

**Summary of House Enrolled Act 1232**  
**Effective July 1, 2002**

**New Protective Order Provisions**

House Enrolled Act 1232 contains five significant concepts that fundamentally change Indiana's law concerning domestic violence and protective orders.

1. Limits protection from abuse orders to cases involving domestic or family violence, sexual assault and stalking.
2. Consolidates all protection from abuse order statutes into one location in the Indiana Code—the new IC 34-26-5.
3. Adopts most of the applicable provisions of the Model Code on Family Violence.
4. Changes the terminology throughout the Indiana Code concerning the types of orders, so that the laws are consistent and less confusing to victims, advocates and law enforcement officers.
5. Creates the remedy of Workplace Violence Restraining Orders using the California statute as a model.

These are the major changes:

- Specifies 3 different kinds of orders: **protective orders (PO), no contact orders (NCO), and workplace violence restraining orders (WVRO).**
- Requires all orders of protection involving intimate partners to be entered into the National Crime Information Center's (NCIC) Protection Order File.
- On all orders of protection, the Court **must include** the Court's hours of operation and telephone number with area code.
- In divorce and legal separation cases, the use of the term "restraining order" has been eliminated. In such cases, a party requesting a protective order must file the petition under IC 34-26-5. The petition must be filed with the court presiding over the pending divorce case.
- Recodified Title 34 on protective orders and a new statute was created: IC 34-26-5, Indiana Civil Protection Order Act. Purpose: To promote the protection and safety of all victims of domestic or family violence in a fair, prompt and effective manner; and prevention of future domestic or family violence.
- **Who can apply?** "A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a: (1) family or household member who commits an act of domestic or family violence; or (2) person who committed stalking under IC 35-45-10-5 or a sex offense under IC

35-42-4 against the petitioner.” A parent, guardian or another representative may file such a petition on behalf of a child. [No longer covers disputes among neighbors or similar cases. Such relief may be provided in different court proceedings].

- **"Family or household member"** means:
  - (1) a person who is a current or former spouse;
  - (2) a person who is dating or has dated;
  - (3) a person who is engaged or was engaged in a sexual relationship;
  - (4) a person who is related by blood or adoption;
  - (5) a person who is related or was related by marriage;
  - (6) a person who has an established legal relationship or previously established a legal relationship:
    - (A) as a guardian;
    - (B) as a ward;
    - (C) as a custodian;
    - (D) as a foster parent; or
    - (E) in a capacity similar to those listed in clauses (A) through (D);
  - (7) a person who has a child in common; and
  - (8) a minor child of a person in a relationship described in subdivisions (1) through (7).
  
- **"Domestic or family violence"** means, except for an act of self-defense, the occurrence of at least one (1) of the following acts committed by a family or household member:
  - (1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member.
  - (2) Placing a family or household member in fear of physical harm.
  - (3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.For purposes of IC 34-26-5, domestic and family violence also includes stalking (as defined in IC 35-45-10-1) or a sex offense under IC 35-42-4.
  
- Standard Forms: The Division of State Court Administration is charged with developing standard petitions and confidential sheets (already in place under current statutes). Additionally, they will develop **standard orders for protection** for use statewide.
  
- Requires the following statements printed in boldface type or in capital letters on an order for protection:
  - **VIOLATION OF THIS ORDER IS PUNISHABLE BY CONFINEMENT IN JAIL, PRISON, AND/OR A FINE. IF SO ORDERED BY THE COURT, THE RESPONDENT IS FORBIDDEN TO ENTER OR STAY AT THE PETITIONER'S RESIDENCE, EVEN IF INVITED TO DO SO BY THE**

**PETITIONER OR ANY OTHER PERSON. IN NO EVENT IS THE ORDER FOR PROTECTION VOIDED.**

- **PURSUANT TO 18 U.S.C. 2265, THIS ORDER FOR PROTECTION SHALL BE GIVEN FULL FAITH AND CREDIT IN ANY OTHER STATE OR TRIBAL LAND AND SHALL BE ENFORCED AS IF IT WERE AN ORDER ISSUED IN THAT STATE OR TRIBAL LAND. PURSUANT TO 18 U.S.C. 922 (g), IT IS A FEDERAL VIOLATION TO PURCHASE, RECEIVE, OR POSSESS A FIREARM WHILE SUBJECT TO THIS ORDER.**

- **Where to file for a protective order?** This new statute is very clear on this point. Any court of record has jurisdiction to issue a civil order for protection. “A petition for an order for protection must be filed in the county in which the: (1) the petitioner currently or temporarily resides; (2) respondent resides; or (3) domestic or family violence occurred. **There is no minimum residency requirement to petition for an order of protection.**
- **New rules apply:** An order for protection is in addition to, and not instead of, another available civil or criminal proceeding. A petitioner is not barred from seeking an order because of another pending proceeding. A court **may not delay** granting relief because of the existence of a pending action between the petitioner and respondent. When a court considers an emergency ex parte petition for an order of protection, the court shall immediately consider the petition and then transfer the matter to the court in which the other case is pending. A court may not deny a petitioner relief solely because of a lapse of time between an act of domestic or family violence and the filing of a petition.
- **No automatic hearing required for the order to become “permanent” as under current law. When is a hearing required?** (1) When requested by either party not more than thirty days after service of the order for protection, the Court must schedule a hearing not more than thirty days after the request for hearing is filed. (2) The Court must automatically set a hearing not more than thirty days after the filing of the ex parte petition if the petitioner requests relief for support of the petitioner or a minor child; visitation arrangements for a minor child; payment of attorney’s fees, or requests respondent be prohibited from using or possessing a firearm or other deadly weapon. (3) The Court must automatically set a hearing not more than thirty days after the filing of the petition if the petitioner requests or the court orders respondent to be evicted from the residence; the possession and use of the residence, automobile and other personal effects; or other relief necessary to provide for the safety and welfare of the petitioner.
- **Relief to be granted** when the Court finds that domestic or family violence has occurred by a preponderance of the evidence. The Court shall grant relief necessary to bring about a cessation of the violence or threat of violence. The relief may include an order directing a respondent to surrender to a law enforcement officer or agency all firearms, ammunition, and deadly weapons.

