

PROTECTION ORDER DESKBOOK

Prepared by the Protection Order Committee of Judicial Conference of Indiana



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FOREWORD

The Protection Order Committee of the Judicial Conference of Indiana is pleased to make available this Protection Order Deskbook as a general guide to understanding Orders for Protection currently available under Indiana statutes.

This information is being made available to Judges, Magistrates, Clerks, attorneys, victim advocates and anyone accessing the Protection Order website. The website address is:

<https://www.in.gov/courts/iocs/publications/po-forms/>.

All updates, as well as complete copies, are available for downloading from the website.

CAVEAT

The procedures and recommendations suggested in this Deskbook were compiled from the statutes and from the practices of Judges and judicial officials in Indiana.

This is not an official publication of the Indiana Supreme Court, nor should it be considered an authoritative statement of Indiana law. A majority of the forms in this manual have been officially adopted by the Indiana Office of Court Services. The other forms and procedures set forth in this Deskbook have not been approved or endorsed by the Indiana Supreme Court but are offered as examples utilized by Judges throughout the state.

ACKNOWLEDGEMENTS

The Protection Order Committee prepares annual revisions to the Desk book and the forms for distribution in July. Normally, this edition would have taken two years and many hours of work from committee members, staff, and other judicial officers throughout the state to complete. Due to the intervention of Covid-19, this edition took more than three years to complete. We appreciate the assistance of all who contributed to this edition including our present and former committee members, staff, and former Chair, the Honorable Sean M. Persin of Tippecanoe Circuit Court.

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July 2023

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Chapter 1:

Getting Started / Jurisdiction / Service

I. Introduction

A. What is the Indiana Civil Protection Order Act, and what is a Protection Order?

The Indiana Civil Protection Order Act, or ICPOA, is a set of laws passed by the Indiana General Assembly in 2002 that overhauled Indiana's response to domestic and family violence. The ICPOA is based largely on the Model Code on Domestic and Family Violence, which was developed by the National Council of Juvenile and Family Court Judges, on existing Indiana law, and on the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. Under the ICPOA, Courts can issue Orders to protect people from domestic or family violence, stalking, a sex offense, or harassment. These Court Orders are called "Protection Orders" or "Orders for Protection," and the terms are used interchangeably. There are two (2) kinds of Protection Orders—an Ex Parte Protection Order, which is issued without a hearing, and a Protection Order Issued After a Hearing. Protection Orders last for two (2) years, unless the Judge decides on a different duration. If the Respondent is a sex or violent offender who is required to register as a lifetime sex or violent offender, and the Petitioner was the victim that resulted in said requirement, the Ex Parte Order or Protection Order Issued After a Hearing is for an indefinite duration unless another date is ordered by the Court.

The Indiana Civil Protection Order Act may be found at: Indiana Code § 34-26-5, sections 1-20; No contact orders; and Workplace Violence Restraining Orders Indiana Code § 34-26-6 sections 0.5 – 15.

The person asking for the Order is called the "Petitioner." The Petitioner needs to file a Petition in a Court of record, against the other person, called the "Respondent." There are two (2) different kinds of Petitions a person can file: one kind allows a person to seek protection for himself or herself, and another kind allows a Petitioner to ask for protection on behalf of a child.

Important Notice: In order to file a case, a Petitioner should have the Respondent's:

- Correct name;
- Correct date of birth or Social Security number; and,
- Correct, current address or other information for respondent which could be used to locate respondent for service.

Additionally, the petition for a protection Order must contain "specific allegations. [*Flash v. Holtzclaw*, 789 N.E.2d 955 \(Ind. Ct. App. 2003\)](#).

B. Who is the Petitioner?

The ICPOA was passed to promote the protection and safety of all victims of domestic or family violence, sexual assault, stalking, and harassment, and to prevent future violence against such victims. A Petitioner is a victim of:

- Domestic or family violence;
- Stalking;
- A sex offense, or
- Harassment.

A Petitioner may also be a parent, a guardian, or another representative filing a petition for an order for protection on behalf of a child against a:

- Family or household member who commits an act of violence or domestic violence;
- Person who has committed stalking or a sex offense against the child;
- Person who has committed repeated acts of harassment against the child; or
- Person who has engaged in a course of conduct with a child that is intended to prepare or condition a child for sexual activity as defined in [35-42-4-13](#).

C. Who is the Respondent?

The Respondent must be either a:

- Family or household member of the Petitioner who committed domestic or family violence;
- Person who has committed stalking or a sex offense against the Petitioner;
- Person who engaged in repeated contact with a child Petitioner that is intended to prepare the child for sexual activity [commonly referred to as sex grooming throughout this bench book]; or,
- Person who has committed repeated acts of harassment against the Petitioner.

Only one Respondent per Order—A Petition may name more than one Respondent, but each Respondent requires a separate case number and a separate Court file. See [Indiana Code § 34-26-5-2\(c\)](#).

II. Definitions

A. "Domestic or family violence" as defined by [Indiana Code § 31-9-2-42](#) means, except for an act of self-defense, the occurrence of at least one (1) of the following acts committed by a family or household member:

- 1) Attempting to cause, threatening to cause, or causing physical harm to another family
- 2) or household member.
- 3) Placing a family or household member in fear of physical harm.

- 4) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.
- 5) Abusing, torturing, mutilating or killing a vertebrate animal without justification with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.

For purposes of Indiana Code § 34-26-5, domestic and family violence also includes stalking (as defined in [Indiana Code § 35-45-10-1](#)) or a sex offense under Indiana Code § 35-42-4, whether or not the stalking or sex offense is committed by a family or household member. [Indiana Code § 34-6-2-44.8](#) and [Parkhurst v. Van Winkle, 786 N.E.2d 1159 \(Ind. Ct. App. 2003\)](#). A crime involving animal cruelty and a family or household member under [Indiana Code § 35-46-3-12\(b\)\(3\)](#) or [Indiana Code § 35-46-3-12.5](#) may also constitute "domestic or family violence." [Indiana Code § 31-9-2-29.5](#).

B. "Family or household member" means:

- 1) a person who is a current or former spouse;
- 2) a person who is dating or has dated;
- 3) a person who is engaged or was engaged in a sexual relationship;
- 4) a person who is related by blood or adoption;
- 5) a person who is related or was related by marriage;
- 6) a person who has an established legal relationship or previously established a legal relationship:
 - a. as a guardian;
 - b. as a ward;
 - c. as a custodian;
 - d. as a foster parent; or
 - e. in a capacity similar to those listed in clauses (A) through (D);
- 7) a person who has a child in common; and
- 8) a minor child of a person in a relationship described in subdivisions (1) through (7).
[Indiana Code § 34-6-2-44.8](#).

C. "Stalking" is defined by Indiana law ([Indiana Code § 35-45-10-1](#)) as:

"A knowing or intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened." The term "course of conduct" means 2 or more incidents. See also [S.B. v. Seymour Community School, 97 N.E.3rd 288 \(2018\)](#) where the Indiana Court of Appeals further defines "course of conduct" and [P.D. v. D.V., 172 N.E.3d 306 \(2021\)](#).

Stalking by Phone: "...telephone messages without more may amount to impermissible contact sufficient to support a stalking conviction." [Smith v. State, 802 N.E.2d 948, 954 \(Ind. Ct. App. 2004\)](#).

D. "Harassment" ([Indiana Code § 34-6-2-51.5](#)) means conduct directed toward a victim that includes, but is not limited to, repeated or continuing impermissible contact:

- That would cause a reasonable person to suffer emotional distress; and
- That actually causes the victim to suffer emotional distress.

"**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.

"**Impermissible contact**" ([Indiana Code § 35-45-10-3](#)) includes, but is not limited to, the following:

- Following or pursuing the victim.
- Communicating with the victim in person, in writing, by telephone, by telegraph, or through electronic means.
- Posting on social media, if the post is directed to the victim, or refers to the victim directly or indirectly.

E. A "sex offense" means one of the following crimes under Indiana law ([Indiana Code § 35-42-4](#)):

- Rape;
- Criminal deviate conduct;
- Child molesting;
- Child exploitation;
- Vicarious sexual gratification;
- Child solicitation;
- Child seduction;
- Sexual conduct in the presence of a minor,
- Inappropriate communication with a child,
- Sexual battery; or,
- Sexual misconduct with a minor.

F. Sexual activity related to conditioning a child means sexual intercourse, other sexual conduct (as defined in [Indiana Code § 35-31.5-2-221.5](#)), or the fondling or touching of the buttocks, genitals, or female breasts.

[Indiana Code § 35-42-4-13](#)

Note:

In order for a person to ask for an Order for Protection because they were a victim of Stalking or a sex offense, it is not necessary for criminal charges to be filed. However, a victim of one of these kinds of crimes should always seek help from the police or sheriff and the prosecutor.

III. Jurisdiction and Venue

- A. **Jurisdiction to Issue an Order**—Any Court of record has jurisdiction to issue an Order for Protection. See [Indiana Code § 34-26-5-4\(a\)](#).
- B. **Venue**—Proper venue is in the county where the Petitioner currently or temporarily resides, where the Respondent resides, or where the domestic or family violence or harassment occurred. See [Indiana Code § 34-26-5-4\(b\)](#).
- C. **Residency Requirement**—There is no minimum duration of residence required to establish residency or venue. See [Indiana Code § 34-26-5-4\(c\)](#).
- D. If a court has jurisdiction over an action that relates to the subject matter of the requested civil order for protection under paragraphs B. or C. above, 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. [Indiana Code § 34-26-5-4](#).

Note:

Some local rules or courts may require that all protective orders are filed in a particular court before transfer to the appropriate court.

- E. **Service**—Courts acquire jurisdiction over parties or persons in two general ways: either a person files the case, or a person is served. See Indiana Rules of [Trial Procedure 4\(A\)](#).

Best Practice Note:

For purposes of future enforcement, the Protection Order Committee recommends personal service on Respondents in accordance with [Indiana Rules of Trial Procedure 4\(A\)\(2\)](#). See [Hill v. Ramey, 744 N.E.2d 509 \(Ind. Ct. App. 2001\)](#).

1. Service can be effected by a police officer or another party giving a copy to the Respondent or informing the Respondent orally of the existence of an Order.
2. Service by registered or certified mail, as described in [Indiana Rules of Trial Procedure 4.1\(A\)\(1\)](#), may be sufficient for future enforcement if a receipt is signed by the Respondent.

3. Service by “tack and mail”, as described in [Indiana Rules of Trial Procedure 4.1\(A\)\(3\)](#), or by other means under Trial Rule 4 generally, may not be sufficient service by itself to show “beyond a reasonable doubt” that the Respondent knew of the existence of the Protection Order for subsequent criminal prosecution.

A. Special Circumstances

Juvenile Respondent - 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. See [Indiana Code § 34-26-5-2\(e\)](#).

BEST PRACTICE NOTE: Although the language of the statute concerning juvenile Respondents is discretionary rather than mandatory, the Protection Order Committee recommends that a Judge in whose Court the Petition is filed always transfer the matter to a Court with juvenile jurisdiction. In most cases, the Juvenile Court is better equipped (in terms of staff and available resources) to handle allegations involving misconduct on the part of a juvenile.

Juvenile Petitioner - If a petition for an order for protection is filed by a person or on behalf of an unemancipated minor, the Court shall determine, after reviewing the petition or making an inquiry, whether issuing the Order for Protection may impact a school corporation's ability to provide in-person instruction for the person or the unemancipated minor. If the Court determines that issuing the Order for Protection may impact a school corporation's ability to provide in-person instruction for the person or the unemancipated minor, then the Court may not issue the Order for Protection until the following requirements are met:

- 1) Notice is provided to the school corporation, by registered mail or certified mail, that includes:
 - a) notice of the petition for the order for protection; and
 - b) the date for the hearing on the petition for the order for protection, if applicable.
- 2) Upon receipt of the notice, the school corporation is allowed to:
 - a) respond to the notice not later than three (3) business days after receipt of the notice; and

- b) testify at the hearing on the petition for the order for protection.

If the school corporation fails to respond to the notice of the petition for the order for protection as described in subdivision (2), then the court may issue the order for protection described in this subsection. See [Indiana Code § 34-26-5-2\(f\)](#).

USE FORM PO-0137: Notice to School Corporation

See also [S.B. v. Seymour Community School, 97 N.E.3rd 288 \(2018\)](#) where the Indiana Court of Appeals held that a school corporation has standing to petition for an order of protection on behalf of its students.

II. Existence of other actions between Petitioner and Respondent.

- a) An Order for Protection is in addition to, and not instead of, other court proceedings. See [Indiana Code § 34-26-5-6\(1\)](#).
- b) A Petitioner is not barred from seeking an order because of another pending proceeding. See [Indiana Code § 34-26-5-6\(2\)](#).
- c) A Court may not delay granting relief because of the existence of a pending action. See [Indiana Code § 34-26-5-6\(3\)](#).

If a person who petitions for an Ex Parte Order for Protection also has a pending case involving the Respondent or 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. See [Indiana Code § 34-26-5-6\(4\)](#).

There is an inconsistency between this statute and other statutes that require a Protection Order proceeding to be filed in the Court that has jurisdiction of the pending dissolution, paternity, or legal separation. See [Indiana Code § 31-14-16-1](#) and [Indiana Code 31-15-5-1](#). The Juvenile Code sets forth that the Juvenile Court has exclusive jurisdiction in many juvenile matters. See [Indiana Code § 31-30-1-1](#).

[Indiana Code § 34-26-5-6](#) allows any Court to resolve an emergency on an ex parte basis and then transfer the case to the Court with the pending matter. This avoids having to dismiss the Petition and re-file it in another Court.

[*State ex rel. Meade v. Marshall Superior Court II, 644 N.E.2d 87 \(Ind. 1994\)*](#), interpreted the Protection Order statute that was in effect before the ICPOA was enacted. In part, a unanimous Supreme Court stated, “Does a court which dissolved a marriage and determined child custody and visitation maintain continuing jurisdiction which prevents another court from entertaining petitions for protective orders which effectively modify the divorce decree? We hold that such protective orders must be filed in the court which heard the divorce, absent emergency or other good cause for going to a second court.”

BEST PRACTICE NOTE: Considerations for placement of a case in the proper Court:

- 1) Dissolution/paternity action already filed and still active in another Court—TRANSFER without issuing Protection Order unless emergency.
- 2) Dissolution/paternity action concluded and no minor children—Consider Petition on its own merits, and rule accordingly.
- 3) Dissolution/paternity action concluded and minor children—Issue Order if an emergency and transfer. If no emergency, transfer without issuing Order.
- 4) Dissolution/paternity action filed after Protection Order has been issued-Transfer.
- 5) Juvenile action already pending against child against whom Protection Order is sought—Issue Ex Parte Order if emergency and transfer. If no emergency, transfer.

If it is not clear from the Petition itself whether another action is pending or whether there is an emergency, conduct a hearing on the record to inquire into those matters before issuing an Ex Parte Order. If possible, contact the other Court to determine the status of the other “pending” matter. If no emergency is apparent, simply set the matter for a hearing.

Use Form 0122: Order of Transfer to Court Having Jurisdiction

The Courts in the county should adopt a local rule defining “pending” and specifying when and how cases should be transferred to the Court in which a case involving the parties or their children is pending. See [*Indiana Code § 34-26-5-6\(4\)*](#), [*31-14-16-1*](#), [*31-14-4-1*](#), [*31-15-5-1*](#).

If there are minor children, a Protection Order may affect parenting time and support, so the Court which issued the Order establishing parenting time and support should hear the petition.

A Petition involving a juvenile Respondent should be heard by the Court having juvenile jurisdiction.

1. Power of Attorney and Guardianship.

- a. The statutes governing Orders for Protection neither limit nor extend the powers which might be granted to an attorney-in-fact acting under a written power of attorney. Title 30, Article 5 of the Indiana Code governs the extent of authority granted by a general or specific power of attorney. A power of attorney conferring authority under [Indiana Code § 30-5-5-11](#) includes the power to prosecute before a court a cause of action against an individual, including the power to sue for “an injunction” or “any other relief.”
- b. A person acting under the authority of a power of attorney who files a Petition for a protection order on behalf of another person must use a lawyer rather than filing the petition pro se. [Simmons v. Carter, 576 N.E.2d 1278, 1280 \(Ind. Ct. App. 1991\)](#) held that if a legal proceeding was instituted on behalf of another in a court of record by one not licensed to practice law, the action should be dismissed, and if the suit has proceeded to judgment, the judgment is void.
- c. In a guardianship, because the court has adjudicated an individual incapacitated, the guardian is able to file on behalf of their ward.

