

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1607

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AN ACT to amend the Indiana Code concerning civil procedure.

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

SECTION 1. IC 33-23-5-5, AS AMENDED BY P.L.173-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. A magistrate may do any of the following:

- (1) Administer an oath or affirmation required by law.
- (2) Solemnize a marriage.
- (3) Take and certify an affidavit or deposition.
- (4) Order that a subpoena be issued in a matter pending before the court.
- (5) Compel the attendance of a witness.
- (6) Punish contempt.
- (7) Issue a warrant.
- (8) Set bail.
- (9) Enforce court rules.
- (10) Conduct a preliminary, an initial, an omnibus, or other pretrial hearing.
- (11) Conduct an evidentiary hearing or trial.
- (12) Receive a jury's verdict.
- (13) Verify a certificate for the authentication of records of a proceeding conducted by the magistrate.
- (14) Enter a final order, conduct a sentencing hearing, and impose a sentence on a person convicted of a criminal offense as described in section 9 of this chapter.

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(15) Enter a final order or judgment in any proceeding involving matters specified in IC 33-29-2-4 (jurisdiction of small claims docket) or IC 34-26-5 (protective orders to prevent domestic or family violence **or harassment**).

(16) Approve and accept criminal plea agreements.

(17) Approve agreed settlements concerning civil matters.

(18) Approve:

(A) decrees of dissolution;

(B) settlement agreements; and

(C) any other agreements;

of the parties in domestic relations actions or paternity actions.

SECTION 2. IC 33-23-5-8, AS AMENDED BY P.L.161-2018, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. ~~Except as provided under sections 5(14) and 9(b) of this chapter~~, A magistrate does not have the power of judicial mandate.

SECTION 3. IC 33-23-5-9, AS AMENDED BY P.L.173-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. ~~(a) Except as provided under subsection (b), a magistrate shall report findings in an evidentiary hearing, a trial, or a jury's verdict to the court. The court shall enter the final order.~~

~~(b)~~ **(a)** If a magistrate presides at a criminal trial or a guilty plea hearing, the magistrate may do the following:

(1) Enter a final order.

(2) Conduct a sentencing hearing.

(3) Impose a sentence on a person convicted of a criminal offense.

~~(c)~~ **(b)** This subsection does not apply to a consolidated city. Unless the defendant consents, a magistrate who did not preside at the criminal trial may not preside at the sentencing hearing. However, this subsection does not prohibit a magistrate from presiding at a sentencing hearing if there was no trial.

SECTION 4. IC 34-6-2-51.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 51.5. **(a) "Harassment", for purposes of IC 34-26-5, means conduct directed toward a victim that includes, but is not limited to, repeated or continuing impermissible contact:**

**(1) that would cause a reasonable person to suffer emotional distress; and**

**(2) that actually causes the victim to suffer emotional distress.**

**(b) "Harassment" does not include statutorily or constitutionally protected activity, such as lawful picketing pursuant to labor disputes or lawful employer-related activities**



**pursuant to labor disputes.**

SECTION 5. IC 34-26-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. This chapter shall be construed to promote the:

- (1) protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; ~~and~~
- (2) protection and safety of all victims of harassment in a fair, prompt, and effective manner; and**
- ~~(2)~~ **(3) prevention of future domestic violence, and family violence, and harassment.**

SECTION 6. IC 34-26-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) 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 has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the petitioner

**(b) A person who is or has been subjected to harassment may file a petition for an order for protection against a person who has committed repeated acts of harassment against the petitioner.**

~~(b)~~ **(c)** A parent, a guardian, or another representative may file a petition for an order for protection on behalf of a child against a:

- (1) family or household member who commits an act of domestic or family violence; ~~or~~
- (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the child; ~~or~~
- (3) person who has committed repeated acts of harassment against the child.**

~~(c)~~ **(d)** A court may issue only one (1) order for each respondent. If a petitioner files a petition against more than one (1) respondent, the court shall:

- (1) assign a new case number; and
- (2) maintain a separate court file;

for each respondent.

