

HOUSE BILL No. 1038

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2-78; IC 35-33; IC 35-38-1-33; IC 35-42-2-1.3; IC 35-46-1-15.1.

Synopsis: Arrest warrants for alleged domestic violence. Provides that if a court denies a request for an arrest warrant involving a crime of domestic violence, a prosecuting attorney may petition the court to hold an ex parte hearing to present additional evidence to establish probable cause. Requires a court to set the ex parte hearing within 24 hours after the petition is filed. Provides that if a court denies a request for an arrest warrant after the ex parte hearing and issues a summons for the defendant, certain notice of the summons to the victim is required. Requires the service of summons on a defendant concerning an alleged crime of domestic violence to be served by a law enforcement officer. Requires a bail hearing if a person is charged with a crime of domestic violence. Enhances the penalty for invasion of privacy to a Level 6 felony if a person violates a no contact order that was issued as a condition of probation or a bond. Enhances the penalty for domestic battery to a Level 6 felony if a person has a previous unrelated conviction of domestic battery. Provides that bail must be revoked for a defendant charged with a crime of domestic violence who violates a no contact order while on bail and who is subsequently charged with invasion of privacy or a subsequent crime of domestic violence.

Effective: July 1, 2022.

Engleman, Payne

January 4, 2022, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1038

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

1 SECTION 1. IC 35-31.5-2-78, AS AMENDED BY P.L.40-2019,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: Sec. 78. "Crime of domestic violence", for purposes of
4 IC 5-2-6.1, **IC 35-33**, IC 35-38-9, and IC 35-47-4-7, means an offense
5 or the attempt to commit an offense that:

6 (1) has as an element the:
7 (A) use of physical force; or
8 (B) threatened use of a deadly weapon; and
9 (2) is committed against a family or household member, as
10 defined in section 128 of this chapter.

11 SECTION 2. IC 35-33-2-2.5 IS ADDED TO THE INDIANA CODE
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2022]: **Sec. 2.5. (a) If a court denies a request for a warrant
14 involving an alleged crime of domestic violence, the prosecuting
15 attorney may petition the court to hold an ex parte hearing to allow
16 the prosecuting attorney to present additional information to
17 establish probable cause for an arrest warrant.**



1 **(b) The court shall set an ex parte hearing within twenty-four**
 2 **(24) hours after a prosecuting attorney files a petition under**
 3 **subsection (a).**

4 **(c) If a court denies an arrest warrant after holding an ex parte**
 5 **hearing and issues a summons for the defendant to appear before**
 6 **the court, the court shall:**

7 **(1) notify the victim before the summons is served on the**
 8 **defendant; or**

9 **(2) notify the prosecuting attorney at least twenty-four (24)**
 10 **hours before the summons is served on the defendant to allow**
 11 **the prosecuting attorney to notify the victim.**

12 **(d) If a court issues a summons for a defendant involving an**
 13 **alleged crime of domestic violence, only a law enforcement officer**
 14 **may serve the summons. Informal service of the summons on**
 15 **defense counsel is prohibited.**

16 SECTION 3. IC 35-33-8-3.5, AS AMENDED BY P.L.187-2017,
 17 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2022]: Sec. 3.5. (a) This section applies only to a sexually
 19 violent predator defendant.

20 (b) As used in this section, "sexually violent predator defendant"
 21 means a person who:

22 (1) is a sexually violent predator under IC 35-38-1-7.5; and

23 (2) is arrested for or charged with the commission of an offense
 24 that would classify the person as a sex or violent offender (as
 25 defined in IC 11-8-8-5).

26 (c) A court may not admit a:

27 (1) sexually violent predator defendant;

28 (2) person charged with child molesting (IC 35-42-4-3); **or**

29 (3) person charged with child solicitation (IC 35-42-4-6); **or**

30 **(4) person charged with a crime of domestic violence (as**
 31 **defined in IC 35-31.5-2-78);**

32 to bail until the court has conducted a bail hearing in open court.
 33 Except as provided in section 6 of this chapter, the court shall conduct
 34 a bail hearing not later than forty-eight (48) hours after the person has
 35 been arrested, unless exigent circumstances prevent holding the
 36 hearing within forty-eight (48) hours.

