

HOUSE BILL No. 1413

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-26-5-9.

Synopsis: Domestic violence. Permits a court to issue or modify an order of protection ex parte if harassment has occurred.

Effective: July 1, 2022.

Hatcher

January 13, 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. 1413

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 34-26-5-9, AS AMENDED BY P.L.266-2019,
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: Sec. 9. (a) If it appears from a petition for an order for
4 protection or from a petition to modify an order for protection that
5 domestic or family violence has occurred or that a modification of an
6 order for protection is required, a court may:
7 (1) without notice or hearing, immediately issue an order for
8 protection ex parte or modify an order for protection ex parte; or
9 (2) upon notice and after a hearing, whether or not a respondent
10 appears, issue or modify an order for protection.
11 (b) If it appears from a petition for an order for protection or from
12 a petition to modify an order for protection that harassment has
13 occurred, a court **may**:
14 (1) ~~may not~~, without notice and a hearing, issue an order for
15 protection ex parte or modify an order for protection ex parte; ~~but~~
16 **and**
17 (2) ~~may~~, upon notice and after a hearing, whether or not a



1 respondent appears, issue or modify an order for protection.
2 A court must hold a hearing under this subsection not later than thirty
3 (30) days after the petition for an order for protection or the petition to
4 modify an order for protection is filed.

5 (c) A court may grant the following relief without notice and
6 hearing in an ex parte order for protection or in an ex parte order for
7 protection modification under subsection (a):

8 (1) Enjoin a respondent from threatening to commit or
9 committing acts of domestic or family violence against a
10 petitioner and each designated family or household member.

11 (2) Prohibit a respondent from harassing, annoying, telephoning,
12 contacting, or directly or indirectly communicating with a
13 petitioner.

14 (3) Remove and exclude a respondent from the residence of a
15 petitioner, regardless of ownership of the residence.

16 (4) Order a respondent to stay away from the residence, school, or
17 place of employment of a petitioner or a specified place
18 frequented by a petitioner and each designated family or
19 household member.

20 (5) Order that a petitioner has the exclusive possession, care,
21 custody, or control of any animal owned, possessed, kept, or cared
22 for by the petitioner, respondent, minor child of either the
23 petitioner or respondent, or any other family or household
24 member.

25 (6) Prohibit a respondent from removing, transferring, injuring,
26 concealing, harming, attacking, mistreating, threatening to harm,
27 or otherwise disposing of an animal described in subdivision (5).

28 (7) Order possession and use of the residence, an automobile, and
29 other essential personal effects, regardless of the ownership of the
30 residence, automobile, and essential personal effects. If
31 possession is ordered under this subdivision or subdivision (5),
32 the court may direct a law enforcement officer to accompany a
33 petitioner to the residence of the parties to:

34 (A) ensure that a petitioner is safely restored to possession of
35 the residence, automobile, animal, and other essential personal
36 effects; or

37 (B) supervise a petitioner's or respondent's removal of personal
38 belongings and animal.

39 (8) Order other relief necessary to provide for the safety and
40 welfare of a petitioner and each designated family or household
41 member.

42 (d) A court may grant the following relief after notice and a hearing,



1 whether or not a respondent appears, in an order for protection or in a
 2 modification of an order for protection:

3 (1) Grant the relief under subsection (c).

4 (2) Specify arrangements for parenting time of a minor child by
 5 a respondent and:

6 (A) require supervision by a third party; or

7 (B) deny parenting time;

8 if necessary to protect the safety of a petitioner or child.

9 (3) Order a respondent to:

10 (A) pay attorney's fees;

11 (B) pay rent or make payment on a mortgage on a petitioner's
 12 residence;

13 (C) if the respondent is found to have a duty of support, pay
 14 for the support of a petitioner and each minor child;

15 (D) reimburse a petitioner or other person for expenses related
 16 to the domestic or family violence or harassment, including:

17 (i) medical expenses;

18 (ii) counseling;

19 (iii) shelter; and

20 (iv) repair or replacement of damaged property;

21 (E) pay the costs and expenses incurred in connection with the
 22 use of a GPS tracking device under subsection (j); or

23 (F) pay the costs and fees incurred by a petitioner in bringing
 24 the action.

25 (4) Prohibit a respondent from using or possessing a firearm,
 26 ammunition, or a deadly weapon specified by the court, and direct
 27 the respondent to surrender to a specified law enforcement agency
 28 the firearm, ammunition, or deadly weapon for the duration of the
 29 order for protection unless another date is ordered by the court.

30 (5) Permit the respondent and petitioner to occupy the same
 31 location for any purpose that the court determines is legitimate or
 32 necessary. The court may impose terms and conditions upon a
 33 respondent when granting permission under this subdivision.

34 An order issued under subdivision (4) does not apply to a person who
 35 is exempt under 18 U.S.C. 925.

36 (e) The court shall:

37 (1) cause the order for protection to be delivered to the county
 38 sheriff for service;

39 (2) make reasonable efforts to ensure that the order for protection
 40 is understood by a petitioner and a respondent if present;

41 (3) electronically notify each law enforcement agency:

42 (A) required to receive notification under IC 5-2-9-6; or



- 1 (B) designated by the petitioner;
2 (4) transmit a copy of the order to the clerk for processing under
3 IC 5-2-9;
4 (5) indicate in the order if the order and the parties meet the
5 criteria under 18 U.S.C. 922(g)(8); and
6 (6) require the clerk of court to enter or provide a copy of the
7 order to the Indiana protective order registry established by
8 IC 5-2-9-5.5.
- 9 (f) An order for protection issued ex parte or upon notice and a
10 hearing, or a modification of an order for protection issued ex parte or
11 upon notice and a hearing, is effective for two (2) years after the date
12 of issuance unless another date is ordered by the court. The sheriff of
13 each county shall provide expedited service for an order for protection.
- 14 (g) A finding that domestic or family violence or harassment has
15 occurred sufficient to justify the issuance of an order under this section
16 means that a respondent represents a credible threat to the safety of a
17 petitioner or a member of a petitioner's household. Upon a showing of
18 domestic or family violence or harassment by a preponderance of the
19 evidence, the court shall grant relief necessary to bring about a
20 cessation of the violence or the threat of violence. The relief may
21 include an order directing a respondent to surrender to a law
22 enforcement officer or agency all firearms, ammunition, and deadly
23 weapons:
24 (1) in the control, ownership, or possession of a respondent; or
25 (2) in the control or possession of another person on behalf of a
26 respondent;
27 for the duration of the order for protection unless another date is
28 ordered by the court.
- 29 (h) An order for custody, parenting time, or possession or control of
30 property issued under this chapter is superseded by an order issued
31 from a court exercising dissolution, legal separation, paternity, or
32 guardianship jurisdiction over the parties.
- 33 (i) The fact that an order for protection is issued under this chapter
34 does not raise an inference or presumption in a subsequent case or
35 hearings between the parties.
- 36 (j) Upon a finding of a violation of an order for protection, the court
37 may:
38 (1) require a respondent to wear a GPS tracking device; and
39 (2) prohibit the respondent from approaching or entering certain
40 locations where the petitioner may be found.
41 If the court requires a respondent to wear a GPS tracking device under
42 subdivision (1), the court shall, if available, require the respondent to



1 wear a GPS tracking device with victim notification capabilities.
2 (k) The court may permit a victim, a petitioner, another person, an
3 organization, or an agency to pay the costs and expenses incurred in
4 connection with the use of a GPS tracking device under subsection (j).

