

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 161

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

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

SECTION 1. IC 34-26-5-9, AS AMENDED BY P.L.159-2022, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: 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

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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) Prohibit a respondent from using a tracking device (as defined by IC 35-31.5-2-337.5) to determine the location of:

(A) the petitioner or property owned or used by the petitioner; and

(B) any other family or household member or property owned or used by the family or household member.

~~(3)~~ (4) Remove and exclude a respondent from the residence of a petitioner, regardless of ownership of the residence.

~~(4)~~ (5) 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)~~ (6) 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)~~ (7) Prohibit a respondent from removing, transferring, injuring, concealing, harming, attacking, mistreating, threatening to harm, or otherwise disposing of an animal described in ~~subdivision (5)~~; **subdivision (6)**.

~~(7)~~ (8) 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)~~; **subdivision (6)**, 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)~~ (9) Order other relief necessary to provide for the safety and welfare of a petitioner and each designated family or household



member.

(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 (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 (k); 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.

(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.

(f) Except as provided in subsection (g), 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.

(g) This subsection applies to an order for protection issued ex parte or upon notice and a hearing, or to a modification of an order for protection issued ex parte or upon notice and a hearing, if:

- (1) the respondent named in the order is a sex or violent offender (as defined in IC 11-8-8-5) and is required to register as a lifetime sex or violent offender under IC 11-8-8-19; and
- (2) the petitioner was the victim of the crime that resulted in the requirement that the respondent register as a lifetime sex or violent offender under IC 11-8-8-19.

An order for protection to which this subsection applies is effective indefinitely 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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 (k).

SECTION 2. IC 34-26-5-10, AS AMENDED BY P.L.178-2022(ts), SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 10. (a) If a court issues:

- (1) an order for protection ex parte effective for a period described under section 9(f) of this chapter; or
- (2) a modification of an order for protection ex parte effective for a period described under section 9(f) of this chapter;

and provides relief under section 9(c) of this chapter, upon a request by either party at any time after service of the order or modification, the court shall set a date for a hearing on the petition. Except as provided in subsection (c), 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. A party may only request one (1) hearing on a petition under this subsection.

(b) If a court issues:

- (1) an order for protection ex parte effective for a period described under section 9(g) of this chapter; or
- (2) a modification of an order for protection ex parte effective for a period described under section 9(g) of this chapter;

and provides relief under section 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. Except as provided in subsection (c), 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. A party may only request one (1) hearing on a petition under this subsection.

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

(d) In a hearing under this section:

- (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 3. IC 35-31.5-2-255.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 255.3. "Protective order", for purposes of IC 35-46-8.5-1, has the meaning set forth in IC 35-46-8.5-1.

SECTION 4. IC 35-31.5-2-337.5, AS ADDED BY P.L.170-2014, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 337.5. "Tracking device", for purposes of IC 35-33-5, IC 35-45-10, IC 35-46-8.5-1, IC 35-50-2-19, and this chapter, means an electronic or mechanical device that allows a person to remotely determine or track the position or movement of another person or an object. The term includes the following:

- (1) A device that stores geographic data for subsequent access or analysis.
- (2) A device that allows real-time monitoring or movement.
- (3) An unmanned aerial vehicle.
- (4) A cellular telephone or other wireless or cellular communications device, **or an electronic device that communicates with a cellular telephone or other wireless or**



cellular communications device, including by means of an application installed on or accessed through a cellular telephone or other wireless or cellular communications device.

SECTION 5. IC 35-45-10-5, AS AMENDED BY P.L.158-2013, SECTION 541, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) A person who stalks another person commits stalking, a Level 6 felony.

(b) The offense is a Level 5 felony if at least one (1) of the following applies:

(1) A person:

(A) stalks a victim; and

(B) makes an explicit or an implicit threat with the intent to place the victim in reasonable fear of:

(i) sexual battery (as defined in IC 35-42-4-8);

(ii) serious bodily injury; or

(iii) death.

(2) A protective order to prevent domestic or family violence, a no contact order, or other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order:

(A) IC 31-15 and IC 34-26-5 or IC 31-1-11.5 before its repeal (dissolution of marriage and legal separation).

(B) IC 31-34, IC 31-37, or IC 31-6-4 before its repeal (delinquent children and children in need of services).

(C) IC 31-32 or IC 31-6-7 before its repeal (procedure in juvenile court).

(D) IC 34-26-5 or IC 34-26-2 and IC 34-4-5.1 before their repeal (protective order to prevent abuse).