- **Order good for 2 years:** An order for protection issued ex parte or upon notice and a hearing, or a modification of such an order, is effective for 2 years after the date of issuance unless another date is ordered by the Court.
- **NO MEDIATION:** A court may not order parties into mediation for resolution of the issues in a petition for an order for protection regarding domestic or family violence.
- **Guardian ad Litem:** In a protection order proceeding, a court may appoint a guardian ad litem to represent the interests of a child of one or both parents.
- **Workplace Violence Restraining Orders:** New statute enacted at IC 34-26-6.  
 Sec. 6. An employer may seek a temporary restraining order or injunction on behalf of an employee to prohibit further violence or threats of violence by a person if: (1) the employee has suffered unlawful violence or a credible threat of violence from the person; and (2) the unlawful violence has been carried out at the employee's place of work or the credible threat of violence can reasonably be construed to be carried out at the employee's place of work by the person.
- Sec. 7. A plaintiff may obtain a temporary restraining order under section 6 of this chapter by filing a petition for an injunction if the plaintiff:
  - (1) files an affidavit that shows, to the satisfaction of the court, reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the defendant; and
  - (2) demonstrates that great or irreparable harm has been suffered by the employee or will be suffered by the employee.
- Sec. 8. A court shall hold a hearing not more than fifteen (15) days after a petition for an injunction is filed under section 7 of this chapter. The defendant may file a cross-complaint or a responsive pleading that explains, excuses, justifies, or denies the alleged unlawful violence or credible threat of violence. The court shall:
  - (1) receive testimony and may make independent inquiry; and
  - (2) if the defendant is a current employee of the entity requesting the injunction, receive testimony of the employer's decision to retain, terminate, or otherwise discipline the defendant.

If the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, the judge shall issue an injunction prohibiting further unlawful violence or credible threats of violence.
- A workplace violence restraining order may remain in effect for not more than **3 years**.
- Sec. 14. A filing fee may not be charged for a petition that alleges that a person has:
  - (1) inflicted or threatened violence against an employee of the petitioner;

- (2) stalked an employee of the petitioner; or
- (3) spoken in a manner that has placed an employee in reasonable fear of violence;

and that seeks a temporary restraining order or an injunction to restrain future violence or threats of violence. A filing fee may not be charged for a responsive pleading described under section 8 of this chapter.

- **Classification of crime of Invasion of Privacy changed:** Invasion of Privacy is now a Class A misdemeanor, and if a person has a prior unrelated conviction for that offense, it is a Class D felony.
- **Important to Note: A protective order issued before July 1, 2002 remains in effect for the period indicated in the court order granting the protective order. After June 30, 2002, a protected person must use the new forms created by the state, if the person is seeking an extension or modification of an order issued under the statute previously in effect.**

### **Changes to the Address Confidentiality Program (ACP)**

- Removes the requirement of an Indiana domicile for participant in the ACP.
- Adds the definitions of sexual assault and stalking to the ACP statute.
- Adds emancipated minors to the list of qualified participants in the ACP.
- Adds victims of sexual assault and stalking to the list of qualified participants in the ACP.
- Changes the expiration date of the ACP to two years for all participants.
- Adds actions taken under the ACP to the civil immunity list in Title 34.

### **New Section on Responsibilities of Law Enforcement and Confiscation of Firearms**

- Creates a new statute at IC 35-33-1-1.5 that specifies that “ a law enforcement officer responding to the scene of an alleged crime of domestic or family violence shall use all reasonable means necessary to prevent further violence, including the following: (1) Transporting or obtaining transportation for the alleged victim and each child to a designated safe place to meet with a domestic violence counselor, local family member, or friend. (2) Assisting the alleged victim in removing toiletries, medication and necessary clothing. (3) Giving the alleged victim immediate and written notice of the rights under IC 35-40.”
- Law enforcement officers may confiscate and remove a firearm, ammunition, or a deadly weapon from the scene if the officer has:
  - (1) probable cause to believe that a crime involving domestic violence or family violence has occurred;
  - (2) a reasonable belief that the firearm, ammunition, or deadly weapon:
    - (A) exposes the victim to an immediate risk of serious bodily injury; or

(B) was an instrumentality of the crime involving domestic or family violence; and

(3) observed the firearm, ammunition, or deadly weapon at the scene during the response.

- If a firearm, ammunition, or deadly weapon is removed from the scene, the officer shall provide for the safe storage of the firearm, ammunition, or deadly weapon during the pendency of a proceeding related to the arrest.

**Involuntary Manslaughter Statute Amended**

- If a child care provider recklessly supervises a child and the child dies a result of the child care provider's reckless supervision, the child care provider commits involuntary manslaughter, a Class D felony.

Summary provided by Jeffrey J. Gulley  
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