

# HOUSE BILL No. 1534

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Orders of protection and firearms. Requires a court to prohibit a person who is subject to an order for protection from using or possessing firearms or ammunition if the domestic or family violence giving rise to the order of protection involved the use or threat of use of a firearm. Requires a court to order the surrender of firearms and ammunition owned or possessed by a person who is subject to an order for protection if the domestic or family violence giving rise to the order of protection involved the use or threat of use of a firearm.

**Effective:** July 1, 2017.

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## McNamara, Kirchhofer

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January 18, 2017, read first time and referred to Committee on Public Policy.

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First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## HOUSE BILL No. 1534

A BILL FOR AN ACT to amend the Indiana Code concerning civil 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.1-2010,  
2 SECTION 135, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2017]: Sec. 9. (a) If it appears from a petition  
4 for an order for protection or from a petition to modify an order for  
5 protection that domestic or family violence has occurred or that a  
6 modification of an 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) A court may grant the following relief without notice and  
12 hearing in an ex parte order for protection or in an ex parte order for  
13 protection modification:  
14 (1) Enjoin a respondent from threatening to commit or  
15 committing acts of domestic or family violence against a  
16 petitioner and each designated family or household member.  
17 (2) Prohibit a respondent from harassing, annoying, telephoning,



- 1 contacting, or directly or indirectly communicating with a  
 2 petitioner.
- 3 (3) Remove and exclude a respondent from the residence of a  
 4 petitioner, regardless of ownership of the residence.
- 5 (4) Order a respondent to stay away from the residence, school, or  
 6 place of employment of a petitioner or a specified place  
 7 frequented by a petitioner and each designated family or  
 8 household member.
- 9 (5) Order possession and use of the residence, an automobile, and  
 10 other essential personal effects, regardless of the ownership of the  
 11 residence, automobile, and essential personal effects. If  
 12 possession is ordered under this subdivision, the court may direct  
 13 a law enforcement officer to accompany a petitioner to the  
 14 residence of the parties to:
- 15 (A) ensure that a petitioner is safely restored to possession of  
 16 the residence, automobile, and other essential personal effects;  
 17 or
- 18 (B) supervise a petitioner's or respondent's removal of personal  
 19 belongings.
- 20 (6) Order other relief necessary to provide for the safety and  
 21 welfare of a petitioner and each designated family or household  
 22 member.
- 23 (c) A court may grant the following relief after notice and a hearing,  
 24 whether or not a respondent appears, in an order for protection or in a  
 25 modification of an order for protection:
- 26 (1) Grant the relief under subsection (b).  
 27 (2) Specify arrangements for parenting time of a minor child by  
 28 a respondent and:
- 29 (A) require supervision by a third party; or  
 30 (B) deny parenting time;  
 31 if necessary to protect the safety of a petitioner or child.
- 32 (3) Order a respondent to:
- 33 (A) pay attorney's fees;  
 34 (B) pay rent or make payment on a mortgage on a petitioner's  
 35 residence;  
 36 (C) if the respondent is found to have a duty of support, pay  
 37 for the support of a petitioner and each minor child;  
 38 (D) reimburse a petitioner or other person for expenses related  
 39 to the domestic or family violence, including:
- 40 (i) medical expenses;  
 41 (ii) counseling;  
 42 (iii) shelter; and



- 1 (iv) repair or replacement of damaged property;  
 2 (E) pay the costs and expenses incurred in connection with the  
 3 use of a GPS tracking device under subsection ~~(i)~~; **(j)**; or  
 4 (F) pay the costs and fees incurred by a petitioner in bringing  
 5 the action.
- 6 (4) Prohibit a respondent from using or possessing a ~~firearm;~~  
 7 ~~ammunition;~~ or a deadly weapon specified by the court, and direct  
 8 the respondent to surrender to a specified law enforcement agency  
 9 the ~~firearm;~~ ~~ammunition;~~ or deadly weapon for the duration of the  
 10 order for protection unless another date is ordered by the court.  
 11 An order issued under subdivision (4) does not apply to a person who  
 12 is exempt under 18 U.S.C. 925.
- 13 **(d) If an order for protection is issued concerning domestic or**  
 14 **family violence that the petitioner has alleged involved a**  
 15 **respondent's use or threat of use of a firearm, the court, after**  
 16 **notice and a hearing, whether or not a respondent appears, shall:**  
 17 **(1) prohibit the respondent from using or possessing a firearm**  
 18 **or ammunition; and**  
 19 **(2) order the respondent to surrender all firearms:**  
 20 **(A) in the control, ownership, or possession of the**  
 21 **respondent; and**  
 22 **(B) in the control or possession of another person on the**  
 23 **behalf of the respondent;**  
 24 **to a specified law enforcement agency for the duration of the order**  
 25 **for protection. The court may also order the respondent to**  
 26 **surrender all ammunition to a specified law enforcement agency**  
 27 **for the duration of the order for protection. An order issued under**  
 28 **this subsection does not apply to a person who is exempt under 18**  
 29 **U.S.C. 925.**
- 30 ~~(d)~~ (e) The court shall:  
 31 (1) cause the order for protection to be delivered to the county  
 32 sheriff for service;  
 33 (2) make reasonable efforts to ensure that the order for protection  
 34 is understood by a petitioner and a respondent if present;  
 35 (3) electronically notify each law enforcement agency:  
 36 (A) required to receive notification under IC 5-2-9-6; or  
 37 (B) designated by the petitioner;  
 38 (4) transmit a copy of the order to the clerk for processing under  
 39 IC 5-2-9;  
 40 (5) indicate in the order if the order and the parties meet the  
 41 criteria under 18 U.S.C. 922(g)(8); and  
 42 (6) require the clerk of court to enter or provide a copy of the



1 order to the Indiana protective order registry established by  
2 IC 5-2-9-5.5.

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

8 ~~(f)~~ **(g)** A finding that domestic or family violence has occurred  
9 sufficient to justify the issuance of an order under this section means  
10 that a respondent represents a credible threat to the safety of a  
11 petitioner or a member of a petitioner's household. Upon a showing of  
12 domestic or family violence by a preponderance of the evidence, the  
13 court shall grant relief necessary to bring about a cessation of the  
14 violence or the threat of violence. The relief may include an order  
15 directing a respondent to surrender to a law enforcement officer or  
16 agency all firearms, ammunition, and deadly weapons:

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

20 for the duration of the order for protection unless another date is  
21 ordered by the court.

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

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

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

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

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

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