37 (d) At the conclusion of the hearing described in subsection (c) and
 38 after consideration of the bail guidelines described in section 3.8 of this
 39 chapter, the court shall consider whether the factors described in
 40 section 4 of this chapter warrant the imposition of a bail amount that
 41 exceeds court or county guidelines, if applicable.

42 SECTION 4. IC 35-33-8-3.7 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2022]: **Sec. 3.7. (a) This section applies only to a defendant who**
3 **is charged with a crime of domestic violence, as defined in**
4 **IC 35-31.5-2-78.**

5 **(b) Except as provided in subsection (c), if a defendant described**
6 **in subsection (a) violates any no contact order while on bail and**
7 **subsequently is charged with:**

8 **(1) invasion of privacy, as described in IC 35-46-1-15.1; or**

9 **(2) a subsequent crime of domestic violence, as defined in**
10 **IC 35-31.5-2-78;**

11 **the court shall revoke the defendant's bail and hold the defendant**
12 **in jail.**

13 **(c) After a hearing, a court may admit a defendant described in**
14 **subsection (b) to bail if the defendant wears a GPS tracking device**
15 **as a condition of bail.**

16 **(d) A court may order a person who is required to wear a GPS**
17 **tracking device under subsection (c) to pay any costs associated**
18 **with the GPS tracking device.**

19 SECTION 5. IC 35-38-1-33, AS ADDED BY P.L.87-2018,
20 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2022]: **Sec. 33. (a) As used in this section, "offender" means**
22 **an individual convicted of a sex offense.**

23 **(b) As used in this section, "sex offense" has the meaning set forth**
24 **in IC 11-8-8-5.2.**

25 **(c) An offender may petition for waiver of the residency restriction**
26 **described in ~~IC 35-46-1-15.1(c)~~. **IC 35-46-1-15.1(d)**. The court may**
27 **waive the residency restriction if the court, at a hearing at which the**
28 **offender is present and of which the prosecuting attorney has been**
29 **notified, determines that:**

30 **(1) the offender has successfully completed a sex offender**
31 **treatment program; and**

32 **(2) good cause exists to allow the offender to reside within one (1)**
33 **mile of the residence of the victim of the offender's sex offense.**

34 **However, the court may not grant a waiver under this subsection if the**
35 **offender is a sexually violent predator under IC 35-38-1-7.5 or if the**
36 **offender is an offender against children under IC 35-42-4-11.**

37 **(d) If the court grants a waiver under this section, the court shall**
38 **determine the duration of the waiver. The offender may petition the**
39 **court for an extension of the waiver not later than sixty (60) days before**
40 **its expiration. However, if the court denies an offender's petition for**
41 **waiver under this section, then the offender is subject to prosecution for**
42 **the offense described in ~~IC 35-46-1-15.1(c)~~. **IC 35-46-1-15.1(d)**.**



1 (e) If the court grants a waiver under this section, the court shall
 2 state in writing the reasons for granting the waiver. The court's written
 3 statement of its reasons shall be incorporated into the record.

4 (f) The address of the victim of the offender's sex offense is
 5 confidential even if the court grants a waiver under this section.

6 SECTION 6. IC 35-42-2-1.3, AS AMENDED BY P.L.67-2021,
 7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2022]: Sec. 1.3. (a) Except as provided in subsections (b)
 9 through (f), a person who knowingly or intentionally:

10 (1) touches a family or household member in a rude, insolent, or
 11 angry manner; or

12 (2) in a rude, insolent, or angry manner places any bodily fluid or
 13 waste on a family or household member;

14 commits domestic battery, a Class A misdemeanor.