Note:

If the protection order was filed on behalf of a ward who is no longer incapacitated, the protected person, the protected person shall be substituted as primary and can then make all decisions regarding the case. If the guardianship was originally for a minor and the minor is now an adult, they shall also be substituted as the primary. See [Indiana Code § 29-3-11-3](#).

- d. As a matter of practice and procedure, the Protection Order Committee recommends the clerk:
- e. notify a person attempting to sign a Petition for a Protective Order on behalf of another adult person that the petition must be filed by a lawyer if the person has only power of attorney and is not a guardian of the Petitioner.

- f. input the name of the principal, rather than the agent, as the “Protected Person” in the Protection Order Registry and otherwise avoid any attempt to input the name of the agent in a specific field of the registry.
- g. the guardian and/or attorney should be listed as an interested party on the petition.

III. Issues with Jurisdiction/Parties, or Problems with Allegations in the Petition

Every Petition for an Order for Protection and Request for a Hearing must be assigned a PO case number and shown as filed, even if the Clerk or court staff has concerns about jurisdictional issues or the adequacy of the allegations. Do not simply disallow the filing of the case. [Indiana Rules of Trial Procedure 3](#) and [Administrative Rule 8](#). Due to the sensitive and potentially lethal nature of these types of cases, it is very important to make a record of all proceedings associated with protection order cases, and for all PO case actions to be noted in the case chronology.

Issues with the parties’ relationship: If the Court believes that the Court lacks jurisdiction over the parties because their relationship does not fall within the categories listed in the definition of “family or household member” ([Indiana Code § 34-6-2-44.8](#)), the Court should first check to see if the allegations nevertheless constitute “domestic or family violence” as defined in [Indiana Code § 34-6-2-34.5](#).

Specifically, does the Petition allege domestic or family violence, stalking, a sex offense, sex grooming, or harassment? If so, the Court does have jurisdiction over the parties, regardless of their relationship, and the Court should proceed and consider the Petition as usual.

- a. If the Petition does not allege domestic or family violence, stalking, a sex offense, grooming, or harassment (say, for example, the allegations involve one neighbor accusing another of threatening to damage his property, or two friends who got into a fight at a bar), then the Court should show the Petition for an Order for Protection and Request for a Hearing denied due to lack of jurisdiction over the parties and subject matter or set the matter for a hearing.

USE FORM PO-0110 Order Denying Petition for an Order for Protection

Issues with the facts alleged in the Petition: If the Court believes the facts as alleged in the Petition do not satisfy the statutory requirements of domestic or family violence, sexual assault, or stalking

by a preponderance of the evidence, then the Court should not issue an Ex Parte Order for Protection. Also, the Court may not issue an Ex Parte Order for Protection if the Petition is based solely on harassment. [*Indiana Code § 34-26-5-9\(b\)*](#).

If the Court is satisfied there is jurisdiction over the parties, the Court should set the matter for an evidentiary hearing (with notice to both parties) on whether an order should be issued.

BEST PRACTICE NOTE: If there is a deficiency in the allegations and the Petitioner is present and available, do not review it off the record and make a ruling setting the case for an evidentiary hearing. Instead, place the Petitioner under oath and address your concerns in a dialogue on the record. If necessary, have the Petitioner amend the Petition and initial and date the amended portion(s). This procedure is acceptable because the protection order statute expressly authorizes the issuance of an ex parte order. In this respect, it is similar to a case in which the affidavit supporting a search warrant might be incomplete, and the Court places a law enforcement officer under oath to obtain more information in support of issuing the warrant.

CHAPTER 2

DUTIES OF CLERK

All Indiana counties are required to use the Indiana Supreme Court Protective Order Registry (POR). It is a web-based application using the Indiana Court Information Technology Extranet (INCITE), designed to improve the effectiveness of the Protective Order process. To that end this chapter will make references to the POR application where applicable.

Each county may establish their own specific procedures for carrying out the following duties. In some counties, the following responsibilities are delegated to Court staff and not Clerk staff. This Chapter merely provides an overview of general processes to be considered and does not suggest which entity is ultimately responsible for certain duties.

I. Initial Filing

A. Often, the Petitioner will first approach the Clerk with questions on how to file a Protection Order.

1. The Clerk's office should provide the Petitioner with the option to electronically file a Petition with Indiana's Protection Order E-Filing Service Provider. This application can be accessed by visiting <https://public.courts.in.gov/porefsp#/>. Petitioners should be advised to follow the instructions provided throughout the application.

Public computer terminals which allow access to this application may be provided to the Petitioner for the purposes of e-filing. If questions arise when e-filing, the Clerk should avoid providing legal advice and be aware of the 'Assistance' guidelines found below in Part B.

NOTE:

It is always a better practice to refer petitioners to a domestic violence advocacy agency to assist them in filling out the protection order forms. Petitioners will have confidentiality in their discussions with an advocate. Additionally, Petitioners can benefit from other services, such as safety planning, when they meet with domestic violence advocates.

2. If the Petitioner chooses to file with paper forms, the appropriate instruction forms, described below, should be provided to the Petitioner. It should be read and reviewed by the Petitioner prior to distribution of the Petition form itself. Some Clerks provide a one-page form that lists the definitions that apply in Protection Order cases.

All Protection Order forms are available online in both Microsoft Word and Adobe PDF format at the following URL: <https://www.in.gov/courts/iocs/publications/po-forms/>

3. A Petition for Order of Protection must be issued on the forms adopted under Indiana Code § 34-26-5-3(a) and provided by the Office of Judicial Administration.

The following instruction forms should be made available to the Petitioner.

Is the Petitioner seeking protection for themselves?

USE FORM PO-0102 Instructions for Petition for Order of Protection-Filed by person seeking protection.

A. Is the Petitioner seeking protection for a child?

USE FORM PO-0103 Instructions for Petition for Order of Protection-Filed on behalf of a child

B. The Clerk can hand forms and instructions to the Petitioner for their review. Let the Petitioner decide if they feel the situation falls into a proper category. It is not the Clerk's duty to decide if stalking, a sex crime, etc. has taken place---this decision should be left to the Judge.

The Clerk should not reject a Petition because it fails to provide Respondent's address, date of birth, or other identifying information. This is true even when a hearing is necessary because the Petitioner, the Court and/or the Sheriff's Office may utilize other means to serve Respondent before the hearing. The grounds for rejecting an electronically filed Petition are controlled by [Indiana Rules of Trial Procedure 88\(b\)](#) (filer selects an incorrect case management system or the filer requests rejection).

Assistance - the Clerk, the Clerk's designee, or a person under contract with the Clerk shall provide under [Indiana Code § 34-26-5-3 \(d\)](#).

- Distribution of Protective Order Forms.
- Provide information about Court procedures in Protection Order cases.
- Referral to victim services, which may assist in completion of the forms or in representation of the Petitioner.
- Answer non-legal questions about the completion of forms.
- Assist the Petitioner in reading or completing the forms.
- Referral to the Indiana Protection Order E-filing Service Provider.
- Referral to the law library if appropriate materials are available.
- Referral to emergency assistance.
- Referral to Attorney General Address Confidentiality Program under [Indiana Code § 5-26.5](#).

- “A person, other than a person or other entity with whom the clerk has entered into a contract to provide assistance, who in good faith performs the duties the person is required to perform under this subsection is not liable for civil damages that might otherwise be imposed on the person as a result of the performance of those duties unless the person commits an act or omission that amounts to gross negligence or willful and wanton misconduct.” [Indiana Code § 34-26-5-3\(d\)](#).

C. Forms to be provided by Clerk and to be completed by Petitioner

1. Petition

USE FORM PO-0100

Petition for Order for Protection and request for a Hearing-Filed by person seeking protection

-or-

USE FORM PO-0101

Petition for Order for Protection and Request for a Hearing-Filed on behalf of a child

Petition for Order for Protection and Request for a Hearing-Filed on behalf of a child

2. Confidential Form

The Confidential Form, PO-0104, needs to be completed by the protected party. Because of confidentiality issues, the Confidential Form(s) with attached Orders needs to be kept in a secure location, separate from the pending case file (which is an open record), or scanned into an electronic case management system as “Court Access Only.” A copy of this form with a copy of the Order (including the cover sheet as the first page of the Order) must be distributed to all applicable law enforcement agencies. [Indiana Code § 5-2-9-6](#). The required information is transmitted to all applicable law enforcement agencies electronically through the POR. The Respondent shall not receive a copy of the Confidential Form.

USE FORM PO-0104 Confidential Form

3. Confidential Information

The names of protected children in Protection Orders and No Contact Orders shall not be redacted or replaced with initials because this may prevent the orders from being enforced, particularly outside Indiana. Addresses (mail or email), dates of birth, and phone numbers of natural persons who are witnesses or victims in civil protection order proceedings shall be excluded from public access. See [Access to Court Records Rule 5\(C\)](#).

Filing of the Petition

1. The Clerk must accept the filing of the Petition for a Protection Order at the location presented.
2. State and local filing rules should be followed.
3. Determine if there are other cases involving the same parties or their children.

BEST PRACTICE NOTE: Protection Order Petitions always involve emergency situations, so it is essential that the Petition be accepted for filing and referred to a judicial officer immediately. For counties utilizing Odyssey, the Clerk should discuss whether an emergency queue should be established for receiving Petitions. Every Court has jurisdiction to resolve an emergency on an ex parte basis. After doing so, the Court is required to transfer the case to another Court if there is another case pending involving the parties. The Clerk should assist the Court by informing the Court of any such pending matters.

4. A new case number should be assigned.

BEST PRACTICE NOTE: Protection Order cases protect victims of domestic or family violence, sexual abuse, or stalking. There are different evidentiary and confidentiality issues associated with Protection Orders than in domestic relations or paternity cases. The Orders in a separate Protection Order case will follow a different path than those for the dissolution or paternity action. In addition, in order to get a true count of the volume of Protection Order cases in Indiana, a new case number should be obtained for a Protection Order case filed by either party in a dissolution or paternity action.

Clerk's offices and Courts should cross-reference the Protection Order case in the file or case management system that includes the dissolution or paternity action. The Committee understands this recommendation may cause concerns in Courts that routinely handle dissolution or paternity cases, but not Protection Order cases. However, the Committee understands the intent of the statute is to emphasize the seriousness of Protection Orders by keeping them separate from all other actions.

[Indiana Code § 31-14-16-1](#), [Indiana Code § 31-15-4-1](#), and [Indiana Code § 31-15-5-1](#) require that Protection Order Petitions affecting parties to a paternity, dissolution of marriage or legal separation or proceeding be filed in the Court which the case is pending. Courts should maintain a complete separation by keeping the Protection Order as a totally separate case with a "PO" case number, thereby facilitating enforcement and case administration. Some Judges try to handle the Protection Order within the existing case, even to the extent of merging the Protection Order into the provisional orders or final decree. The merger of Orders creates substantial problems with respect to enforcement through criminal prosecution for Invasion of Privacy. Combining Orders creates further problems for Clerks and Sheriff Departments, who must comply with statutory requirements concerning service, confidentiality of records, and entry of the Orders into the appropriate databases. Moreover, merged Orders often lack a cover sheet (or require two cover sheets for one Order); they can violate [Indiana Rules of Trial Procedure 65](#), which prohibits two

“orders” in the same Order; and, they usually lack the required statutory warning language. A new case number must be generated when a Petition for a Protection Order is filed.

Enforcement problems may occur with a merged Protection Order and dissolution decree. In one prosecution for Invasion of Privacy for violation of the Protection Order portion of the decree, the defense attorney argued that since the Protection Orders were in the same Order, they were a mutual Order and therefore not permitted under Indiana law. Since a mutual Order was not permitted, it could not be violated. The Judge commented: “I’ll never do that again!” The Protection Order Committee recommends that Judges issue separate Orders for Protection issued in conjunction with orders from other pending cases involving the same parties.

When a Protection Order (PO) case is transferred from one Court to another, the Clerk of the receiving Court should assign the case a new Protection Order (PO) case number.

5. Filing Fee

The Court, Clerk, and Sheriff must not charge the Petitioner a fee for filing a Protection Order case, service of process, witnesses, or subpoenas. The Court may collect costs from the Respondent. See [Indiana Code § 34-26-5-16](#).

NOTE:

Other states may charge a fee for service of process despite the Violence Against Women Act provision that mandates all protection orders should be without cost. If this occurs, first, contact the local jurisdiction to confirm their service requirements. You may choose to pay this expense. You may also consider entering an order waiving these costs or encouraging your local sheriff to seek reciprocity from the sheriff’s office in the other state. Additionally, the court may also consider charging the service fee to the Respondent. The Respondent may also be served by other methods of service. See [Indiana Rules of Trial Procedure 86\(E\)](#) for service of documents in protection order, workplace violence and child protection orders.

II. Case Processing

A. The duties and responsibilities underlying case processing will differ from county to county.

Conversations among Court, Clerk and Sheriff staff should first be held in order to assign responsibilities, set expectations and address potential issues.

Use the case-management system to assign the case to the proper Court. The case-management system should file-mark the Petition and record the case number on all documents. The Clerk should immediately forward the Petition to the Court. The Court will then determine whether to grant the Petition on an Ex Parte basis and/or set a hearing on the Petition.

B. Hearings

Some Ex Parte Protection Orders require a subsequent hearing and some do not. See Chapter 3. When a Judge does not issue an Ex Parte Protection Order, the Court may or may not set a hearing on the Petition.

The following scenarios may exist:

1. Court issues an Ex Parte Order and the law does not require that a hearing be set.

Once the case file is returned to Clerk, the Clerk should follow established procedures for processing the file.

The Court is also required to provide a copy of the Protection Order to the Clerk. See Indiana Code § 34-26-5-9(e). The Clerk shall provide a copy of the Protection Order for each party, and to the Sheriff for service in the county in which the protected party resides. See Indiana Code § 5-2-9-6. Some courts may also have the Petitioner/Respondent be provided FORM PO-0107: Petitioner/Respondent's Verified Request For A Hearing.

2. The Court issues an Ex Parte Order and the law requires that a hearing be set.

In addition to the procedures discussed in #1, above, the Notice to Appear, FORM PO-0106 shall be served on the Respondent, along with a copy of the Petition.

3. The Court does not issue an Ex Parte Order, but does set the case for a hearing.

The Respondent shall be served with a copy of the Petition and a Notice to Appear, FORM PO-0106.

4. The Court does not issue an Ex Parte Order and does not set the case for a hearing.

Do not serve the Respondent, who is not yet a party to the case because they have not received a summons. Send a copy of the Order Denying Petition for Order for Protection, FORM PO-0110, to the Petitioner only. Sending a copy to the Respondent may unnecessarily create a dangerous situation for the Petitioner.

C. Summons and Service

A summons must be issued with a copy of the Petition, the Order granting a Protection Order, and/or a Notice to Appear. A copy of such a summons is at the end of this section. A summons is required to acquire jurisdiction under Trial Rule 4. The return of service may be a separate form.

After the Judge has issued a Protection Order, the Clerk must prepare the Protection Order Petition and notice of hearing for service on the Respondent.

BEST PRACTICE NOTE: Service by Municipal/State Law Enforcement Officer

Under current Indiana Law, it is permissible for any law enforcement agency to serve a Protection Order on a restrained individual. In such an instance, the law enforcement agency should enter the service information into the Protective Order Registry. As a practical note, any agency that performs this function outside of the Sheriff of the county should enter into a cooperative agreement with the Court to make sure proof of service is returned to the Clerk of the county. It would be beneficial if the officer or designated person, upon entering the service information into the registry, would print the Return of Service Information form that is available online. Forwarding this information in paper format to the clerk will allow the proof of service to be noted on the electronic Chronological Case Summary (CCS) and maintained in the physical case file, if one exists.

Return of Service: Instructions to Clerk

1. After receiving the return of service information for a Protection, No Contact, or Workplace Violence Restraining Order, the Clerk shall make a CCS entry about the return of service information.

SEE FORM PNW-0100 Instructions to Clerk

Return of Service Information for Protection Orders

USE FORM PNW-0101 Return of Service Information for Protection Orders, No Contact Orders, and Workplace Violence Restraining Orders

2. Return of service must be kept in a format that can be used later in a subsequent criminal case. Either of the following procedures is acceptable.
 - a. Some counties create a complete order and a redacted order. The redacted order is maintained in the public file, and the unredacted order with endorsed proof of service is kept confidential according to the Indiana Rules on Access to Court Records.
 - b. Other counties have all confidential information on a green sheet attached to a redacted Protection Order. Both the redacted order with the green sheet attached with proof of service is kept confidential according to the Indiana Rules on Access to Court Records. Only the redacted order is kept in the public portion of the file.