(E) IC 34-26-6 (workplace violence restraining orders).

(3) The person's stalking of another person violates an order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion if the person has been given actual notice of the order.

(4) The person's stalking of another person violates a no contact order issued as a condition of probation if the person has been given actual notice of the order.

(5) The person's stalking of another person violates a protective order issued under IC 31-14-16-1 and IC 34-26-5 in a paternity action if the person has been given actual notice of the order.

(6) The person's stalking of another person violates an order issued in another state that is substantially similar to an order



described in subdivisions (2) through (5) if the person has been given actual notice of the order.

(7) The person's stalking of another person violates an order that is substantially similar to an order described in subdivisions (2) through (5) 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 if the person has been given actual notice of the order.

(8) A criminal complaint of stalking that concerns an act by the person against the same victim or victims is pending in a court and the person has been given actual notice of the complaint.

(9) The offense was committed or facilitated by the use of a tracking device.

(c) The offense is a Level 4 felony if:

- (1) the act or acts were committed while the person was armed with a deadly weapon; or
- (2) the person has an unrelated conviction for an offense under this section against the same victim or victims.

SECTION 6. IC 35-46-8.5-1, AS AMENDED BY P.L.58-2016, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) This section does not apply to any of the following:

- (1) Electronic or video toll collection facilities or activities authorized under any of the following:
 - (A) IC 8-15-2.
 - (B) IC 8-15-3.
 - (C) IC 8-15.5.
 - (D) IC 8-15.7.
 - (E) IC 8-16.
 - (F) IC 9-21-3.5.
- (2) A law enforcement officer who has obtained:
 - (A) a search warrant; or
 - (B) the consent of the owner ~~or~~ of private property;



to place a camera, ~~or~~ electronic surveillance equipment, ~~or tracking device~~ on the private property, **with respect to the placement of a camera, electronic surveillance equipment, or tracking device.**

(3) A law enforcement officer who uses a law enforcement recording device in performance of the officer's duties, **with respect to the use of the law enforcement recording device.**

(4) A person who uses a tracking device to determine the location of a family member (as defined in IC 35-44.1-3-1), unless the person is the subject of a protective order obtained by the family member.

(5) A person who places a tracking device on property in which the person has an ownership or contractual interest, unless the person is the subject of a protective order and the property is likely to be used by the person who obtained the protective order.

(6) A tracking device placed on a person or the property of a person:

(A) who is incarcerated;

(B) as a condition of probation, parole, home detention, community corrections, bail, prosecutorial diversion, or supervised release; or

(C) pursuant to a court order.

(7) A device installed as original equipment by the manufacturer of a motor vehicle.

(8) A provider of electronic communications services with respect to a tracking device, if the installation, placement, or use of the tracking device is disclosed to the consumer in the provider's terms of use, privacy policy, or similar document available to the consumer.

(b) As used in this section, "protective order" refers to an order described in IC 35-45-10-5(b)(2) or IC 35-46-1-15.1(a).

~~(b)~~ (c) A person who knowingly or intentionally places a:

(1) camera or electronic surveillance equipment that records images or data of any kind while unattended on the private property of another person without the consent of the owner or tenant of the private property; or

(2) tracking device on an individual or on property owned or used by an individual, without the knowledge or consent of the individual;

commits **unlawful surveillance**, a Class A misdemeanor, **except as provided in subsection (d).**



(d) Unlawful surveillance under subsection (c) is a Level 6 felony if:

- (1) the person has a prior unrelated conviction for:**
 - (A) an offense under this section;**
 - (B) a crime of domestic violence under IC 35-38-1-7.7;**
 - (C) stalking (IC 35-45-10-5); or**
 - (D) invasion of privacy (IC 35-46-1-15.1); or**
- (2) the person is the subject of a protective order.**

SECTION 7. IC 35-50-2-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 19. (a) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally used a tracking device:**

- (1) in the commission of the offense; or**
- (2) to facilitate the commission of the offense.**

(b) If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(c) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proven beyond a reasonable doubt that the person knowingly or intentionally used a tracking device in the commission of the offense, or to facilitate the commission of the offense, the court may sentence the person to an additional fixed term of imprisonment of:

- (1) if the offense did not result in serious bodily injury to another person, between six (6) months and two and one-half (2 1/2) years; or**
- (2) if the offense resulted in serious bodily injury to another person, between one (1) and six (6) years.**

(d) A person who commits more than one (1) offense comprising a single episode of criminal conduct may be sentenced to only one (1) additional fixed term under this section.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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