15 (b) The offense under subsection (a)(1) or (a)(2) is a Level 6 felony
 16 if one (1) or more of the following apply:

17 (1) The person who committed the offense has a previous,
 18 unrelated conviction:

19 (A) for a battery offense included in this chapter; or

20 **(B) for a domestic battery offense under this section; or**

21 ~~(B) (C)~~ **(C) for a strangulation offense under IC 35-42-2-9: section**
 22 **9 of this chapter.**

23 (2) The person who committed the offense is at least eighteen (18)
 24 years of age and committed the offense against a family or
 25 household member in the physical presence of a child less than
 26 sixteen (16) years of age, knowing that the child was present and
 27 might be able to see or hear the offense.

28 (3) The offense results in moderate bodily injury to a family or
 29 household member.

30 (4) The offense is committed against a family or household
 31 member who is less than fourteen (14) years of age and is
 32 committed by a person at least eighteen (18) years of age.

33 (5) The offense is committed against a family or household
 34 member of any age who has a mental or physical disability and is
 35 committed by a person having the care of the family or household
 36 member with the mental or physical disability, whether the care
 37 is assumed voluntarily or because of a legal obligation.

38 (6) The offense is committed against a family or household
 39 member who is an endangered adult (as defined in IC 12-10-3-2).

40 (7) The offense is committed against a family or household
 41 member:

42 (A) who has been issued a protection order (as defined in



- 1 IC 34-26-7.5-2) that protects the family or household member
 2 from the person and the protection order was in effect at the
 3 time the person committed the offense; or
 4 (B) while a no contact order issued by the court directing the
 5 person to refrain from having any direct or indirect contact
 6 with the family or household member was in effect at the time
 7 the person committed the offense.
- 8 (c) The offense described in subsection (a)(1) or (a)(2) is a Level 5
 9 felony if one (1) or more of the following apply:
- 10 (1) The offense results in serious bodily injury to a family or
 11 household member.
 12 (2) The offense is committed with a deadly weapon against a
 13 family or household member.
 14 (3) The offense results in bodily injury to a pregnant family or
 15 household member if the person knew of the pregnancy.
 16 (4) The person has a previous conviction for a battery offense or
 17 strangulation (as defined in section 9 of this chapter) included in
 18 this chapter against the same family or household member.
 19 (5) The offense results in bodily injury to one (1) or more of the
 20 following:
- 21 (A) A family or household member who is less than fourteen
 22 (14) years of age if the offense is committed by a person at
 23 least eighteen (18) years of age.
 24 (B) A family or household member who has a mental or
 25 physical disability if the offense is committed by an individual
 26 having care of the family or household member with the
 27 disability, regardless of whether the care is assumed
 28 voluntarily or because of a legal obligation.
 29 (C) A family or household member who is an endangered
 30 adult (as defined in IC 12-10-3-2).
- 31 (d) The offense described in subsection (a)(1) or (a)(2) is a Level 4
 32 felony if it results in serious bodily injury to a family or household
 33 member who is an endangered adult (as defined in IC 12-10-3-2).
- 34 (e) The offense described in subsection (a)(1) or (a)(2) is a Level 3
 35 felony if it results in serious bodily injury to a family or household
 36 member who is less than fourteen (14) years of age if the offense is
 37 committed by a person at least eighteen (18) years of age.
- 38 (f) The offense described in subsection (a)(1) or (a)(2) is a Level 2
 39 felony if it results in the death of one (1) or more of the following:
- 40 (1) A family or household member who is less than fourteen (14)
 41 years of age if the offense is committed by a person at least
 42 eighteen (18) years of age.