D. Modification, Extension and/or Termination

The Clerk shall provide the following forms to the protected person upon request:

FORM PO-0108	Petitioner's Verified Request for Dismissal
FORM PO-0111	Verified Motion to Reinstate Petition for an Order For Protection
FORM PO-0115	Petition to Modify an Order for Protection
FORM PO-0116	Verified Petition to Extend Order For Protection

E. Whenever a Protection Order is modified or terminated, the Clerk must transmit a copy of the Modification/Termination notice to all the law enforcement agencies, including those outside Indiana, which received the original Confidential Form/Protection Order.

USE FORM PO-0117 Notice of Extension or Modification

USE FORM PO-0118 Notice of Termination

F. Foreign Orders

USE FORM PO-0119 Registration of Foreign Protection Order

USE FORM PO-0120 Confidential Data Entry Form for Foreign Protection Orders

Sometimes a protected person from another jurisdiction will want to register their Order in the local county. Registration is a way for the protected person to ensure that the Order will be entered into both the Indiana Data and Communications System (IDACS) database and the National Crime Information Center (NCIC). In order to register a foreign Protection Order, the protected person will need to complete the forms mentioned above. Form PO-0119 is a pleading that is public in nature and will go into the Court file. The protected person will also need one (1) copy of the Protection Order they wish to register, which will also be a public record and filed in the Court file. The second form, the confidential form, PO-0120, is not public, and should only be used by Court staff, Clerk personnel, and law enforcement to enter the necessary information into IDACS and the NCIC. A foreign, registered Order for Protection should be assigned a "PO" case number, and shall be enforced as if it was "an order originating in Indiana" under [*Indiana Code § 34-26-5-17\(f\)*](#).

Registration of a foreign Protection Order requires no judicial action. The form for registration, Form PO-0119, can be completed by the Petitioner and filed with the Clerk. Once filed, the Clerk should treat it like any other Order of Protection issued by an Indiana Court.

The purpose of this procedure is to register a Protection Order from another state or a Native American Tribal Court in the state of Indiana. The registration procedure is not required in order for the Order to be enforceable in Indiana. The use of this process is discretionary with the Petitioner. The confidential form should never be distributed to the Respondent.

The Confidential Form for foreign Protection Orders (Form PO-0120) is different from the Confidential Form for "domestic" Orders, in recognition of the fact that not every state's laws and procedures are identical to Indiana's. The foreign Protection Order might be an Ex Parte Order, or one issued after a hearing. It may have been recently modified by the other jurisdiction's Court and

the protected person might just now be registering it. The forms are different because the Orders themselves are different.

G. Motion to Reinstate Petition for Protection Order

USE FORM PO-0111 Verified Motion to Reinstate Petition for an Order for Protection

This form should be used when a Petitioner did not appear for a hearing on the Petition for Protection Order and the Petition was dismissed. The Petitioner later requests reinstatement of the Petition. The Court will get a copy of this motion and rule accordingly.

H. Expungement of Protection Orders

Petitions to Expunge Protection Orders must be filed in the original Protection Order case (PO or JQ case type). The Violence Against Women Act prohibits the filing of Petitions in any other case type (including XP) because these cases are accessible to the public and searchable online.

[Indiana Code § 34-26-7.5-4](#) requires the Court to redact certain information from the Petition to Expunge. Indiana Code § 34-26-7.5-4 requires the Court to serve the redacted Petition to Expunge on the previously protected person. The Clerk should confer with the Judge and/or Court staff to determine whether the Clerk or Court staff will be performing these functions.

NOTE:

With all expungement protection order petitions, there must be a redacted version for service.

BEST PRACTICE NOTE: If the petition for expungement is not filed under seal as required by [Indiana Code § 34-26-7.5-3\(a\)-\(b\)](#), the clerk should scan the document as confidential and notify the Court.

For more information on expungement, see [Chapter 9](#).

CHAPTER 3

EX PARTE PROCEEDINGS AND ORDERS

“Ex parte proceeding: A proceeding in which not all parties are present or given the opportunity to be heard.

Ex parte order. An order made by the court upon the application of one party to an action without notice to the other.”

Black’s Law Dictionary, 7th Edition (1999)

I. Introduction

The cover sheet must be included as the first page of every order of protection. Orders of Protection should be issued in the form provided. [Indiana Code § 34-26-5-3\(c\)](#) and federal law require the inclusion of certain language regarding Brady disqualifiers and warnings of criminal penalty. These forms include findings, which must be made to make the order lawful and effective.

Each county may establish their own specific procedures for reviewing an ex parte Petition. Some courts review only the written/e-filed Petition for Protection Order. Other courts may conduct an ex parte hearing in a courtroom or virtually where the Petitioner is questioned under oath and on the record. After initial review, a few courts may have their court staff request the Petitioner supplement their sworn signed Petition to clarify the allegations contained in the Petition. (Ex. specifically explain the words used that the Petitioner labelled a “threat” in the Petition). Regardless of your county’s procedure, all ex parte petitions should be considered emergency situations and it is recommended that the petition be reviewed promptly.

Best Practice Note: A Court may decide to set the Petition for a hearing with notice to the Respondent without granting the Ex Parte Order. Prior to making this particular choice, the Court should consider the lethality and seriousness of the allegations in the Petition including any safety concerns for the Petitioner and history between the parties. When the Court does not grant an Ex Parte Order and notifies the Respondent that the Petitioner has requested an order, the safety risk to the Petitioner is significantly increased at a time when there is no protection for the Petitioner. The Court should not create a practice or policy where Ex Parte Orders are routinely rejected in favor of setting the Petition for hearing and should not use this practice other than on a very limited basis in order to protect the safety of petitioners who need assistance of the Court.

A. Determination of Proper Jurisdiction and Venue

The Court must determine whether it has jurisdiction and has proper venue to hear the Petition. Frequently, the Petition does not contain sufficient information to establish whether jurisdiction exists and venue is proper in the court hearing the Petition. Some courts conduct an ex parte hearing at the time the Petition is filed to determine whether jurisdiction and venue are proper. The Petitioner may be questioned under oath and on the record before an Ex Parte Order is issued, or the Court may grant a request from the Petitioner to add further written information to the sworn signed Petition. This procedure avoids delay in having the Petition heard by the proper court. Petitioners may also e-file their Petitions using public.courts.in.gov/porefsp#/. See [Section VI: E-filing Considerations for Odyssey Counties](#). Those courts which do not conduct ex parte hearings will need to determine jurisdiction and venue at the time of the contested hearing and may be required to transfer the hearing to the proper court, delaying the prompt hearing that the statute is designed to allow. Jurisdiction exists in the county where (1) the petitioner currently or temporarily resides; (2) respondent resides; or (3) where an act of domestic or family violence, or harassment occurred. [Indiana Code § 34-26-5-4\(b\)](#). Further inquiry into jurisdiction and venue requires an examination of the alleged acts or threats, the existence of other pending proceedings, and the relationship between the parties.

B. Findings of Fact and Conclusions

Protective orders are similar to injunctions, and therefore in granting an order, the trial court must sua sponte make special findings of fact and conclusions thereon." [Fox v. Bonam, 45 N.E.3d 794, 798 \(Ind.Ct.App. 2015\)](#)(citing [Hanauer v. Hanauer, 981 N.E.2d 147](#), 148 (Ind.Ct.App. 2013)). Similarly, [Indiana Rule of Trial Procedure 52\(A\)](#) states, "[t]he court shall make special findings of fact without request (1) in granting or denying preliminary injunctions..." The appellate court applies a two-tiered standard of review: the court first determine whether the evidence supports the findings, and then determines whether the findings support the order. Fox, 45 N.E.3d at 798. The court should consider supplementing its findings and conclusions in the Ex Parte Protection Order as it deems appropriate.

C. Who May Grant Protection Orders – Judges or Magistrates?

A magistrate may issue final protection orders without being countersigned by a judge. [Indiana Code § 33-23-5-8.5](#).

D. Delivery of Protection Orders to Sheriff

The implementation of the Protection Order Registry (POR) has simplified the post-hearing procedure. The POR takes care of notifications automatically to designated local law enforcement agencies. Registration of the Order occurs automatically as soon as the Order is issued. Law enforcement serves the Order on the Respondent.

[Indiana Code § 34-26-5-9\(e\)](#) requires the Court to “transmit” a copy of an Order of Protection (Order, Coversheet and Confidential Form) to the Clerk for processing under Indiana Code § 5-2-9. The statute requires the Clerk to enter or provide a copy of the Order to the Indiana Protective Order Registry established by [Indiana Code § 5-2-9-5.5](#).

E. Qualifying Acts

1. If the Petitioner is the victim of an act of domestic or family violence, a sex offense, stalking, or sex grooming as defined by [Indiana Code § 35-42-4-13](#) (Petition on Behalf of a Child), an Ex Parte Protection Order may be issued. If the Petition does not provide sufficient facts alleging an act of domestic or family violence, a sex offense, stalking, repeated acts of harassment, or sex grooming as defined by [Indiana Code § 35-42-4-13](#) (Petition on Behalf of a Child), the Court may deny the Petition.
2. If the Petition solely alleges repeated acts of harassment, no Ex Parte Order can be issued without notice to the Respondent and a hearing. Review the Petition and if it appears harassment did not occur, the Court may deny the Petition. However, if the Court finds sufficient evidence alleges harassment, set a hearing no later than thirty (30) days after the Petition is filed. [Indiana Code § 34-26-5-9\(b\)](#). The Harassment Petition will need a correct, current address or other information for Respondent which could be used to locate the Respondent for service of the hearing date.

BEST PRACTICE NOTE: For purposes of future enforcement, the Protection Order Committee recommends personal service on Respondents in accordance with [Trial Rule 4.1\(A\)\(2\)](#). See [Hill v. Ramey, 744 N.E.2d 509 \(Ind. Ct. App. 2001\)](#). Service can be effected by a police officer or another party giving a copy to the Respondent or informing the Respondent orally of the existence of an Order; or service by registered or certified mail, as described in [Trial Rule 4.1\(A\)\(1\)](#), may be sufficient for future enforcement if a receipt is signed by the Respondent. Service by “tack and mail”, as described in [Trial Rule 4.1\(A\)\(3\)](#), or by other means under Trial Rule 4 generally, may not be sufficient service by itself to show “beyond a reasonable doubt” that the Respondent knew of the existence of the Protection Order for subsequent criminal prosecution.

3. If the Petition alleges harassment and another qualifying act (ex. domestic violence), the Court may issue an Ex Parte Protection Order based upon the act other than harassment. A Court may choose not to set a subsequent hearing on harassment because it is moot. However, the Court may have a duty to transfer the case to another Court that has jurisdiction over an action that relates to the subject matter of the requested order of protection or need to set a hearing because of the specific relief sought by the Petitioner in the Petition. See Section IV regarding when a hearing is required for an Ex Parte Protection Order.

NOTE:

Under [Indiana Code § 34-26-5-4\(d\)](#), a Petition for a Protection order based on harassment MUST be filed in a court that has “jurisdiction over an action that relates to the subject matter of the requested civil order for protection.”

USE FORM PO-0110: Order Denying Petition for an Order of Protection

USE FORM PO 0106: Notice to Appear

NOTE:

If the Court does not issue an Ex Parte Order and does not set the case for a hearing, do not serve the Respondent, who is not yet a party to the case because they have not received a summons. Send a copy of the Order Denying Petition for Order for Protection, FORM PO-0110, to the Petitioner only. Sending a copy to the Respondent may unnecessarily create a dangerous situation for the Petitioner. See [18 USC § 2265 \(d\)\(1\)](#).

4. No Mutual Orders of Protection

There can be no mutual orders for protection against both parties. If both parties allege injury, each party shall file a separate petition which is assigned a separate PO cause number. The trial court shall review each Petition separately, and grant or deny each Petition on its individual merits. If both Petitions are granted, the Court shall create separate orders with specific findings justifying the issuance of each order. [Indiana Code § 34-26-5-14 \(b\)](#).

5. Transfer to Proper Court

1. If another Court has jurisdiction of the parties because of a pending dissolution, paternity, CHINS, or delinquency proceeding or even a civil action, see [Sims v. Lopez, 885 N.E.2d 15 \(Ind.Ct.App. 2008\)](#) and no emergency exists, transfer the Petition to that Court. Where no emergency situation exists, the Court where divorce, custody, and visitation matters were heard retains continuing jurisdiction over the case, and a party should go to that court to secure a protective order absent some extraordinary circumstance. [State ex rel. Meade v. Marshall Superior Court II, 644 N.E.2d 87 \(Ind. 1994\)](#). An order for custody, parenting time, or possession or control of property issued under the Ex Parte Protection Order is superseded by an order issued from a court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties. [Indiana Code § 34-26-5-9\(h\)\(i\)](#).
2. If the reviewing court finds an emergency exists, review the ex parte petition, and if granted transfer the Ex Parte Protection Order to the other court with continuing jurisdiction. The transfer does not affect the expiration date of the Ex Parte Protection Order, so the incoming Court may extend or modify the Order for Protection if appropriate.

Note:

Each party has a continuing duty to inform the Court of each separate proceeding for an Order for Protection; any civil litigation; each proceeding in a family, domestic relations, or juvenile court; and each criminal case involving a party or a child of the parties. The information must include the case

name, case number, and the county or state in which the proceeding is held, if known by the party. See [Indiana Code § 34-26-5-5](#) and Question 4 of the Petition for Order of Protection.

3. If an emergency exists, grant interim relief and transfer to the proper court.

USE FORM PO-0122: Order of Transfer to Court Having Jurisdiction

USE FORM PO-0117: Notice of Extension or Modification

II. Who are the Proper Parties?

A. Petitioner

1. Adult Victims of Domestic or Family Violence, Stalking, Sex Offenses, or Harassment.
 1. A victim of domestic or family violence may file a Petition for protection. See [Indiana Code § 34-26-5-2\(a\)](#). "Domestic or family violence" is defined as a family or household member committed one or more of the following acts: (a) attempting, or threatening to cause, or actually causing physical harm to another family or household member; (b) placing a family or household member in fear of physical harm; (c) causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress; or (d) beating, torturing, mutilating, or killing a vertebrate animal without justification with an intent to threaten, intimidate, coerce, harass or terrorize a family or household member. [Indiana Code § 34-6-2-34.5](#).
 2. Stalking may occur between parties who are "family or household members," or may occur between parties who do not have a "family or household member" relationship. See [Indiana Code § 34-26-5-2\(a\)\(2\)](#). A criminal charge or conviction is not required. Stalking is defined as a knowing or intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. [Indiana Code § 35-45-10-1](#). A course of conduct for stalking is defined as two or more incidents under Indiana law.

Note:

As many Petitioners file for protection orders pro se, they may not understand the statutory differences between harassment and stalking. The Court will have to review the Petition to ensure that the facts dictate the decision, rather than the boxes checked, as to whether the Petition falls under stalking or harassment.

Stalking 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.

“Repeated” has been defined as “more than once,” and “continuing harassment” includes the non-exclusive list of following or pursuing the victim; communicating with the victim in person, in writing, by telephone, by telegraph, or through electronic means; posting on social media if post is directed to the victim or directly or indirectly refers to the victim. [Indiana Code § 35-45-10-3](#), and see [Falls v. State, 131 N.E.3d 1288 \(Ind. 2019\)](#).

3. Sex offenses may occur between parties who are “family or household members,” or may occur between parties who do not have a “family or household member” relationship. Sex offenses are enumerated in Indiana Code § 35-42-4, and a criminal charge or conviction is not required.
4. Harassment may occur between parties who are “family or household members,” or may occur between parties without a “family or household member” relationship. A criminal charge or conviction is not required. Harassment is defined as conduct directed toward a victim that includes but is not limited to repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress. [Indiana Code § 35-45-10-2](#).

“Impermissible contact” includes but is not limited to (a) following or pursuing the victim; (b) communicating with the victim in person, in writing, by telephone, by telegraph, or through electronic means; or (c) posting on social media, if the post is directed to the victim, or refers to the victim, directly or indirectly. [Indiana Code § 35-45-10-3](#). 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.