~~(d)~~ **(e)** If a petitioner seeks relief against an unemancipated minor, the case may originate in any court of record and, if it is an emergency matter, be processed the same as an ex parte petition. When a hearing is set, the matter may be transferred to a court with juvenile jurisdiction.

SECTION 7. IC 34-26-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) Any court of



record has jurisdiction to issue a civil order for protection.

(b) A petition for an order for protection must be filed in the county in which the:

- (1) petitioner currently or temporarily resides;
- (2) respondent resides; or
- (3) domestic or family violence **or harassment** occurred.

(c) There is no minimum residency requirement to petition for an order for protection.

**(d) If a court has jurisdiction over an action that relates to the subject matter of the requested civil order for protection under section 2(b) or 2(c)(3) of this chapter, either because of an action pending in that court or in the exercise of the court's continuing jurisdiction, the petitioner must file the petition for an order for protection in that court.**

SECTION 8. IC 34-26-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. The following rules apply to an order for protection issued under this chapter:

- (1) An order for protection is in addition to, and not instead of, another available civil or criminal proceeding.
- (2) A petitioner is not barred from seeking an order because of another pending proceeding.
- (3) A court may not delay granting relief because of the existence of a pending action between the petitioner and respondent.
- (4) If a person who petitions for an ex parte order for protection also has a pending case involving:

- (A) the respondent; or
- (B) a child of the petitioner and respondent;

the court that has been petitioned for relief shall immediately consider the ex parte petition and then transfer that matter to the court in which the other case is pending.

(5) If a person files a petition for an order of protection requesting relief that:

- (A) does not require a hearing under sections ~~9(b)~~ **9(c)** and 10(a) of this chapter; and
- (B) requires a hearing under sections ~~9(c)~~ **9(d)** and 10(b) of this chapter;

the court may issue an ex parte order for protection providing relief under clause (A) at any time before the required hearing under clause (B).

SECTION 9. IC 34-26-5-9, AS AMENDED BY P.L.112-2017, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) If it appears from a petition for an order for



protection or from a petition to modify an order for protection that domestic or family violence has occurred or that a modification of an order for protection is required, a court may:

- (1) without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte; or
- (2) upon notice and after a hearing, whether or not a respondent appears, issue or modify an order for protection.

**(b) If it appears from a petition for an order for protection or from a petition to modify an order for protection that harassment has occurred, a court:**

**(1) may not, without notice and a hearing, issue an order for protection ex parte or modify an order for protection ex parte; but**

**(2) may, upon notice and after a hearing, whether or not a respondent appears, issue or modify an order for protection.**

**A court must hold a hearing under this subsection not later than thirty (30) days after the petition for an order for protection or the petition to modify an order for protection is filed.**

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

- (1) Enjoin a respondent from threatening to commit or committing acts of domestic or family violence against a petitioner and each designated family or household member.
- (2) Prohibit a respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with a petitioner.
- (3) Remove and exclude a respondent from the residence of a petitioner, regardless of ownership of the residence.
- (4) Order a respondent to stay away from the residence, school, or place of employment of a petitioner or a specified place frequented by a petitioner and each designated family or household member.
- (5) Order that a petitioner has the exclusive possession, care, custody, or control of any animal owned, possessed, kept, or cared for by the petitioner, respondent, minor child of either the petitioner or respondent, or any other family or household member.
- (6) Prohibit a respondent from removing, transferring, injuring, concealing, harming, attacking, mistreating, threatening to harm, or otherwise disposing of an animal described in subdivision (5).
- (7) Order possession and use of the residence, an automobile, and



other essential personal effects, regardless of the ownership of the residence, automobile, and essential personal effects. If possession is ordered under this subdivision or subdivision (5), the court may direct a law enforcement officer to accompany a petitioner to the residence of the parties to:

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

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

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

~~(e)~~ (d) A court may grant the following relief after notice and a hearing, whether or not a respondent appears, in an order for protection or in a modification of an order for protection:

(1) Grant the relief under subsection ~~(b)~~; (c).

