate Professor, Indiana University-Bloomington, testified as follows:

□ Since 1966, to Dr. Billingham's knowledge, there have been 187 academic articles written about joint custody and only one of the articles opposes joint custody. The professional literature opposes joint custody only in high conflict situations. Opponents of joint custody purport that it hurts children and causes litigation and relitigation. However, the findings on joint custody show the opposite to be true. Research does not support the premise that couples who cannot cooperate in marriage are not able to cooperate post-marriage.

□ Research shows that women in joint custody situations report more life satisfaction and well-being than women who are in sole custody situations. If you create an environment where parents have to cooperate in most instances they will be able to cooperate.

Dr. Billingham is supportive of Texas' legal approach to joint custody and distributed a handout to the Committee entitled "Framework for a Proposed Joint Custody Bill"⁴

⁴ This document is on file in the Legislative Information Center (see footnote 1).

which is modeled after a Texas statute. Dr. Billingham discussed the Texas approach and stated that Texas is most progressive on the issue of joint custody. Dr. Billingham stated that it takes the law to set the starting point for joint custody.

Senator Ford stated that a presumptive joint custody law may encourage a parent to make false allegations of abuse in order to gain an advantage with respect to custody. Dr. Billingham responded that the abuse would need to be substantiated and parents who make false allegations of abuse should be penalized.

III. Adjournment.

Chair Lytle adjourned the Committee meeting at approximately 2:00 p.m.