***Note:**

No Ex Parte Order can be issued solely alleging harassment without notice and a hearing. Review the Petition and if insufficient evidence of harassment is alleged, the Court may deny the Petition and not set it for hearing. If the court finds sufficient evidence of harassment has been alleged in the Petition, the Court still does not issue an Ex Parte Order for Protection but sets the matter for a hearing no later than thirty (30) days after the Petition is filed and has a notice to appear served upon the Respondent. If the Petition alleges harassment and another qualifying act (ex. domestic violence), the Court may issue an ex parte Order for Protection based upon the act other than harassment and may choose to set the harassment allegation for hearing with notice sent to the Respondent. The Court may also decide that the need for a hearing is moot, based on the allegations other than harassment. If the parties have another matter pending, the harassment Petition shall be transferred to be heard with the pending case.

- USE FORM PO-0110: Order Denying Petition for an Order of Protection
- USE FORM PO 0106: Notice to Appear
- USE FORM PO-0122: Order of Transfer to Court Having Jurisdiction
- USE FORM PO-0102: Instructions for Petition for Order of Protection – Filed by Person Seeking Protection
- USE FORM PO-0105: Ex Parte Order for Protection for the Individual

2. Child Victims of Domestic or Family Violence, Stalking, Sex Offenses, Sex Grooming, or Harassment.

The parent, guardian, or other representative of a child who has been a victim of domestic or family violence, stalking, a sex offense, sex grooming, which means engaging in a course of conduct involving repeated or continuing contact with the child that is intended to prepare or condition the child for sexual activity, or repeated acts of harassment, may file a Petition on behalf of the child. See [Indiana Code § 34-26-5-2](#). "Domestic or family violence", stalking, sex offenses, and harassment are defined above.

Form PO-0103 names the Child as Petitioner. The parent, guardian or other representative of the Child is named as the Child's "Next Friend." This designation of parties provides the Child the protection intended by the statute. The Indiana Court Rules on Access to Court Records do not allow the use of initials or similar designations to ensure a child their anonymity in protection order cases. See [Indiana Access to Court Records 5\(C\)\(2\)](#).

Practice Note: If the "Next Friend" is not the parent or guardian, the Indiana Civil Protection Order Act (ICPOA) expressly provides that "another representative" may petition for protection on behalf of a child. [Indiana Code § 34-26-5-2\(c\)](#). "Representative" means a spouse, parent, guardian, trustee, attorney, or other legal agent. [Indiana Code § 34-18-2-25](#) and [C.H. v. A.R., 72 N.E.3d 996](#) (Ind. Ct. App. 2017). The Court of Appeals has found a school corporation to stand "in loco parentis" to a child and allowed the school corporation to petition on behalf of a child as "another representative". [S.B. vs Seymour Cmt. Sch., 97 N.E.3d 288](#) (Ind.Ct.App. 2018).

USE FORM PO-0103: Instructions for Petition for Order of Protection – Filed on Behalf of a Child

USE FORM PO-0101: Petition for Order of Protection-Filed on Behalf of a Child

B. Respondent

1. Legal Basis for Petition for Protection

The Petition may be brought against a family or household member who commits an act of domestic or family violence, or against any person who commits stalking, a sex offense, or harassment against the victim. See [Indiana Code § 34-26-5-2](#). In addition to the above basis for a Protection Order, the Petition on behalf of a child may be brought against any person who engaged in a course of conduct involving repeated or continuing contact with a child

that is intended to prepare or condition a child for sexual activity (as defined by [Indiana Code § 35-42-4-13](#)). [Indiana Code § 34-26-5-2\(c\)\(3\)](#).

Family or household member” is defined as (a) the Petitioner and Respondent being current or former spouses; (b) the Petitioner and Respondent dating each other or used to date each other; (c) the Petitioner and Respondent having a child in common; (d) the Petitioner and Respondent being related by blood or adoption or now related by marriage (ex. step-brother and step-sister); (e) Petitioner has adopted a child of Respondent; (f) either Petitioner or Respondent are now or were the other’s guardian, ward, custodian, foster parent, or in a similar relationship. A “family or household member” could also mean a minor child of a person in one of the kinds of relationships described above. [Indiana Code § 34-6-2-44.8](#).

2. Only one Respondent per Order

A Petition may name more than one Respondent, but each Respondent requires a separate case number and a separate Court file. See [Indiana Code § 34-26-5-2\(d\)](#).

3. Minor Respondents

A Petition may name an unemancipated minor as a respondent. Any court of record may issue an Ex Parte Order as to an unemancipated minor, but the Petition may be transferred for hearing to a court having juvenile jurisdiction. See [Indiana Code § 34-26-5-2\(e\)](#).

The Protection Order Committee recommends transfer to the juvenile court because of issues of confidentiality and the relief that would be required if the Order of Protection is violated by the minor respondent. If an order regarding a minor Respondent is required, the juvenile court is best able to administer it. Only the juvenile court may punish a juvenile for violation of the Order of Protection. If the minor respondent does not have a parent or guardian present, the juvenile court may appoint a guardian ad litem or attorney.

III. Venue

A. Any court of record may issue an Order for Protection. See [Indiana Code § 34-26-5-4\(a\)](#). Additionally, if a court has jurisdiction 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. [Indiana Code § 34-26-5-4\(d\)](#).

B. Effect of Pending Proceedings

1. Another pending proceeding between the parties does not preclude the entry of an Order for Protection. An Order for Protection is in addition to, and not instead of, another available civil or criminal proceeding. (Ex. No Contact Order in pending Criminal Case). See [Indiana Code § 34-26-5-6\(1\)](#).
2. A Petitioner is not barred from seeking an Order because of another pending proceeding. See [Indiana Code § 34-26-5-6\(2\)](#).
3. A Court may not delay granting relief because of the existence of a pending action between the Petitioner and the Respondent. See [Indiana Code § 34-26-5-6\(3\)](#).
4. After the Court rules on the Petition ex parte, the case must be transferred for hearing to the Court having jurisdiction of another pending case between the parties or involving their child. See [Indiana Code § 34-26-5-6\(4\)](#). The Court may transfer the case to another jurisdiction, even out of state, upon request of either party. However, the Court should consider the distance of travel required between where Petitioner or Respondent reside and where the case would be heard if transferred. Additionally, the Court should contact the court that would receive the case to determine if they will accept the transfer.

Petitions for orders of protection affecting parenting time are required to be filed in the dissolution court or the court establishing paternity. [Indiana Code § 31-14-16-1](#), [31-15-4-1\(b\)](#), [31-15-5-1](#). Other courts of record may hear the Petition ex parte on an emergency basis but must transfer the case to the proper court for hearing. [Indiana Code § 34-26-5-6\(4\)](#).

C. Residency

Any court of record may issue an order for protection where the Petitioner currently or temporarily resides, or the Respondent resides, or where the domestic or family violence, or harassment occurred. There is no minimum residency requirement. For example, if a Petitioner is temporarily residing at a relative's house or at a shelter in a county, then for the purposes of the Indiana Civil Protection Order Act (hereinafter "ICPOA"), the Petitioner has sufficient residence in that county to file a petition for an order of protection. See [Indiana Code § 34-26-5-4](#)

D. Remoteness in Time of Allegation

Lapse of time no bar. A Court cannot deny relief solely because of lapse of time between the act of domestic or family violence, or harassment and the filing of the Petition. See [Indiana Code § 34-26-5-13](#). This section of the Indiana Civil Protection Order Act (ICPOA) recognizes that a perpetrator of domestic or family violence may pose a risk of violence long after the last act or episode of violence and an Order may be necessary to protect a victim from that continuing or recurrent risk. As an example, the intimate partner was incarcerated for a period of years for setting the Petitioner's home on fire, and the Petitioner is requesting protection. The trial court can consider the remoteness of incidents in determining whether a protection order is warranted, however, that remoteness cannot be the sole reason for denial of a protection order. [Fox v. Bonam, 45 N.E.3d 794 \(Ind. Ct. App. 2015\)](#).

E. Duration of Ex Parte Protection Order:

The Court may grant an Ex Parte Protection Order for up to two (2) years, unless the Judge decides on a different duration. [Indiana Code § 34-26-5-9\(f\)](#). If the Respondent is a sex or violent offender who is required to register as a lifetime sex or violent offender, and the Petitioner was the victim that resulted in said requirement, the Court may issue the Protection Order for an indefinite duration unless another date is ordered by the Court. [Indiana Code § 34-26-5-9\(g\)](#). The Order for Protection is effective indefinitely after the date of issuance. The sheriff of each county shall provide expedited service for the Order for Protection.

IV. When is a Hearing Required for an Ex Parte Protection Order?

1. Some courts set all Petitions seeking Protection for a hearing regardless of the relief requested to ensure that service has been obtained on the Respondent.
2. No hearing is required if the Ex Parte Protection Order prohibits:
 1. The Respondent from committing or threatening to commit acts of domestic or family violence against the Petitioner and each designated family or household member, or
 2. Prohibits the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the Petitioner, or
 3. Orders Respondent to stay away from the Petitioner's residence, school, employment and/or other specified places frequented by the Petitioner and each designated family or household members. [Indiana Code § 34-26-5-9\(c\)](#).

After issuance of an Ex Parte Protection Order, both the Order and Petitioner's/Respondent's Verified Request for a Hearing should have expedited Sheriff service to the Respondent. See [Indiana Code § 34-26-5-9\(f\)](#). The Petitioner or Respondent

may request a hearing on the Ex Parte Protection Order at any time. [Indiana Code § 34-26-5-10\(a\)\(2\)](#). The hearing must be held not more than thirty (30) days after the request for hearing is filed unless continued by the Court for good cause shown. [Indiana Code § 34-26-5-10\(a\)\(2\)](#). The Court shall notify the parties of the date and time of the hearing by first class mail. [Indiana Code § 34-26-5-10\(a\)\(2\)](#). A party may only request one (1) hearing of a Petition.

USE FORM PO-0105: Ex Parte Order for Protection

USE FORM PO-0107: Respondent's Verified Request for A Hearing

Note:

If the Petition for Protection is based solely on allegations of harassment, an order may NOT be granted ex parte. A Court must hold a hearing within thirty (30) days of the Petition. [Indiana Code §34-25-5-9\(b\)](#).

3. A hearing is required within thirty (30) days of issuing the Ex Parte Protection Order if Petitioner requests or Court orders:
 1. The exclusive possession, care, custody, or control of any animal owned, possessed, kept, or cared for by the Petitioner, Respondent, minor child of either party or any other family or household member, or prevents Respondent from removing, transferring, injuring, concealing, harming, attacking, mistreating, threatening to harm or otherwise disposing of the above-named animal, or
 2. Evicts the Respondent from the Petitioner's residence (regardless of ownership), or
 3. Orders the Respondent to give the Petitioner possession or use of a residence they both share, an automobile and/or other personal effects (including the above animal), or
 4. Orders a cell phone provider to transfer a telephone number for Petitioner or minor child in Petitioner's custody, in addition to providing that the Petitioner have the sole right to continued use of said telephone number and the financial responsibility for the services associated with that telephone number. See [Indiana Code § 34-26-5-21](#).
 5. Directs a law enforcement officer to accompany the Petitioner to the parties' home to ensure Petitioner is safely restored to possession of the home, car, and other necessary personal items (including animals) or to supervise the Petitioner's or Respondent's removal of personal belongings and animals, or
 6. Orders other relief necessary to provide for the safety and welfare of a Petitioner and each designated family or household member. [Indiana Code § 34-26-5-9-\(c\)\(3\), \(5\),\(6\), \(7\), \(8\)](#) and [Indiana Code §34-26-5-10\(c\)](#).

Note:

In a situation involving an eviction or writ of assistance, the Court should order a law enforcement officer to supervise the transfer of property to ensure the Petitioner or Respondent receives the possession of the property ordered, and to keep peace between the parties.

USE FORM PO-0105: Ex Parte Order for Protection

-and-

USE FORM PO-0106: Notice to Appear

4. A Court is required to have notice issued to the Respondent and hold a hearing before the Court when the Court:
 - A. Specifies parenting time arrangements (including supervision by a third party or a denial of parenting time), or
 - B. Orders Respondent to pay money to the Petitioner for attorney fees, rent/mortgage payments, child support (if a duty exists), or for other expenses related to domestic or family violence such as medical bills, counselling, shelter or repair fees, or for other costs incurred by the Petitioner in bringing the action, or
 - C. Places the Respondent on a GPS tracking device and orders the Respondent to pay monitoring fees, or
 - D. Prohibits the Respondent from possessing firearms, ammunition, or deadly weapons and requires the Respondent to surrender firearms, ammunition, or deadly weapons, or

Note:

The Court prohibiting the Respondent from possessing firearms, ammunition, or deadly weapons and requiring the Respondent to surrender firearms, ammunition, or deadly weapons does not apply to the Respondent who is exempt under [18 U.S.C. § 925](#).

5. Permits the Respondent and Petitioner to occupy the same location for any purpose the Court determines is legitimate or necessary. The Court may impose terms and conditions upon Respondent when granting this permission.
6. Grants an Order for Protection where the Petition for Protection only alleges harassment.

Note:

The Court may grant the above relief after notice and a hearing regardless of whether or not the Respondent appears for the hearing. [Indiana Code § 34-46-5-9\(d\)](#).

E. Impact on School Corporation's In-person Instruction

If the Petition is filed by a person or on behalf of an unemancipated minor, the Court shall determine after review whether an issued order may impact a school corporation's ability to provide in-person instruction for the person or the un-emancipated minor. If the Court determines the order may make such an impact, the Court may not issue the order without a registered or certified notice being provided to the school corporation which provides notice of the Petition and the date for hearing, if applicable. The school corporation is allowed three (3) business days to respond upon receipt of the notice and may testify at the hearing. If the school corporation fails to respond to the notice, the Court may issue the order for protection. [Indiana Code § 34-26-5-2\(f\)](#).

USE FORM PO-0137: Notice to School Corporation

Note:

Ex parte remedies do not include custody determinations or Brady Disqualification.

Custody is not included in the Indiana Civil Protection Order Act (hereinafter "ICPOA"). A Court has no authority to make a custody determination as part of a Protection Order. Parties must pursue custody in a dissolution or paternity action. If one is not pending, it should be filed. Non-custodial parties often attempt to obtain custody with a Protection Order by filing a Petition for Protection on behalf of a child against the custodial parent. The Court may attempt to determine which party is the custodial parent. If the child is in a potentially unsafe situation, the non-custodial parent has the additional option of making a report to the Indiana Department of Child Services (DCS), or to local law enforcement, and still may file a Petition to Modify Custody in the dissolution or paternity case if the Court denies the Petition for Protection on behalf of a child.

Note:

Be aware of distinctions between an Order for Protection and restraining orders under [Trial Rule 65\(E\)](#). The Court can grant Ex Parte Orders for Protection if the statutory requirements are met. See [In Re Anonymous, 786 N.E.2d 1185, 1190 \(Ind. 2003\)](#).

Brady Disqualification. See [Chapter 10](#) for discussion of when a Respondent may be subject to a Brady disqualification.

V. What to do if an Expungement Motion is Filed?

Expungement of Ex Parte Protection Order. See [Chapter 9: Modification, Termination, and Expungement of Protection Order](#) for when a Respondent may expunge an ex parte Order for Protection.

VI. E-filing Considerations for Odyssey Counties

A. E-Filing Requirement

Petitioners may e-file, and attorneys are required to e-file Petitions for Protection through the Protection Order E-filing service: public.courts.in.gov/porefsp#/. Attorneys for the Respondent can also e-file their appearances and requests for hearing or motions to continue a hearing into a pending PO case.

*Note:

Pro Se Petitioners still have the option of filing their Petitions for Protection on paper.

B. Clerk's Office

The majority of counties' Clerk's Offices' check and accept the E-filed Petitions from INcite and move the Petition into the assigned Judge's queue. It is recommended that the Clerk frequently check their e-filings to determine if a "PO" case type has been recently e-filed to ensure that Protection Orders are quickly processed and addressed. In addition to the Petitioner's own contact information listed in the Appearance Form, the Petitioner will need to supply an address or other contact information for the Respondent for service. If the Ex Parte Protection Order is granted without service being made upon the Respondent, the Ex Parte Order will have no effect. Additionally, if a hearing is needed, the Respondent's contact information is necessary. The Clerk's Office should input the parties' addresses, telephone numbers, SSNs, DOBs, and e-mail addresses (if available) into Odyssey. The Clerk may also telephone the assigned Judge's Office to advise that a "PO" case type is in their queue in order to further speed up the review process.