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

(A) require supervision by a third party; or

(B) deny parenting time;

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

(3) Order a respondent to:

(A) pay attorney's fees;

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

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

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

(i) medical expenses;

(ii) counseling;

(iii) shelter; and

(iv) repair or replacement of damaged property;

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

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

(4) Prohibit a respondent from using or possessing a firearm, ammunition, or a deadly weapon specified by the court, and direct the respondent to surrender to a specified law enforcement agency the firearm, ammunition, or deadly weapon for the duration of the



order for protection unless another date is ordered by the court.

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

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

~~(d)~~ **(e)** The court shall:

- (1) cause the order for protection to be delivered to the county sheriff for service;
- (2) make reasonable efforts to ensure that the order for protection is understood by a petitioner and a respondent if present;
- (3) electronically notify each law enforcement agency:
  - (A) required to receive notification under IC 5-2-9-6; or
  - (B) designated by the petitioner;
- (4) transmit a copy of the order to the clerk for processing under IC 5-2-9;
- (5) indicate in the order if the order and the parties meet the criteria under 18 U.S.C. 922(g)(8); and
- (6) require the clerk of court to enter or provide a copy of the order to the Indiana protective order registry established by IC 5-2-9-5.5.

~~(e)~~ **(f)** An order for protection issued ex parte or upon notice and a hearing, or a modification of an order for protection issued ex parte or upon notice and a hearing, is effective for two (2) years after the date of issuance unless another date is ordered by the court. The sheriff of each county shall provide expedited service for an order for protection.

~~(f)~~ **(g)** A finding that domestic or family violence or **harassment** has occurred sufficient to justify the issuance of an order under this section means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household. Upon a showing of domestic or family violence **or harassment** by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence or the 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:

- (1) in the control, ownership, or possession of a respondent; or
- (2) in the control or possession of another person on behalf of a respondent;

for the duration of the order for protection unless another date is



ordered by the court.

~~(g)~~ **(h)** An order for custody, parenting time, or possession or control of property issued under this chapter is superseded by an order issued from a court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties.

~~(h)~~ **(i)** The fact that an order for protection is issued under this chapter does not raise an inference or presumption in a subsequent case or hearings between the parties.

~~(i)~~ **(j)** Upon a finding of a violation of an order for protection, the court may:

- (1) require a respondent to wear a GPS tracking device; and
- (2) prohibit the respondent from approaching or entering certain locations where the petitioner may be found.

If the court requires a respondent to wear a GPS tracking device under subdivision (1), the court shall, if available, require the respondent to wear a GPS tracking device with victim notification capabilities.

~~(j)~~ **(k)** The court may permit a victim, a petitioner, another person, an organization, or an agency to pay the costs and expenses incurred in connection with the use of a GPS tracking device under subsection ~~(i)~~: **(j)**.

SECTION 10. IC 34-26-5-10, AS AMENDED BY P.L.112-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) Except as provided in subsection (b), if a court issues:

- (1) an order for protection ex parte; or
- (2) a modification of an order for protection ex parte;

and provides relief under section ~~9(b)~~ **9(c)** of this chapter, upon a request by either party not more than thirty (30) days after service of the order or modification, the court shall set a date for a hearing on the petition. The hearing must be held not more than thirty (30) days after the request for a hearing is filed unless continued by the court for good cause shown. The court shall notify both parties by first class mail of the date and time of the hearing.

(b) A court shall set a date for a hearing on the petition not more than thirty (30) days after the filing of the petition if a court issues an order for protection ex parte or a modification of an order of protection ex parte and:

- (1) a petitioner requests or the court provides relief under section ~~9(b)(3), 9(b)(5), 9(b)(6), 9(b)(7), or 9(b)(8)~~ **9(c)(3), 9(c)(5), 9(c)(6), 9(c)(7), or 9(c)(8)** of this chapter; or
- (2) a petitioner requests relief under section ~~9(c)(2), 9(c)(3), or 9(c)(4)~~ **9(d)(2), 9(d)(3), or 9(d)(4)** of this chapter.