- 1 (2) A family or household member who is an endangered adult (as
 2 defined in IC 12-10-3-2).
 3 SECTION 7. IC 35-46-1-15.1, AS AMENDED BY P.L.266-2019,
 4 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2022]: Sec. 15.1. (a) A person who knowingly or intentionally
 6 violates:
- 7 (1) a protective order to prevent domestic or family violence or
 8 harassment issued under IC 34-26-5 (or, if the order involved a
 9 family or household member, under IC 34-26-2 or IC 34-4-5.1-5
 10 before their repeal);
 - 11 (2) an ex parte protective order issued under IC 34-26-5 (or, if the
 12 order involved a family or household member, an emergency
 13 order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
 - 14 (3) a workplace violence restraining order issued under
 15 IC 34-26-6;
 - 16 (4) a no contact order in a dispositional decree issued under
 17 IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4
 18 or IC 31-6-4-15.9 before their repeal) or an order issued under
 19 IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the
 20 person to refrain from direct or indirect contact with a child in
 21 need of services or a delinquent child;
 - 22 (5) a no contact order issued as a condition of pretrial release,
 23 including release on bail or personal recognizance, or pretrial
 24 diversion, and including a no contact order issued under
 25 IC 35-33-8-3.6;
 - 26 (6) a no contact order issued as a condition of probation;
 - 27 (7) a protective order to prevent domestic or family violence
 28 issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before
 29 their repeal);
 - 30 (8) a protective order to prevent domestic or family violence
 31 issued under IC 31-14-16-1 in a paternity action;
 - 32 (9) an order issued in another state that is substantially similar to
 33 an order described in subdivisions (1) through (8);
 - 34 (10) an order that is substantially similar to an order described in
 35 subdivisions (1) through (8) and is issued by an Indian:
 - 36 (A) tribe;
 - 37 (B) band;
 - 38 (C) pueblo;
 - 39 (D) nation; or
 - 40 (E) organized group or community, including an Alaska
 41 Native village or regional or village corporation as defined in
 42 or established under the Alaska Native Claims Settlement Act



1 (43 U.S.C. 1601 et seq.);
 2 that is recognized as eligible for the special programs and services
 3 provided by the United States to Indians because of their special
 4 status as Indians;
 5 (11) an order issued under IC 35-33-8-3.2; or
 6 (12) an order issued under IC 35-38-1-30;
 7 commits invasion of privacy, a Class A misdemeanor.
 8 **(b)** However, the offense **in subsection (a)** is a Level 6 felony if the
 9 person:
 10 **(1)** has a prior unrelated conviction for an offense under ~~this~~
 11 ~~subsection;~~ **subsection (a); or**
 12 **(2) violated a no contact order described in subsection (a) that**
 13 **was issued as a condition of bond or probation.**
 14 ~~(b)~~ **(c)** It is not a defense to a prosecution under subsection (a) **or**
 15 **(b)** that the accused person used or operated an unmanned aerial
 16 vehicle in committing the violation.
 17 ~~(c)~~ **(d)** A sex offender under IC 11-8-8-4.5 who:
 18 (1) establishes a new residence within a one (1) mile radius of the
 19 residence of the victim of the offender's sex offense;
 20 (2) intends to reside (as defined in IC 35-42-4-11(b)) at the
 21 residence; and
 22 (3) at the time the sex offender established the residence, knew or
 23 reasonably should have known that the residence was located
 24 within a one (1) mile radius of the residence of the victim of the
 25 offender's sex offense;
 26 commits invasion of privacy, a Class A misdemeanor. However, the
 27 offense is a Level 6 felony if the sex offender has a prior unrelated
 28 conviction under this subsection.
 29 ~~(d)~~ **(e)** The victim of the sex offender's sex offense may not be
 30 prosecuted under subsection ~~(c)~~ **(d)** if the victim's liability is based on
 31 aiding, inducing, or causing the offender to commit the offense
 32 described in subsection ~~(c)~~ **(d)**.
 33 ~~(e)~~ **(f)** Subsection ~~(c)~~ **(d)** does not apply to a sex offender who has
 34 obtained a waiver of residency under IC 35-38-2-2.5 or IC 35-38-1-33.