C. Judicial Staff

1. It may be helpful that the Judicial Staff review the Petition, Confidential Sheet, Appearance Form and the Clerk's Office input to verify that the parties' addresses, telephone numbers, SSNs, DOBs, and e-mail addresses (if available) have been input into Odyssey.
2. If the Ex Parte Petition is granted by the Judicial Officer, the Order will be sent to the Petitioner through automated Odyssey within the next twenty-four (24) hours. The Court Staff may expedite this process by manually e-mailing the Order to the Petitioner through Odyssey. This ensures that the Petitioner receives the Ex Parte Order immediately after it's signing. The Ex Parte Order will need to be placed into the Clerk's Office queue, so that the Sheriff's service of the Order on the Respondent may be effectuated. If a hearing is scheduled by the Court, the same process would be utilized with the Notice to Appear.

D. Insufficient E-filed Petition for Protection

1. If the Judicial Officer finds the e-filed Ex Parte Petition to be insufficient on its face, the Court may deny the Petition or set the Petition for a hearing.

Use Form PO-0110: Order Denying Petition for an Order of Protection

2. If the Court believes more information is necessary in order to make a determination regarding the e-filed Ex Parte Petition, the Court may schedule an ex parte hearing in one (1) to two (2) days and order the Petitioner to appear for an ex parte hearing. Using Odyssey, the Judicial Staff can manually e-mail the Petitioner the ex parte Notice to Appear. See [Addendum 1: Sample Notice to Appear](#). The Court may also consider holding a virtual ex parte hearing, which may be able to occur sooner and with less inconvenience to both the Court and the Petitioner. At the ex parte hearing, the Court may either hear evidence under oath, or allow the Petitioner to submit an Amendment to the Petition for Ex Parte Protection Order. See [Addendum 2: Sample Amendment](#). Following the ex parte hearing, the Court may either deny or grant the Ex Parte Petition for Protection. If granted, the Ex Parte Order will need to be sent to the Clerk's Office for Sheriff's service of the Order on the Respondent to be effectuated.

Use Form PO-0110: Order Denying Petition for an Order of Protection

-or-

Use Form PO-0105: Ex Parte Order for Protection for the Individual

3. If the Judicial Officer finds the Ex Parte e-filed Petition on its face to be insufficient the Court may deny the petition.

Use Form PO-0110: Order Denying Petition for an Order of Protection

E. E-Filed Petition with Harassment Allegation

If the Petition is found to only allege harassment, the Court shall set the matter for hearing within thirty (30) days and issue a Notice to Appear to the Respondent. The Clerk's Office shall provide the Notice to Appear to the Sheriff's Office for service of the Notice on the Respondent to be effectuated. To ensure the Petitioner is aware of the Court date, a Notice to Appear may also be issued to the Petitioner in the same manner as the Respondent.

Use Form PO-0106: Notice to Appear

F. Minor Respondents

A Petition may name an unemancipated minor as a Respondent. Any Court of record may issue an ex parte Order as to an unemancipated minor, but the petition may be transferred for hearing to a Court having juvenile jurisdiction. See [Indiana Code § 34-26-5-2\(e\)](#). The Protection Order Committee recommends transfer to the juvenile court because of issues of confidentiality and the relief that would be required if the Order of Protection is violated by the minor respondent. If an order regarding a minor respondent is required, the juvenile court is best able to administer it. Only the

juvenile court may punish a juvenile for violation of the Order of Protection. If the minor respondent does not have a parent or guardian present, the juvenile court may appoint a guardian ad litem or attorney.

VII. Jurisdiction and Venue

A. Subject Matter Jurisdiction

The Court's jurisdiction is limited to occurrences of domestic or family violence, stalking, sex offenses, repeated acts of harassment, and additionally for any person who engaged in a course of conduct involving repeated or continuing contact with a child that is intended to prepare or condition a child for sexual activity (as defined by [Indiana Code § 35-42-4-13](#)) on Petitions on behalf of a child. See [Indiana Code § 34-26-5-2](#).

Any court of record may issue an Order for Protection. See [Indiana Code § 34-26-5-4\(a\)](#). Additionally, if a court has jurisdiction 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. [Indiana Code § 34-26-5-4\(d\)](#).

B. Venue

1. Effect of Pending Proceedings: Another pending proceeding between the parties does not preclude the entry of an Order for Protection. An Order for Protection is in addition to, and not instead of, another available civil or criminal proceeding. See [Indiana Code § 34-26-5-6\(1\)](#).

A Petitioner is not barred from seeking an Order because of another pending proceeding. See [Indiana Code § 34-26-5-6\(2\)](#).

A Court may not delay granting relief because of the existence of a pending action between the Petitioner and the Respondent. See [Indiana Code § 34-26-5-6\(3\)](#).

After the Court rules on the Petition ex parte, the case must be transferred for hearing to the Court having jurisdiction of another pending case between the parties or involving their child. See [Indiana Code § 34-26-5-6\(4\)](#).

2. Parenting time: Petitions for orders of protection affecting parenting time are required to be filed in the dissolution court or the court establishing paternity. [Indiana Code § 31-14-16-1](#), [31-15-4-1\(b\)](#), [31-15-5-1](#). Other courts of record may hear the petition ex parte on an emergency basis but must transfer the case to the proper court for hearing. [Indiana Code § 34-26-5-6\(4\)](#).

C. Remoteness in Time of Allegation

Lapse of time no bar. A Court cannot deny relief solely because of lapse of time between the act of domestic or family violence, or harassment and the filing of the Petition. See [Indiana Code § 34-26-5-13](#). This section of the ICPOA recognizes that a perpetrator of domestic or family violence may pose a risk of violence long after the last act or episode of violence and an Order may be necessary to protect a victim from that continuing or recurrent risk. As an example, the intimate partner was incarcerated for a period of years for setting the Petitioner's home on fire, and the Petitioner is requesting protection. The trial court can consider the remoteness of incidents in determining whether a protection order is warranted, however, that remoteness cannot be the sole reason for denial of a protection order. [Fox v. Bonam, 45 N.E.3d 794 \(Ind. Ct. App. 2015\)](#).

VIII. Hearings for Ex Parte Orders of Protection

After granting an ex parte petition, some courts set the matter for a hearing regardless of receiving a request for hearing from the Respondent. This method ensures that the Respondent knows of the existence of the ex parte order based upon proof of service.

A. The following ex parte relief may be granted without a hearing:

1. Prohibit the Respondent from committing or threatening to commit acts of domestic or family violence, stalking, or sex offenses against the Petitioner and/or each designated family or household member or prohibit the Respondent from committing a course of conduct involving repeated or continuing contact with the Child-Petitioner that is intended to prepare or condition the Child-Petitioner for sexual activity (as defined in Indiana Code § 35-42-4-13) for Petitions on Behalf of a Child.
2. Beating (as described in Indiana Code § 35-46-3-0.5(2)), torturing (as described in Indiana Code § 35-46-3-0.5(5)), mutilation (as described in Indiana Code § 35-46-3-0.5(3)), or killing a vertebrate animal without justification with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.
3. Prohibit the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the Petitioner
4. Order the Respondent to stay away from the Petitioner's residence, school, employment and/or other specified places frequented by the Petitioner and/or each designated family or household member. See Indiana Code § 34-26-5-9(c)(1), (2) & (4).

USE FORM PO-0105: Ex Parte Order for Protection

If, after a Court has granted ex parte relief, the Respondent desires a hearing to contest the ex parte Order, he or she may request one. See [Indiana Code § 34-26-5-10\(a\)](#).

USE FORM PO-0107: Respondent's Verified Request for a Hearing

B. Relief that may be initially granted ex parte, but requires a hearing within 30 days:

1. Evicting the Respondent from the Petitioner's residence
2. Ordering the Respondent to give the Petitioner possession or use of:
3. A home they both share
4. A car or other motor vehicle
5. Other necessary personal items
6. Exclusive possession, care, custody, or control of any animal owned, possessed, kept, or cared for by the Petitioner, Respondent, minor child of either Petitioner or Respondent, or any other family or household member
7. Prohibiting the Respondent from removing, transferring, injuring, concealing, attacking, mistreating, threatening to harm, or otherwise disposing of the described above animal.
8. Directing a law enforcement officer to accompany the Petitioner to the parties' residence to ensure the Petitioner is safely restored to possession of the home, car and other necessary personal items---including animals, or to supervise the Petitioner's or the Respondent's removal of personal belongings and animals.
9. Ordering other relief necessary to provide for the safety and welfare of a Petitioner and each designated family or household member. See Indiana Code § 34-26-5-9(c)(3), (5), (6), (7) & (8). (b) (3), (5), & (6), (7), & (8), and Indiana Code § 34-26-5-10(b).

USE FORM PO-0105: Ex Parte Order for Protection

-and-

USE FORM PO-0106: Notice to Appear

10. The Court may order a law enforcement officer to supervise the transfer of property to ensure the Petitioner/Respondent receives the possession of the property ordered, and to keep peace between the parties. See Form PO-0105, paragraph nine (9) which provides this relief.

C. Relief that may be ordered only after notice to Respondent and a hearing

1. Specifying parenting time arrangements such as supervision by a third party, or denial of parenting time.
2. Ordering the Respondent to pay money to the Petitioner, or on the behalf of the Petitioner, for:
 - a. Attorney fees;
 - b. Rent or mortgage payments;
 - c. Child Support, if a duty exists or maintenance;
 - d. Other expenses related to domestic or family violence such as medical expenses, counseling, shelter, and repair or replacement of damaged property;
 - e. Pay the costs and expenses of court-ordered GPS;

- f. Costs and fees in bringing the action.
3. Prohibiting the Respondent from possessing firearms, ammunition, or deadly weapons and requiring the Respondent to surrender firearms, ammunition or deadly weapons. See Indiana Code § 34-26-5-9(c)(2), (3) & (4).
4. Allow Petitioner or a child to continue to use a telephone number for which Petitioner will be financially responsible.
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 this permission.

USE FORM PO-0113: Order for Protection Issued After a Hearing

NOTE:

Ex parte remedies do not include custody determinations or Brady Disqualification.

D. Custody Considerations:

Custody is not included in the Indiana Civil Protection Order Act (hereinafter "ICPOA"). A Court has no authority to make a custody determination as part of a Protection Order. Parties must pursue custody in a dissolution or paternity action. If one is not pending, it should be filed. Non-custodial parties often attempt to obtain custody with a Protection Order by filing a Petition for Protection on behalf of a child against the custodial parent. The Court may attempt to determine which party is the custodial parent. If the child is in a potentially unsafe situation, the non-custodial parent has the additional option of making a report to the Indiana Department of Child Services (DCS), or to local law enforcement, and still may file a Petition to Modify Custody in the dissolution or paternity case if the Court denies the Petition for Protection on behalf of a child.

Note:

Be aware of distinctions between an Order for Protection and restraining orders under [Trial Rule 65\(E\)](#). The Court can grant ex parte Orders for Protection if the statutory requirements are met. See [In Re Anonymous, 786 N.E.2d 1185, 1190 \(Ind. 2003\)](#).

E. Brady Disqualification: See [Chapter 10](#) for discussion of when a Respondent may be subject to a Brady disqualification.

F. Conducting the Ex Parte Hearing

The conduct of an ex parte hearing to determine whether an ex parte Order of Protection should be issued is permissible. See [Advisory Opinion 1-01](#). In discussing ex parte custody orders, the Judicial Qualifications Commission stated:

In assessing both the sworn statements of the alleged irreparable harm which could result without the order, and the written certifications about notice or reasons for not providing it, if the judge

does not insist on an abundance of facts in the pleadings, the judge should be prepared to actively question the petitioner or the petitioner's attorney about these claims. The key inquiries pertain to why the petition is submitted ex parte. Where is the other party? What notice has been accomplished? Why should this matter be heard without the opposing party's participation? What exactly is the irreparable harm which would result if the case simply is set for a hearing after notice is made? No such potential harm was indicated in the instances investigated by the Commission.

Some judges insist that counsel bring in the petitioner to discuss these aspects of the petition. Other judges have expressed concern that these recommended discussions themselves constitute improper ex parte contacts. These concerns are misplaced. After all, the judge properly has entered into an ex parte proceeding if T.R. 65(B) is followed. To gather information which helps the judge determine whether the extraordinary relief is warranted only bolsters the fairness of the ex parte process which is underway. Nonetheless, the judge should not entertain discussions which go beyond what he or she believes is necessary to adequately entertain the petition. Ideally, the conversation will be recorded.

Excerpt from Advisory Opinion #1-01, Judicial Qualifications Commission

The same reasoning applies here. The petitioner may be questioned under oath and on the record before an ex parte order is issued. This ex parte hearing can accomplish two objectives. First, it can flesh out ambiguous and inadequate allegations to determine whether the petition should be supplemented or clarified, and to determine the nature and degree of emergency that exists. Second, it can reveal which court is the proper court to conduct a hearing, and hearing and permit a prompt transfer to the proper court. See [Advisory Opinion #1-01](#) and [Advisory Opinion #2-17](#). Furthermore, [Rule 2.9\(b\)\(5\)](#) of the Code of Judicial Conduct specifically allows the Judge to initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

The following dialogue may be used:

- [Place the Petitioner under oath.] State your name for the record.
- What is your relationship to the respondent?
- Did you ever live together? When did you stop living together? Who lives in the residence you shared? Does either of you have anything belonging to the other?
- Do you have any children together?
- Has a dissolution decree been entered? Has a dissolution petition been filed? In what court?
- Has a paternity petition been filed? Has paternity been established? Is there a court order regarding parenting time? Is there a court order establishing child support? In what court?
- Tell me what occurred that causes you to seek an order of protection.

G. Which Court Reviews the ex parte petition?

The Clerk should examine petitions when filed and under the direction of the judges assign them to the proper court. Any court can review the ex parte petition.

The courts in the county should adopt a local rule defining “pending” and specifying when and how cases will be transferred to the court in which a case involving the parties or their children is pending. See [Indiana Code §§ 34-26-5-6\(4\), 31-14-16-1, 31-15-4-1\(b\), 31-15-5-1](#).

USE FORM PO-0122

H. Who May Grant Protection Orders – Judges or Magistrates

A magistrate may issue final protection orders without being countersigned by a judge. [Indiana Code § 33-23-5-8.5](#).

I. Delivery of Protection Orders to Sheriff

The implementation of the Protection Order Registry (POR) has simplified the post-hearing procedure. The POR takes care of notifications automatically to designated local law enforcement agencies. Registration of the order occurs automatically as soon as the order is issued. Law enforcement serves the Order on the Respondent.

[Indiana Code § 34-26-5-9 \(e\)](#) requires the Court to “transmit” a copy of an Order of Protection (Order, Coversheet and Confidential Form) to the clerk for processing under Indiana Code § 5-2-9. The statute requires the clerk to enter or provide a copy of the Order to the Indiana protective order registry established by [Indiana Code § 5-2-9-5.5](#).

J. What to do if Expungement Motion is Filed

Expungement of Ex Parte Protection Orders. [See Chapter 9: Modification, Termination, and Expungement of Protection](#) for when a Respondent may expunge an ex parte Order for Protection.

K. E-filing Considerations for Odyssey Counties

Petitioners may e-file, and Attorneys are required to e-file Petitions for Protection through the Protection Order E-filing service: public.courts.in.gov/porefsp#/.

***Note:**

Pro Se Petitioners still have the option of filing their Petitions for Protection on paper.

The Clerk’s Office checks and accepts from INCite the E-filed Petition and moves it into the assigned Judge’s queue. It is recommended that the Clerk frequently checks their e-filings to determine if a “PO” case type has been recently e-filed to ensure that Protection Orders are quickly processed and addressed. The Clerk may also telephone the assigned Judge’s Office to advise that a “PO” case type is in their queue in order to further speed up the review process.

It is recommended that the Judicial Staff review the Petition, Confidential Sheet, Appearance Form and Clerk’s Office input to verify that the parties’ addresses, telephone numbers, SSNs, DOBs, and e-mail addresses (if available) have been inputted into Odyssey.

If the ex parte Petition is granted by the Judicial Officer, the Order will be sent to the Petitioner through automated Odyssey within the next twenty-four (24) hours. The Court Staff may expedite this process by manually e-mailing the Order to the Petitioner through Odyssey. This ensures that the Petitioner receives the ex parte Order immediately after it's signing. The ex parte Order will need to be placed into the Clerk's Office queue, so that the Sheriff's service of the Order on the Respondent may be effectuated. If a hearing is scheduled by the Court, the same process would be utilized with the Notice to Appear (Form PO-0106).

If the Judicial Officer finds the *ex parte* e-filed Petition to be insufficient the Court may deny the petition (**Use Form PO-0110**).