The hearing must be given precedence over all matters pending in the court except older matters of the same character.

(c) In a hearing under subsection (a) or (b):

- (1) relief under section 9 of this chapter is available; and
- (2) if a respondent seeks relief concerning an issue not raised by a petitioner, the court may continue the hearing at the petitioner's request.

SECTION 11. IC 34-26-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. A court may not deny a petitioner relief under section 9 of this chapter solely because of a lapse of time between an act of domestic or family violence **or harassment** and the filing of a petition.

SECTION 12. IC 35-31.5-2-150, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 150. (a) "Harassment", for purposes of IC 35-45-10, has the meaning set forth in IC 35-45-10-2.

(b) **"Harassment", for purposes of IC 35-42-4-4, IC 35-46-1-15.1, and IC 35-49-3-4, has the meaning set forth in IC 34-6-2-51.5.**

SECTION 13. IC 35-42-4-4, AS AMENDED BY P.L.132-2017, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) The following definitions apply throughout this section:

- (1) "Disseminate" means to transfer possession for free or for a consideration.
- (2) "Matter" has the same meaning as in IC 35-49-1-3.
- (3) "Performance" has the same meaning as in IC 35-49-1-7.
- (4) "Sexual conduct" means:
  - (A) sexual intercourse;
  - (B) other sexual conduct (as defined in IC 35-31.5-2-221.5);
  - (C) exhibition of the:
    - (i) uncovered genitals; or
    - (ii) female breast with less than a fully opaque covering of any part of the nipple;
 intended to satisfy or arouse the sexual desires of any person;
  - (D) sadomasochistic abuse;
  - (E) sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with an animal; or
  - (F) any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who:



(1) knowingly or intentionally manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) knowingly or intentionally disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age;

(3) knowingly or intentionally makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age; or

(4) with the intent to satisfy or arouse the sexual desires of any person:

(A) knowingly or intentionally:

(i) manages;

(ii) produces;

(iii) sponsors;

(iv) presents;

(v) exhibits;

(vi) photographs;

(vii) films;

(viii) videotapes; or

(ix) creates a digitized image of;

any performance or incident that includes the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age;

(B) knowingly or intentionally:

(i) disseminates to another person;

(ii) exhibits to another person;

(iii) offers to disseminate or exhibit to another person; or

(iv) sends or brings into Indiana for dissemination or exhibition;

matter that depicts the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age; or

(C) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains



matter that depicts the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age; commits child exploitation, a Level 5 felony.

(c) However, the offense of child exploitation described in subsection (b) is a Level 4 felony if:

- (1) the sexual conduct, matter, performance, or incident depicts or describes a child less than eighteen (18) years of age who:
  - (A) engages in bestiality (as described in IC 35-46-3-14);
  - (B) is mentally disabled or deficient;
  - (C) participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force;
  - (D) physically or verbally resists participating in the sexual conduct, matter, performance, or incident;
  - (E) receives a bodily injury while participating in the sexual conduct, matter, performance, or incident; or
  - (F) is less than twelve (12) years of age; or
- (2) the child less than eighteen (18) years of age:
  - (A) engages in bestiality (as described in IC 35-46-3-14);
  - (B) is mentally disabled or deficient;
  - (C) participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force;
  - (D) physically or verbally resists participating in the sexual conduct, matter, performance, or incident;
  - (E) receives a bodily injury while participating in the sexual conduct, matter, performance, or incident; or
  - (F) is less than twelve (12) years of age.

(d) A person who knowingly or intentionally possesses or accesses with intent to view:

- (1) a picture;
- (2) a drawing;
- (3) a photograph;
- (4) a negative image;
- (5) undeveloped film;
- (6) a motion picture;
- (7) a videotape;
- (8) a digitized image; or
- (9) any pictorial representation;

that depicts or describes sexual conduct by a child who the person knows is less than eighteen (18) years of age or who appears to be less than eighteen (18) years of age, and that lacks serious literary, artistic,



political, or scientific value commits possession of child pornography, a Level 6 felony.