If the Court believes more information is necessary to make a determination, the Court may schedule an ex parte hearing in the next day or two (2), and order the Petitioner to appear for an ex parte hearing. Using Odyssey, the Judicial Staff can manually e-mail the Petitioner the ex parte Notice to Appear (see Addendum 1: Sample Notice to Appear). At the ex parte hearing, the Court may either hear evidence under oath, or allow the Petitioner to submit an Amendment to the Petition for ex parte Protection Order (see Addendum 2: Sample Amendment). Following the ex parte hearing, the Court may deny (**Use Form PO-0110**), or grant the ex parte Petition for Protection (**Use Form PO-0105**). If granted, the ex parte Order will need to be sent to the Clerk's Office for Sheriff's service of the Order on the Respondent to be effectuated.

If the Petition is found to only allege harassment, the Court shall set the matter for hearing within thirty (30) days and issue a Notice to Appear (**Use Form PO-0106**) to the Respondent. The Clerk's Office shall provide the Notice to Appear to the Sheriff's Office for service of the Notice on the Respondent to be effectuated. To ensure the Petitioner is aware of the Court date, a Notice to Appear (**Use Form PO-0106**) may also be issued to the Petitioner in the same manner as the Respondent.

CHAPTER 4

HEARINGS FOR PROTECTION ORDERS

I. Determination of Proper Jurisdiction and Venue

The Court must determine whether it has jurisdiction and has proper venue to hear the Petition. Jurisdiction is proper if the Petitioner lives in the county, the Respondent lives in the county, or if the acts alleged occurred in the county. There is no minimum residency requirement. See [Indiana Code § 34-26-5-4](#).

Frequently, the Petition does not contain sufficient information to establish whether jurisdiction exists, and venue is proper in the Court hearing the petition. Some courts conduct an ex parte hearing at the time the Petition is filed to determine whether jurisdiction and venue are proper. [See Chapter 3](#). This procedure avoids delay in having the petition heard by the proper court. Those courts which do not conduct ex parte hearings will need to determine jurisdiction and venue at the time of the contested hearing and may be required to transfer the hearing to the proper court, delaying the prompt hearing that the statute is designed to allow. The inquiry into jurisdiction and venue requires an examination of the alleged acts or threats, the existence of other pending procedures, and the relationship between the parties.

A. Qualifying Acts

If the Petitioner does not allege an act of domestic or family violence, a sex offense, stalking, repeated acts of harassment, or sex grooming as defined by [Indiana Code § 35-42-4-13](#) (Petition on Behalf of a Child), in the Petition or at the hearing, dismiss the Petition.

B. Transfer to Proper Court

If another Court has jurisdiction of the parties because of a pending dissolution, paternity, CHINS, or delinquency proceeding or even a civil action, See [Sims v. Lopez, 885 N.E.2d 15 \(Ind. Ct. App. 2008\)](#) and no emergency exists, transfer the Petition to that Court. If appropriate, enter, extend, modify or terminate the Protection Order. The Court may transfer the case to another jurisdiction, even out of state, upon request of either party. However, the Court should consider the distance of travel required between where Petitioner or Respondent reside and where the case would be heard if transferred. Additionally, the Court should contact the court that would receive the case to determine if they will accept the transfer.

USE FORM PO-0117 Notice of Extension or Modification

If an emergency exists, grant interim relief and transfer to the proper court.

USE FORM PO-0122 Order of Transfer to Court Having Jurisdiction of the Parties or their Children.

Each party has a continuing duty to inform the court of each separate proceeding for an order for protection; any civil litigation; each proceeding in a family, domestic relations, or juvenile court; and each criminal case involving a party or a child of the parties. The information must include the case name, case number, and the county or state in which the proceeding is held, if known by the party. [Indiana Code § 34-26-5-5](#). Question 4 on each type of Petition also includes cases between the parties.

II. Proper Parties

C. Petitioner

1. Adult Victims of Domestic or Family Violence. A victim of domestic or family violence may file a Petition. See [Indiana Code § 34-26-5-2\(a\)](#). "Domestic or family violence" is defined in [Indiana Code § 34-6-2-34.5](#), "Family or household member" is defined in [Indiana Code § 34-6-2-44.8](#).

USE FORM PO-0102 Instructions for Petition For Order of Protection – Filed By Person Seeking Protection

2. Child Victims of Domestic or Family Violence. The parent, guardian, or other representative of a child who has been a victim of domestic or family violence, stalking, a sex offense or grooming may file a Petition on behalf of the child. [See Indiana Code § 34-26-5-2](#). "Domestic or family violence" is defined in [Indiana Code § 34-6-2-34.5](#). "Family or household member" is defined in [Indiana Code § 34-6-2-44.8](#).

The Indiana Office of Court Services has revised Form PO-0103 to name the Child as a Petitioner. The parent, guardian or other representative of the Child is named as the Child's "Next Friend." This designation of parties provides the Child the protection intended by the statute. The previous practice of naming the representative as Petitioner resulted in orders of protection which taken literally did not prohibit contact between the Respondent and the Child.

USE FORM PO-0103 Instructions for Petition for Order of Protection – Filed on Behalf of a Child

3. Adult and Child Victims of Stalking. Stalking is included in the definition of domestic or family violence. See [Indiana Code § 34-6-2-34.5](#); [Indiana Code § 34-26-5-2\(a\)\(2\)](#). A criminal charge or conviction is not required. Stalking is defined in [Indiana Code § 35-45-10-1](#).

USE FORM PO-0102 Instructions for Petition for an Order for Protection –
Filed by Person Seeking Protection

-or-

USE FORM PO-0103 Instructions for Petition for an Order for Protection –
Filed on Behalf of a Child

4. Adult and Child Victims of Sex Offenses. Sex offenses are included in the definition of domestic or family violence. See [Indiana Code § 34-6-2-34.5](#); [Indiana Code § 34-26-5-2\(a\)\(2\)](#). Sex offenses are enumerated in Indiana Code § 35-42-4. A criminal charge or conviction is not required.

USE FORM PO-0102 Instructions for Petition for an Order for Protection – Filed by Person
Seeking Protection

-or-

USE FORM PO-0103 Instructions for Petition for an Order for Protection – Filed on Behalf of a
Child

5. Adult and Child Victims of Repeated Acts of Harassment.
"A person who is or has been subjected to harassment may file a petition for an order of protection against a person who has committed repeated acts of harassment." [Indiana Code § 34-26-5-2\(b\)](#).

Harassment, under [Indiana Code § 34-6-2-51.5](#), 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.

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.

Further, "a parent, a guardian, or another representative may file a petition for an order of protection on behalf of a child against a....person who has committed repeated acts of harassment against the child." [Indiana Code § 34-26-5-2\(c\)](#).

SEE FORM PO-0102 Instructions for Petition for Order of Protection –
Filed by Person Seeking Protection

-or-

SEE FORM PO-0103 Instructions for Petition for Order of Protection –
Filed on Behalf of a Child

However, under [Indiana Code § 34-26-5-9\(b\)](#) 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.

6. Child Victims of Sex Grooming

A person may file on behalf of a child who has been subjected to “a course of conduct involving repeated or continuing contact with a child that is intended to prepare or condition a child for sexual activity (as defined in [Indiana Code § 35-42-4-13](#)). Sexual activity is defined as sexual intercourse, other sexual conduct (previously referred to as sexually deviate conduct) or the fondling or touching of the buttocks, genitals, or female breasts.

Common aspects of sex grooming consist of an adult befriending a child, while introducing adult or sexual topics of conversation to the child and gradually conditioning the child to being touched by the adult. Sex grooming may start out with seemingly innocent compliments to the child, pats on the back, tickling, wrestling or gifts but then will escalate to more secret and/or sexualized behavior, along with adult gifts like a new cell phone, pornography, or lingerie.

D. Respondent

1. The Petition may be brought against a family or household member who commits an act of domestic or family violence, or against any person who commits stalking or a sex offense against the victim, or against any person that commits repeated acts of harassment, or against a person who engages in grooming of a child as defined by [Indiana Code § 35-42-4-13](#) (Petition on Behalf of a Child). See [Indiana Code § 34-26-5-2](#); [Essany v. Bower, 790 N.E.2d 148 \(Ind. Ct. App. 2003\)](#); [Parkhurst v. Van Winkle, 786 N.E.2d 1159 \(Ind. Ct. App. 2003\)](#).
2. Only one Respondent per Order. Each Respondent requires a separate case number and a separate Court file. See [Indiana Code § 34-26-5-2\(c\)](#).
3. Minor Respondents. A Petition may name an unemancipated minor as a Respondent. Any Court of record may issue an ex parte Order as to an unemancipated minor, if it appears

from the petition that the minor committed acts of domestic or family violence, stalking, or a sex offense. As with adults, the court may not issue an ex parte order if the acts alleged are repeated acts of harassment. Further, the petition may be transferred for hearing to a Court having juvenile jurisdiction. See [Indiana Code § 34-26-5-2\(d\)](#).

Best Practice Note: The Protection Order Committee recommends transfer to the juvenile court because of issues of confidentiality and the relief that would be required if the Order of Protection is violated by the minor respondent. If an order regarding a minor respondent is required, the juvenile court is best able to administer it. Only the juvenile court may punish a juvenile for violation of the Order of Protection. If the minor respondent does not have a parent or guardian present, the juvenile court may appoint a guardian ad litem or attorney.

III. Jurisdiction and Venue

A. Subject Matter Jurisdiction.

1. The Court's jurisdiction is limited to occurrences of domestic or family violence, stalking, sex offenses, acts of repeated acts of harassment or grooming as defined by [Indiana Code § 35-42-4-13](#) (Petition on Behalf of a Child). See [Indiana Code § 34-26-5-2](#).
2. Any Court of record may issue an Order for Protection. See [Indiana Code § 34-26-5-4\(a\)](#).

B. Venue

1. Effect of Pending Proceedings.
 - a. Another pending proceeding between the parties does not preclude the entry of an Order for Protection. An Order for Protection is in addition to, and not instead of, another available civil or criminal proceeding. See [Indiana Code § 34-26-5-6\(1\)](#).
 - b. A Petitioner is not barred from seeking an Order because of another pending proceeding. See [Indiana Code § 34-26-5-6\(2\)](#). For instance, a no contact order as a condition of bond in a criminal case does not preclude the necessity of a civil protection order.
 - c. A Court may not delay granting relief because of the existence of a pending action between the Petitioner and the Respondent. See [Indiana Code § 34-26-5-6\(3\)](#). Best practice is for the Court to rule on the petition first and then transfer the case to the appropriate court.
 - d. After the Court rules on the Petition ex parte, the case must be transferred for hearing to the Court having jurisdiction of another pending case between the parties or involving their child. See [Indiana Code § 34-26-5-6\(4\)](#).

Petitions for orders of protection affecting parenting time are required to be filed in the dissolution court or the court establishing paternity. [Indiana Code § 31-14-16-1](#), [31-15-4-1\(B\)](#), [31-15-5-1](#). Other courts of record may hear the petition ex parte on an emergency basis, but must transfer the case to the proper court for hearing. [Indiana Code § 34-26-5-6\(4\)](#).

2. The Petition may be filed in the county where the Petitioner currently or temporarily resides, the Respondent resides, or where the domestic or family violence or harassment occurred. See [Indiana Code § 34-26-5-4\(b\)](#). Note: [Indiana Code § 34-26-5-4\(b\)](#) does not include grooming as defined by [Indiana Code § 35-42-4-13](#) (Petition on Behalf of a Child).
3. There is no minimum residency requirement for the Petition. See [Indiana Code § 34-26-5-4\(c\)](#). For example, if a Petitioner is temporarily residing at a relative's house or at a shelter in a county, then for the purposes of the ICPOA, the Petitioner has sufficient residence in that county to file a Petition for a Protection Order. Procedural Matters

IV. Procedural Matters

A. Confidentiality of the Petitioner's address

1. The Petitioner may omit the petitioner's address from all non-confidential documents filed with the Court. See [Indiana Code § 34-26-5-7](#).
2. If disclosure of the address is needed to determine jurisdiction or venue, the Court may order disclosure: (a) with the Petitioner's consent; (b) orally in the Judge's chambers and out of the presence of a Respondent with a sealed record made; or, (c) after a hearing in which the Petitioner's safety is considered. See [Indiana Code § 34-26-5-7](#).
3. In any event, the Petitioner must provide the Court with a "public mailing address" for use by the Court, the Clerk, and opposing counsel.
4. For information on the use of the Attorney General's Address Confidentiality Program, see: <https://www.in.gov/attorneygeneral/about-the-office/appeals/victim-services/address-confidentiality-program/>. Call that office at 1-800-321-1907.

B. Form of Petition; Notice; Time of Hearing; Authority

1. The Petition must contain a request for relief. See [Indiana Code § 34-26-5-9](#). The Petitioner is responsible for completing the prescribed forms.
2. Notice of the hearing. If the Court grants or modifies a two (2) year Ex Parte Protection Order after service of the Order, either party may request a hearing at any time after the service of the order or modification. The court shall set the hearing not more than thirty (30) days after the request for hearing is filed and give notice of the hearing by first class mail. See [Indiana Code § 34-26-5-10\(a\)](#). The Order for Protection, however, must be delivered to the Sheriff for service. See [Indiana Code § 34-26-5-9\(d\)](#). A party may only request one (1) hearing on a petition.
3. Timing of hearing. If a hearing is required, it must be held within 30 days of the filing of the Petition. See [Indiana Code § 34-26-10\(c\)](#).
4. Priority of the hearing. The hearing must be given precedence over all other matters except older matters of the same character. See [Indiana Code § 34-26-10\(c\)](#).

C. Dismissal and Default

1. Dismissal. If the Petitioner moves in writing or orally on the record for dismissal, the Court shall dismiss the case without prejudice and without delay or condition. See [Indiana Code § 34-26-5-12](#). This law serves to enhance the safety and autonomy of a Petitioner who has been a victim of domestic or family violence.
Even though a Judge may not believe that dismissal of the Order for Protection is the best way to ensure a victim's safety, the fact is that the victim alone is, ultimately, the best judge of his or her own safety. [Weisz, A.N., Tolman, R.M., and Saunders, D.G. \(January, 2000\) "Assessing the Risk of Severe Domestic Violence: The Importance of Survivors' Predictions." 15 Journal of Interpersonal Violence \(1\), pages 75-90. Sage Publications, Inc.](#) A judge may provide information on advocacy and/or counseling services with the dismissal of the petition to ensure that the petitioner has appropriate support moving forward.

USE FORM PO-0109 Order Dismissing Petition for Order of Protection

USE FORM PO-0118 Notice of Termination

2. Default. If the Respondent fails to appear after having been served, the Court should hold an evidentiary hearing and grant such relief as the Petitioner requests and the evidence supports. If the Court extends or modifies an ex parte Order, then the Petitioner and the Court must complete their respective parts of Form PO-117, Notice of Extension or Modification.
3. Failure of the Petitioner to appear. If the Petitioner fails to appear, and the Respondent does appear, the Court may dismiss the Petition without prejudice, or the Court may reset the hearing for a later date.

USE FORM PO-0109 Order Dismissing Petition for Order of Protection

USE FORM PO-0118 Notice of Termination

4. Failure of both parties to appear. If both parties fail to appear, the Court may dismiss the Petition and terminate the Ex Parte Order or may leave the Ex Parte Order in place but grant no additional relief.

USE FORM PO-0109 Order Dismissing Petition for Order of Protection

USE FORM PO-0118 Notice of Termination

PRACTICE TIP: As of July 1, 2014, [Indiana Code § 34-60-1-4](#) allows a victim advocate to attend civil proceedings, sit with the victim, and confer with the victim as necessary, and specifies that the advocate is not practicing law when performing such services. A protection order hearing qualifies as a civil proceeding for purposes of this law.

D. Evidentiary Matters

1. Subject Matter. The scope of a Protection Order hearing is domestic or family violence, stalking, sex offenses, harassment, and grooming as defined by [Indiana Code § 35-42-4-13](#). See [Indiana Code § 34-26-5-2](#); [Indiana Code § 34-26-5-9](#).
2. Issues. According to the ICPOA, the Court must decide the following issues at a Protection Order hearing:
 - whether domestic or family violence, stalking, sex offense, harassment, or grooming as defined by [Indiana Code § 35-42-4-13](#) has occurred. See [Indiana Code § 34-26-5-9](#);
 - whether a Respondent represents a credible threat to the safety of a Petitioner or a member of the Petitioner's household. See [Indiana Code § 34-26-5-9](#); and,
 - what relief is necessary to bring about a cessation of the violence or the threat of violence. See [Indiana Code § 34-26-5-9](#).
3. Petitioner cannot waive protection. An invitation from the Petitioner does not waive or nullify an Order for Protection. See [Indiana Code § 34-26-5-11](#). This section of the ICPOA firmly underscores the principle that court orders may be modified only by Judges and rejects the notion that any party, by his or her conduct, can set aside or modify the terms and conditions of any Order for Protection, even by agreement of the parties. The remedy for the victim or perpetrator seeking to be excused from any provision of an Order for Protection is to petition for modification pursuant to [Indiana Code §§ 34-26-5-8](#) and [-9](#). Likewise, this section gives unequivocal direction to law enforcement officers that Orders for Protection are to be enforced as written and that no action by a party relieves the duty to enforce the Order. [Model Code on Domestic and Family Violence, NCJFCJ \(1994\)](#).