(e) However, the offense of possession of child pornography described in subsection (d) is a Level 5 felony if:

(1) the item described in subsection (d)(1) through (d)(9) depicts or describes sexual conduct by a child who the person knows is less than eighteen (18) years of age, or who appears to be less than eighteen (18) years of age, who:

(A) engages in bestiality (as described in IC 35-46-3-14);

(B) is mentally disabled or deficient;

(C) participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force;

(D) physically or verbally resists participating in the sexual conduct, matter, performance, or incident;

(E) receives a bodily injury while participating in the sexual conduct, matter, performance, or incident; or

(F) is less than twelve (12) years of age; or

(2) the child whose sexual conduct is depicted or described in an item described in subsection (d)(1) through (d)(9):

(A) engages in bestiality (as described in IC 35-46-3-14);

(B) is mentally disabled or deficient;

(C) participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force;

(D) physically or verbally resists participating in the sexual conduct, matter, performance, or incident;

(E) receives a bodily injury while participating in the sexual conduct, matter, performance, or incident; or

(F) is less than twelve (12) years of age.

(f) Subsections (b), (c), (d), and (e) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials is for legitimate scientific or educational purposes.

(g) It is a defense to a prosecution under this section that:

(1) the person is a school employee; and

(2) the acts constituting the elements of the offense were performed solely within the scope of the person's employment as a school employee.

(h) Except as provided in subsection (i), it is a defense to a prosecution under subsection (b), (c), (d), or (e) if all of the following apply:



- (1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to possess, produce, or disseminate the image.
  - (2) The defendant is not more than four (4) years older or younger than the person who is depicted in the image or who received the image.
  - (3) The relationship between the defendant and the person who received the image or who is depicted in the image was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.
  - (4) The crime was committed by a person less than twenty-two (22) years of age.
  - (5) The person receiving the image or who is depicted in the image acquiesced in the defendant's conduct.
- (i) The defense to a prosecution described in subsection (h) does not apply if:
- (1) the person who receives the image disseminates it to a person other than the person:
    - (A) who sent the image; or
    - (B) who is depicted in the image;
  - (2) the image is of a person other than the person who sent the image or received the image; or
  - (3) the dissemination of the image violates:
    - (A) a protective order to prevent domestic or family violence **or harassment** issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
    - (B) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
    - (C) a workplace violence restraining order issued under IC 34-26-6;
    - (D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
    - (E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial



diversion, and including a no contact order issued under IC 35-33-8-3.6;

(F) a no contact order issued as a condition of probation;

(G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);

(H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;

(I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;

(J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);

(K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:

(i) tribe;

(ii) band;

(iii) pueblo;

(iv) nation; or

(v) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

(L) an order issued under IC 35-33-8-3.2; or

(M) an order issued under IC 35-38-1-30.

(j) It is a defense to a prosecution under this section that:

(1) the person was less than eighteen (18) years of age at the time the alleged offense was committed; and

(2) the circumstances described in IC 35-45-4-6(a)(2) through IC 35-45-4-6(a)(4) apply.

(k) A person is entitled to present the defense described in subsection (j) in a pretrial hearing. If a person proves by a preponderance of the evidence in a pretrial hearing that the defense described in subsection (j) applies, the court shall dismiss the charges under this section with prejudice.

SECTION 14. IC 35-45-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. **(a)** As used in this chapter, "impermissible contact" includes ~~but is not limited to~~ knowingly or intentionally following or pursuing the victim: ~~the~~



**following:**

- (1) Following or pursuing the victim.**
- (2) Communicating with the victim in person, in writing, by telephone, by telegraph, or through electronic means.**
- (3) Posting on social media, if the post:**
  - (A) is directed to the victim; or**
  - (B) refers to the victim, directly or indirectly.**

**(b) The list in subsection (a) is nonexclusive.**

SECTION 15. IC 35-46-1-15.1, AS AMENDED BY P.L.87-2018, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 15.1. (a) A person who knowingly or intentionally violates:

- (1) a protective order to prevent domestic or family violence **or harassment** issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
- (2) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
- (3) a workplace violence restraining order issued under IC 34-26-6;
- (4) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
- (5) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;
- (6) a no contact order issued as a condition of probation;
- (7) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
- (8) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;
- (9) an order issued in another state that is substantially similar to an order described in subdivisions (1) through (8);
- (10) an order that is substantially similar to an order described in subdivisions (1) through (8) and is issued by an Indian:
  - (A) tribe;



- (B) band;
- (C) pueblo;
- (D) nation; or
- (E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

- (11) an order issued under IC 35-33-8-3.2; or
- (12) an order issued under IC 35-38-1-30;

commits invasion of privacy, a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction for an offense under this subsection.

(b) It is not a defense to a prosecution under subsection (a) that the accused person used or operated an unmanned aerial vehicle in committing the violation.

(c) A sex offender under IC 11-8-8-4.5 who:

- (1) establishes a new residence within a one (1) mile radius of the residence of the victim of the offender's sex offense;
- (2) intends to reside (as defined in IC 35-42-4-11(b)) at the residence; and
- (3) at the time the sex offender established the residence, knew or reasonably should have known that the residence was located within a one (1) mile radius of the residence of the victim of the offender's sex offense;

commits invasion of privacy, a Class A misdemeanor. However, the offense is a Level 6 felony if the sex offender has a prior unrelated conviction under this subsection.

(d) The victim of the sex offender's sex offense may not be prosecuted under subsection (c) if the victim's liability is based on aiding, inducing, or causing the offender to commit the offense described in subsection (c).

(e) Subsection (c) does not apply to a sex offender who has obtained a waiver of residency under IC 35-38-2-2.5 or IC 35-38-1-33.

SECTION 16. IC 35-49-3-4, AS AMENDED BY P.L.158-2013, SECTION 649, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) It is a defense to a prosecution under section 3 of this chapter for the defendant to show:

- (1) that the matter was disseminated or that the performance was performed for legitimate scientific or educational purposes;





(2) that the matter was disseminated or displayed to or that the performance was performed before the recipient by a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or by an employee of such a school, museum, or public library acting within the scope of the employee's employment;

(3) that the defendant had reasonable cause to believe that the minor involved was eighteen (18) years of age or older and that the minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years of age or older; or

(4) that the defendant was a salesclerk, motion picture projectionist, usher, or ticket taker, acting within the scope of the defendant's employment and that the defendant had no financial interest in the place where the defendant was so employed.

(b) Except as provided in subsection (c), it is a defense to a prosecution under section 3 of this chapter if all the following apply:

(1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to disseminate matter to a minor that is harmful to minors.

(2) The defendant is not more than four (4) years older or younger than the person who received the matter that is harmful to minors.

(3) The relationship between the defendant and the person who received the matter that is harmful to minors was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.

(4) The crime was committed by a person less than twenty-two (22) years of age.

(5) The person receiving the matter expressly or implicitly acquiesced in the defendant's conduct.

(c) The defense to a prosecution described in subsection (b) does not apply if:

(1) the image is disseminated to a person other than the person:

(A) who sent the image; or

(B) who is depicted in the image; or

(2) the dissemination of the image violates:

(A) a protective order to prevent domestic or family violence **or harassment** issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);



- (B) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
- (C) a workplace violence restraining order issued under IC 34-26-6;
- (D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
- (E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;
- (F) a no contact order issued as a condition of probation;
- (G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
- (H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;
- (I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;
- (J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);
- (K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:
- (i) tribe;
  - (ii) band;
  - (iii) pueblo;
  - (iv) nation; or
  - (v) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);
- that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;
- (L) an order issued under IC 35-33-8-3.2; or
- (M) an order issued under IC 35-38-1-30.



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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