However, take note of [Tharp v. State, 942 N.E.2d 814](#) (Ind., 2011) where the Indiana Supreme Court vacated a conviction for Invasion of Privacy when the Petitioner of the Protection Order told the Respondent/Defendant that the order was dismissed and Respondent had not been served with the order in any other manner.
4. Lapse of time no bar. A Court cannot deny relief solely because of lapse of time between the act of violence or harassment and the filing of the Petition. See [Indiana Code § 34-26-5-13](#). This section of the ICPOA recognizes that a perpetrator of domestic or family violence may pose a risk of violence long after the last act or episode of violence, and an Order may be necessary to protect a victim from that continuing or recurrent risk. [Model Code on Domestic and Family Violence, NCJFCJ \(1994\)](#). As an example, the intimate partner was incarcerated for a period of years for setting the Petitioner's home on fire, and the Petitioner is requesting protection upon the respondent's release.
5. Rules of Evidence Apply. The statute makes no provision for relaxed rules of evidence.
6. Child Witnesses. One frequent evidentiary challenge is child hearsay. Child hearsay interviews are only admissible in criminal or CHINS cases. However, exceptions such as

excited utterance or then existing state of mind may apply to statements of child witnesses or petitioners.

BEST PRACTICE NOTE: Judges should consider the appointment of a guardian ad litem in any situation where they are suspicious of child abuse or neglect.

7. Right to present evidence. The parties to a Protection Order proceeding have the right to present evidence and cross-examine the witnesses. [Essany v. Bower, 790 N.E.2d 148 \(Ind. Ct. App. 2003\)](#).

The Court in its discretion may limit cross examination. Id.

8. Burden of proof. The Petitioner has the burden of proving domestic or family violence, stalking, sex offense, harassment, or grooming as defined by Indiana Code § 35-42-4-13 by a preponderance of the evidence. [Essany v. Bower, 790 N.E.2d 148 \(Ind. Ct. App. 2003\)](#); [Indiana Code § 34-26-5-9](#).

BEST PRACTICE NOTE: Even if a Respondent appears at an evidentiary hearing and agrees to the issuance of an Order for Protection incorporating all of the relief the Petitioner requested, a Judge should still swear in the parties and, at the very least, obtain a factual basis for the issuance of the Order. A Protection Order places limitations on a Respondent's constitutional rights and subjects a Respondent to criminal prosecution upon a violation. Therefore, the Judge needs to make an adequate record in case the need to enforce the Order should ever arise.

9. Evidence presented at hearing differs from allegations in Petition. The case of [Garmene v. LeMasters, 743 N.E.2d 782 \(Ind. Ct. App. 2001\)](#) discussed the use of form Petitions and what should happen when the evidence presented at the hearing differs from the allegations in the Petition. The Court of Appeals also considered the trial court's authority to prohibit the possession of a firearm under Indiana Code § 34-26-2-12 (the precursor to [Indiana Code § 34-26-5-9](#)) and the VAWA, as well as the sufficiency of the evidence. Everything the magistrate did was upheld.

V. Effect of Order After Hearing

- A. Duration. An Order for Protection remains in effect for two years after the date of issuance, unless another date is ordered by the Court. See [Indiana Code § 34-26-5-9](#). See also [H.H. v. S.H., 157 N.E.3d 1237 \(Ind.Ct.App. 2020\)](#) for further guidance on alterations of the two-year period. Petitioners who are victims of a crime where the respondent was convicted of a crime against them which required respondent to register as a sex or violent offender for life are eligible for an indefinite order for protection. [Indiana Code § 34-26-5-9](#).
- B. Effect on other cases.
1. Order in other case. An Order for Protection affecting custody, parenting time or possession or control of property is superseded by an Order issued from a Court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties. Indiana Code § 34-26-5-9(i). Even though the language of Indiana Code § 34-26-5-9 contains the word “custody,” the ICPOA does not empower Judges to make custody decisions as a part of a Protection Order case.
 2. No inference or presumption. An Order for Protection raises no inference or presumption in a subsequent case or hearing between the parties. See Indiana Code § 34-26-5-9.

VI. Relief

- A. Relief that may be granted ex parte
1. Prohibiting the Respondent from committing or threatening acts of domestic or family violence, stalking, sex offenses, or grooming as defined by Indiana Code § 35-42-4-13 against the Petitioner and/or family or household members.
 2. Prohibiting the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the Petitioner.
 3. Ordering the Respondent to stay away from the Petitioner’s residence, school, employment, or other places. See Indiana Code § 34-26-5-9.

USE FORM PO-0105 Ex Parte Order for Protection

USE FORM PO-0107 Petitioner’s/Respondent’s Verified Request for a Hearing

B. Relief that may be initially granted ex parte but requires a hearing within 30 days.

1. Evicting the Respondent from the Petitioner's residence regardless of ownership of the residence;
2. Ordering the Respondent to give the Petitioner possession or use of:
 - a. A home they both share;
 - b. A car or other motor vehicle; and
 - c. Other essential personal items
3. Ordering the Respondent to give the Petitioner possession of any animal owned, possessed, kept, or cared for by Petitioner, Respondent, minor child of either the Petitioner or Respondent, or any other family or household member.
4. Prohibit the Respondent from removing, transferring, injuring, concealing, harming, attacking, mistreating, threatening to harm, or otherwise disposing of an animal.
5. Ordering a cell phone provider to transfer a telephone number for Petitioner or minor child in Petitioner's custody, in addition to providing that the Petitioner have the sole right to continued use of said telephone number and the financial responsibility for the services associated with that telephone number. See [Indiana Code § 34-26-5-21](#).
6. Ordering other relief necessary to provide for the safety and welfare of a Petitioner and each designated family or household member.
See [Indiana Code § 34-26-5-9](#) and [Indiana Code § 34-26-5-10\(b\)](#).

USE FORM PO-0105 Ex Parte Order for Protection and

USE FORM PO-0106 Notice to Appear

C. Relief that may be ordered only after notice and hearing.

1. Specifying parenting time arrangements for the Respondent and a minor child, and/or requiring supervision by a third party, or denying parenting time.

Parenting Time:

The determination of parenting time requires a hearing and that hearing should be held in the court having jurisdiction of the parties' children. All orders regarding parenting time should be considered with the best interests of the child/children in mind.

If parenting time is ordered, obtain the parties' agreement on a location and schedule for parenting time, and if not, order a parenting time schedule and location, determine whether a neutral exchange point or place should be designated, and determine whether the parenting time should be supervised, etc. The Supreme Court Parenting Time Guidelines "*...are not applicable to situations involving family violence, substance abuse, risk of flight with a child, or any other circumstances the court reasonably believes endanger the child's physical health or safety, or*

significantly impair the child's emotional development." [emphasis added][Indiana Parenting Time Guidelines.]

If the Respondent has been convicted of a crime of domestic or family violence that was witnessed or heard by the Respondent's child, Indiana Code § 31-17-2-8.3 creates a rebuttable presumption that if the respondent is the non-custodial parent, all parenting time shall be supervised for a period of at least one year but not more than two years immediately following the crime of domestic or family violence. Courts may also require the non-custodial parent to complete a certified batterer's intervention program as part condition of gaining unsupervised visits. See Indiana Code § 31-17-4-1 for rebuttable presumption of supervised parenting.

2. Guardians ad Litem. The Court may appoint a guardian ad litem to represent the interests of a child of one or both parents. See [Indiana Code § 34-26-5-19](#).
3. Ordering the Respondent to pay money to the Petitioner, or on the behalf of the Petitioner, for:
 - a. Attorney fees;
 - b. Rent or mortgage payments;
 - c. Child support, if a duty exists;
 - d. Other expenses related to domestic or family violence or harassment;
 - e. Costs and expenses incurred in connection with the use of a GPS tracking device; or
 - f. Costs and fees incurred in bringing the action.
4. Prohibiting the Respondent from possessing firearms, ammunition, or deadly weapons, and requiring the Respondent to surrender firearms, ammunition, or deadly weapons.
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 this permission. See [Indiana Code § 34-26-5-9](#).

USE FORM PO-0113 Order for Protection Issued after a Hearing
(Long form for more complex relief)

BEST PRACTICE NOTE: If the Court does order a surrender of weapons, set a compliance hearing for a later date or otherwise require the Respondent to show proof that the weapon was surrendered as ordered, or notify the law enforcement agency that a weapon surrender was ordered and the deadline for surrender. See Chapter 10 for further information on firearm surrender and protocols for the Court.

D. Weapons and Brady Law issues

See [Chapter 10](#) of this Deskbook on Weapons and the Brady Act.

E. No mutual Order for Protection.

The Court may not grant a mutual Order for Protection to opposing parties. See [Indiana Code § 34-26-5-14\(a\)](#). However, the parties may file separate Petitions and the Court may grant both by separate Orders. Id. See Chapter 11, Full Faith & Credit.

See also [Maurer v. Maurer, 712 N.E.2d 990 \(Ind. Ct. App. 1999\)](#).

F. Language of Orders is Mandatory and Not Discretionary.

The cover sheet must be included as the first page of every order of protection. Orders of Protection should be issued in the form provided. [Indiana Code § 34-26-5-3\(c\)](#) requires the inclusion of certain language regarding Brady disqualifiers and warnings of criminal penalty. These forms include findings, which must be made to make the order effective. Accordingly, the committee strongly encourages the use of the order forms provided so that the Orders issued are in compliance with state and federal law.

G. No mediation.

The Court may not order the parties to a Protection Order proceeding to mediation. This does not preclude an Order for mediation in another case between the same parties. See [Indiana Code § 34-26-5-15](#).

H. Fees and costs.

The Court may not order the Petitioner to pay a fee for filing, service of process, witnesses, or subpoenas. The Court may collect costs from the Respondent. See [Indiana Code § 34-26-5-16](#).

I. Attorney fees.

Attorney fees may be awarded to the petitioner under Indiana Code § 34-26-5-9. Attorney fees may also be awarded to the respondent, if the court finds the petitioner brought the petition on, or continued to litigate, a claim that is frivolous, unreasonable, or groundless, or litigated in bad faith. Indiana Code § 34-52-1-1(b).

VII. Procedures after Hearing

A. Court's duties after hearing. 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 the Petitioner and the Respondent (if present);
- 3) transmit a copy of the Order to the Clerk for processing under Indiana Code § 5-2-9; and,
- 4) notify the state police through the use of the Protection Order Registry of the Order and the parties meet the criteria under 18 U.S.C. § 922(g)(8)-(9)(the Brady Act). This notification is accomplished by completing the Confidential Form, Form PO-104. Only the judicial officer who issued the Protection Order should complete these sections.

B. Notice of Extension or Modification When granting a Petition after a hearing, where an *ex parte* Order has been in place, the Court should send both the new Order and a Notice of Extension or Modification to the Sheriff and Clerk for processing.

USE FORM PO-0117 Notice of Extension or Modification

C. Notice of Termination. When denying a Petition after a hearing when an Ex Parte Order has been in place, the Court should send a Notice of Termination to the Sheriff and Clerk for processing.

USE FORM PO-0118 Notice of Termination

D. Processing of order by Clerk after hearing. [*Indiana Code § 5-2-9-6*](#) sets forth procedures for the Clerk to provide copies of the Protection Order to the parties, to provide the Protection Order and the Confidential Form to law enforcement agencies, and to maintain a confidential file.

CHAPTER 5

PROTECTION ORDERS IN DISSOLUTION, PATERNITY, OR CHINS CASES

I. Domestic Relations: Trial Rule 65 Restraining Order, or Protection Order?

When seeking to prohibit family violence, domestic violence, stalking, or repeated acts of harassment, the parties and the court should proceed under Indiana Code § 34-26-5 for entry of an order for protection.

- A. Protection orders address violence. A protection order under Indiana Code § 34-26-5 is the preferred remedy when seeking to prohibit family or domestic violence. The protection order is entered into the state computer system referred to as the Protective Order Registry (POR), which automatically notifies the Indiana law enforcement database (IDACS) and the federal database (NCIC). Respondents may be prosecuted for violations of protection orders under the Invasion of Privacy statute, [Indiana Code § 35-46-1-15.1](#). Conversely, a Trial Rule 65 temporary restraining order would not be entered into any of these databases—the POR, IDACS, or NCIC. Furthermore, a Trial Rule 65 restraining order entered as part of a dissolution action or paternity action will not afford the same level of confidentiality to the victim. Finally, it is not a crime to violate a restraining order. The proper procedure for enforcing a violation of a restraining order involves an affidavit and petition for contempt citation.
- B. Protection Orders address harassment. A Protection Order under Indiana Code 34-26-5 is the preferred remedy when seeking to prohibit harassment as defined under [Indiana Code 34-6-2-51.5](#). The Protection Order is entered into the state computer system referred to as the Protective Order Registry (POR), which automatically notifies the Indiana law enforcement database (IDACS) and the federal database (NCIC). Respondents may be prosecuted for violations of protection orders under the Invasion of Privacy statute, [Indiana Code 34-6-2-51.5](#).
- C. [Indiana Rules of Trial Procedure 65](#) temporary restraining orders. A temporary restraining order may be issued if the parties are simply seeking to prohibit the dissipation of assets or

seeking the possession of property. [Indiana Code § 31-15-4-3](#). A temporary restraining order may also be issued to enjoin a parent from removing a child of the parties from Indiana with the intent of depriving the court of jurisdiction over such child. A temporary restraining order should be used for minor acts of harassment or incivility where emotional distress or violence is not involved. In this context, “violence” includes acts, or threatened acts, described at [Indiana Code § 31-9-2-42](#) and [Indiana Code § 34-6-2-34.5](#), domestic or family violence.

II. Where Should the Protection Order Petition be Filed?

The Petition for an Order for Protection and Request for a Hearing should be filed in the court exercising jurisdiction over the parties’ dissolution, paternity, legal separation, CHINS, or guardianship case.

NOTE:

Some local rules or courts may require that all protective orders be filed in a particular court before transfer to the appropriate court.

- A. A Court **cannot** delay granting ex parte relief because of the existence of a pending action between the Petitioner and the Respondent. The Court should consider the petition for relief immediately and then transfer that matter to the court in which the other case is pending. [Indiana Code §§ 34-26-5-6 \(3\) & -\(4\)](#).
- 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 may not, without notice and a hearing, issue an order for protection ex parte or modify an order for protection based solely on the issue of harassment; but may, upon notice and after a hearing, whether or not a Respondent appears, issue or modify an order for protection. [Indiana Code § 34-26-5-9\(b\)](#).

BEST PRACTICE NOTE: Protection order petitions typically involve emergency situations, so it is essential that the petition be accepted for filing and referred to a judicial officer immediately. A judicial officer should review and act upon the petition on an expedited basis. Every court has jurisdiction to resolve an emergency on an *ex parte* basis. After doing so, the Court is required to transfer the case to another court if there is another case pending involving the parties. The Clerk should assist the Court by informing the Court of any such pending matters.

- C. The Committee recommends the Court specifically ask the parties under oath and on the record if there is other litigation pending. Each party has a continuing duty to inform the court of: separate proceedings for protection orders; any civil litigation between the parties;

any paternity, juvenile, family or domestic relations cases; and, any criminal case involving the parties or a child of a party. [Indiana Code § 34-26-5-5](#).

- D. An order for parenting time or possession of property issued under Indiana Code § 34-26-5 is superseded by an order issued from a court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties. [Indiana Code § 34-26-5-9\(i\)](#).
- E. A parent in a paternity action may request a protection order against the other parent to prevent family violence, domestic violence, stalking, grooming, or harassment any time before or after the decree of paternity is entered but must file under Indiana Code § 34-26-5 in the court in which the paternity case is pending, if the parties have an unemancipated child. See [Indiana Code § 31-14-16-1](#). This does not prohibit hearing an ex parte matter and transferring the case in accordance with paragraph A. above.
- F. Likewise, either party to a dissolution may request a protection order against the other to prevent family violence, domestic violence, stalking, grooming, or harassment any time during the dissolution, by filing under Indiana Code § 34-26-5 in the court in which the dissolution case is pending. See [Indiana Code § 31-15-5-1](#). This does not prohibit hearing an ex parte matter and transferring the case in accordance with paragraph A above.
- G. An Order for Protection is in addition to, and not instead of, another available civil or criminal proceeding. A Petitioner is not barred from seeking an order for protection because of another pending proceeding. See [Indiana Code § 34-26-5-6 \(1\)](#).

III. Transfer of Case to Proper Court

- A. The courts in the county should adopt a local rule defining “pending” which specifies when and how cases should be transferred to the court in which a case involving the parties or their children is pending. See [Indiana Code §§ 34-26-5-6 \(4\)](#); [Indiana Code § 31-14-16-1](#); [Indiana Code § 31-14-4-1 \(b\)](#); [Indiana Code § 31-15-5-1](#).

If there are minor children, a protection order may affect parenting time and support, so the Court which issued the order establishing parenting time and support should hear the Petition.

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. [Indiana Code § 34-26-5-2 \(e\)](#).

NOTE:

See [Sims v. Lopez, 885 N.E.2d 15 \(Ind. Ct. App. 2008\)](#) regarding the obligation to transfer cases when there is general civil litigation pending between the Petitioner and Respondent.

B. Placement of Case in Proper Court.

[State ex rel. Meade v. Marshall Superior Court II, 644 N.E.2d 87 \(Ind. 1994\)](#), interpreted the protection order statute that was in effect before the ICPOA was enacted. In part, a unanimous Supreme Court stated, “Does a court which dissolved a marriage and determined child custody and visitation maintain continuing jurisdiction which prevents another court from entertaining petitions for protective orders which effectively modify the divorce decree? We hold that such protective orders must be filed in the court which heard the divorce, absent emergency or other good cause for going to a second court.”

BEST PRACTICE NOTE: Considerations for placement of a case in the proper court:

1. Dissolution/paternity action already filed and still active in another court—transfer without issuing a protection order unless an emergency exists.
2. Dissolution action concluded and no minor children—Consider petition on its own merits, and rule accordingly.
3. Dissolution/paternity action concluded and minor children—Issue order if an emergency exists and transfer. If no emergency, transfer without issuing order.
4. Dissolution/paternity action filed after protection order has been issued—Transfer.
5. Juvenile action already pending against child against whom protection order is sought—Issue ex parte order if emergency exists and transfer. If no emergency, transfer.

If it is not clear from the Petition itself whether another action is pending or whether there is an emergency, conduct a hearing on the record to inquire into those matters before issuing an *ex parte* order. If possible, contact the other court to determine the status of the other “pending” matter. If no emergency is apparent, simply set the matter for a hearing.

IV. Should the Protection Order Case be Filed as a Separate Case from the Parties’ Dissolution or Paternity Case?

Yes. This practice facilitates data entry into the Protection Order Registry and IDACS/NCIC and facilitates other enforcement issues if the protection order case has a separate case number. Moreover, it is helpful to monitor the total number of protection order cases filed statewide.

In order to transfer the protection order case to the new court, the original protection order case should be transferred to the dissolution, paternity, or juvenile court. The transferred protection order case should receive a new PO case number reflecting the court where it is now pending.

V. Child-related communication related to parental issues

[Indiana Code § 34-26-5-9 \(c\) & \(d\)](#) set forth the relief which a Court may grant in a protection order proceeding. A Court may select from the list of available remedies depending on the circumstances of each case. When parties have children in common it may be necessary for the parties to have some direct or indirect communication if the communication can occur without domestic violence. The protection order forms have been drafted to allow a court flexibility in selecting appropriate options for such child-related communications to occur. The examples below are not exhaustive but are illustrative of some options available:

- A. A Court may prohibit contact between the parties except for specifically ordered permissible contact as set forth in rhetorical paragraph 2 in the Ex Parte Order for Protection and Findings and/or the form orders for protection issued after a hearing. Refer to Paragraph 2, Forms PO-0105, PO-0113, and PO-0123. For example, paragraph 2 of an order could prohibit contact “except for telephonic, e-mail, or text messages only and solely regarding child related issues.” It is recommended that the Petitioner be asked under oath if they believe this type of contact can occur safely and without risk of domestic violence, threats, intimidation or harassment. The Court may also consider ordering the parties to utilize a communication app. for parenting time communications such as www.ourfamilywizard.com.

VI. Other Important Considerations

- A. Waiver or Nullification of Order. If the Respondent is excluded from the residence of the Petitioner, or is ordered to stay away from the Petitioner, an invitation by the Petitioner does not waive or nullify an order for protection. [Indiana Code § 34-26-5-11](#).

B. A Court may not grant a mutual order for protection to opposing parties. If both parties allege injury, they shall file separate petitions under separate case numbers. The Court shall review each Petition separately in an individual or a consolidated hearing, and grant or deny each petition on the Petition's individual merits. If the trial court finds cause to grant both Petitions, the Court must do so by separate orders with specific findings. [Indiana Code § 34-26-5-14](#).

C. Custody is not a remedy under the Indiana Civil Protection Order Act.

The Court is not vested with subject matter jurisdiction to award custody as a part of a protection order case. [Indiana Code § 34-26-5-9](#).

An Order for Protection is effective for two (2) years unless the court orders another expiration date. [Indiana Code § 34-26-5-9 \(f\)](#). See also [H.H. v. S.H., 157 N.E.3d 1237 \(Ind.Ct.App. 2020\)](#). If the Respondent is a sex or violent offender who is required to register as a lifetime sex or violent offender, and the Petitioner was the victim that resulted in said requirement, the Protection Order Issued After a Hearing is for an indefinite duration unless another date is ordered by the Court. [Indiana Code § 34-26-5-9\(g\)](#).

D. An order for protection does not raise an inference or presumption in a subsequent case or hearing. See [Indiana Code § 34-26-5-9 \(j\)](#).

E. A Court may not order mediation for resolution of the issues in a protection order case involving family or domestic violence, because the issue of whether a person is violent or abusive should never be subject to mediation. [Indiana Code § 34-26-5-15](#). However, this does not preclude mediation in other cases involving the same parties.

F. A Court may appoint a guardian ad litem to represent a child of one or both of the parties to a protection order case. [Indiana Code § 34-26-5-19](#).

G. Forms. A Petition for an Order for Protection, and the order itself, must be issued on the forms adopted under [Indiana Code § 34-26-5-3\(a\)](#) and provided by the Indiana Office of Court Services under [Indiana Code § 34-26-5-3\(e\)](#).

Language of Orders is Mandatory and Not Discretionary. The cover sheet must be included as the first page of every order for protection. Orders for protection should be issued on the forms provided. [Indiana Code § 34-26-5-3 \(c\)](#) requires the inclusion of certain language regarding Brady disqualifiers and warnings of criminal penalties. These forms include findings, which must be made

to make the order effective. Accordingly, the Committee strongly encourages the use of the order forms provided so that the orders issued comply with state and federal law.

Parenting Time:

The determination of parenting time requires a hearing, and that hearing should be held in the court having jurisdiction of the parties' children. If there is no other court exercising jurisdiction over the parties' children, the issue of parenting time may be addressed in the protection order case.

If parenting time is ordered, obtain the parties' agreement on a location and schedule for parenting time, and if not, order a parenting time schedule and location, determine whether a neutral exchange point or place should be designated, and determine whether the parenting time should be supervised, etc. The Supreme Court Parenting Time Guidelines "*...are not applicable to situations involving family violence, substance abuse, risk of flight with a child, or any other circumstances the court reasonably believes endanger the child's physical health or safety, or significantly impair the child's emotional development.*" [emphasis added][Parenting Time Guidelines.]

If the Respondent has been convicted of a crime of domestic or family violence, see Indiana Code § 31-17-2-8.3 about the rebuttable presumption of supervised parenting time and ordering batterer's intervention programs as a condition of unsupervised parenting time.

VII. Child Protection Orders for Removal of Alleged Perpetrators

A. Filing of Petition. A Verified Petition for a Child Protective Order may be filed by the Department of Child Services if (1) there is probable cause to believe the child is a child in need of services and (2) the child would be protected in the child's residence by the removal of the alleged perpetrator. [*Indiana Code § 31-34-2.3-1.*](#)

BEST PRACTICE NOTE: The Department of Child Services should file the Verified Petition for a Child Protective Order at the time of the detention hearing in order for the court to have all available placement options at the initiation of the case.

B. Ex Parte Temporary Order.

1. A temporary order may be issued for the removal of an alleged perpetrator without a hearing, if the Verified Petition for a Child Protective Order states facts sufficient to satisfy the following:

- (A) There is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse.
 - (B) There is not time for an adversarial hearing given the immediate danger to the physical health or safety of the child.
 - (C) The child is not in danger of child abuse or neglect from the parent or other adult with whom the child will continue to reside in the child's residence.
 - (D) The issuance of a temporary child protective order is in the best interest of the child.
- 2. The issuance of this temporary order should be limited to extraordinary circumstances where the removal of one person would ensure the safety of the child without removing the child from his or her home. See [Indiana Code § 31-34-2.3-2](#).
 - 3. A temporary order must require that the parent or other adult with whom the child resides make reasonable efforts to monitor the residence, and report any attempt by the alleged perpetrator to return to the child's residence. [Indiana Code § 31-34-2.3-6](#). A parent or other adult who knowingly or intentionally fails to comply with these requirements commits a Class A misdemeanor. [Indiana Code § 31-34-2.3-7](#).

USE FORM CHPO-0100 Temporary Child Protective Order—CHINS

C. Service of Order. The Department of Child Services must serve the temporary order on the alleged perpetrator and the parent with whom the child continues to reside in accordance with Trial Rule 4. See [Indiana Code § 31-34-2.3-3](#).

D. Hearing. The juvenile court shall conduct a hearing within forty-eight (48) hours after the temporary order is issued. The Department of Child Services shall notify the child, the child's parent, guardian, or custodian, any adult with whom the child is residing, and the alleged perpetrator. See [Indiana Code § 31-34-2.3-4](#).

E. Issuance of Order

After notice and a hearing, the court may issue a child protective order if the Department of Child Services' Verified Petition for a Child Protective Order states facts sufficient to satisfy the court that:

- (1) The child is not in danger of child abuse by remaining in the home; and
- (2) One or more of the following exist:
 - (A) The presence of the alleged perpetrator constitutes a continuing danger to the child.
 - (B) The child has been the victim of sexual abuse and there is a substantial risk that the child will be a victim in the future if the alleged perpetrator remains in the home.

The order is valid until the court determines the child is not a child in need of services or the child is adjudicated and the court enters a dispositional decree. See [Indiana Code § 31-34-2.3-5](#).

BEST PRACTICE NOTE: The Child Protective Orders are relatively short in duration. The Court should make the Department of Child Services and the parents or guardians aware of this when the order is entered so that all parties may plan accordingly.

USE FORM CHPO-0101 CHILD PROTECTIVE ORDER AFTER NOTICE
AND HEARING—CHINS

F. Violations. An alleged perpetrator who knowingly or intentionally returns to a child’s residence in violation of a child protection order either before or after hearing, commits a Class A misdemeanor. However, the offense is a Level 6 felony if the alleged perpetrator has a prior unrelated conviction under this section. See [Indiana Code § 31-34-2.3-8](#).

CHAPTER 6

No Contact Orders

I. Background

No Contact Orders are issued in criminal and juvenile proceedings.

No Contact Orders issued are issued under the authority of the following statutes:

- | | |
|--|--|
| 1. Indiana Code § 31-32-13 | "Generic" Juvenile Court Order |
| 2. Indiana Code § 31-34-20 | CHINS |
| 3. Indiana Code § 31-34-25 | CHINS |
| 4. Indiana Code § 31-37-19 | Delinquency |
| 5. Indiana Code § 31-37-25 | Delinquency |
| 6. Indiana Code § 33-39-1-8 | Pretrial Diversion |
| 7. Indiana Code § 35-33-8-3.2 | Pretrial Release/Bail and Recognizance |
| 8. Indiana Code § 35-33-8-3.6 | Pretrial Release/No Hearing |
| 9. Indiana Code § 35-38-1-30 | Executed sentence |
| 10. Indiana Code § 35-38-2-2.3 | Probation |

II. No Contact Orders in Criminal Proceedings

A. Standard of proof necessary for a No Contact Order as condition of pretrial release:

The bail statute, [Indiana Code § 35-33-8-3.2](#), provides in relevant part that:

- a) After considering the results of the Indiana pretrial risk assessment system (if available), other relevant factors, and bail guidelines described in section 3.8 [[Indiana Code § 35-33-8-3.8](#)] of this chapter, a Court may admit a Defendant to bail and impose any of the following conditions to assure the Defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the Defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:
1. (3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.
 2. Except as provided in section 3.6 [[Indiana Code § 35-33-8-3.6](#)] of this chapter, require the Defendant to refrain from any direct or indirect contact with an individual and, if the Defendant has been charged with an offense under [Indiana Code § 35-46-3](#), any animal

belonging to the individual, including if the defendant has not been released from lawful detention.

3. (5) Place the Defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the Court places the defendant under the supervision of a probation officer or pretrial services agency, the Court shall determine whether the Defendant must pay the pretrial services fee under section 3.3 [\[Indiana Code § 35-33-8-3.6\]](#) of this chapter...
4. (9) Impose any other reasonable restrictions designed to assure the Defendant's presence in court or the physical safety of another person or the community.

BEST PRACTICE NOTE: As a pretrial restriction to assure the physical safety of another person, Courts can utilize electronic monitoring i.e. home detention or GPS from Community Corrections in their county. Buffer zones (residence, employment, school or church, etc.) can be set to restrict the Defendant's movements in the community and protect the other person.

No Contact Orders which are issued as a condition of bail must be supported by clear and convincing evidence that the Defendant poses a risk of physical danger to another person. The probable cause affidavit itself may contain sufficient clear and convincing evidence upon which to issue the No Contact Order.

No Contact Orders are requested by the State of Indiana. There is no requirement that an individual witness or victim request a No Contact Order or endorse a request for a No Contact Order. However, Indiana's victim rights laws, which are codified in [Indiana Code § 35-40](#) et seq., do confer rights upon crime victims with respect to issues of pretrial release and revocation of bail.

BEST PRACTICE NOTE: No Contact Orders may be issued in addition to a civil Protection Order. Dismissing a No Contact Order will not affect an existing Protection Order or other No Contact Orders; likewise, dismissing a Protection Order will not affect an existing No Contact Order. See also [N.E. v. L.W. 130 N.E.3d 102 \(Ind. Ct. App. 2019\)](#).

Parties to related Protection Orders and No Contact Orders should be informed they are separate enforceable orders. A civil protection order between a Petitioner and Respondent may allow exceptions to the prohibition against the Respondent contacting the Petitioner which are not part of a related No Contact Order in which the Petitioner is the victim or alleged victim, and the Respondent is the Defendant. Petitioners may dismiss civil protection orders at their discretion, while a victim or alleged victim's request to dismiss a No Contact Order may be denied by the Court. See [Indiana Code § 34-26-5-12](#).

If a Defendant does not post bond and remains in jail but violates a No Contact Order by directly or indirectly communicating with the victim, the Prosecutor may determine that there is probable cause for a criminal charge of Invasion of Privacy. Prosecutors may examine whether the inmate is committing new crimes with respect to intimidating witnesses. In addition, the Court may enforce administrative restrictions on jail communications such as prohibiting visitors, phone calls or mail, other than communication with the Defendant's counsel.

If the Court grants a request for a no contact order, the Court will issue a "No Contact Order Upon Release From Custody on Bail or Personal Recognizance." The cover sheet is required as page one (1) of the Order. Form PO-0104, the Confidential Form, must accompany the Order so that the data will be entered into IDACS and NCIC, and must be completed with all No Contact Orders.

USE FORM NC-0100: No Contact Order Upon Release from Custody on Bail or Personal Recognizance

USE COVER SHEET

USE FORM PO-0104: Confidential Form

[Indiana Code § 35-33-8-3.6](#) requires that, if a Court releases on bail a Defendant charged with committing a violent crime (as defined in [Indiana Code § 5-2-6.1-8](#)) that results in bodily injury without holding a bail hearing in open Court, the Court shall include as a condition of bail the requirement that the Defendant refrain from any direct or indirect contact with the victim. This order lasts for a period of ten days or until the initial hearing, whichever occurs first. The Committee recommends that local procedures be adopted, in all such cases, to allow for an initial hearing to be scheduled within ten days of a Defendant posting bail so that there is no lapse in protection due to the expiration of such "ten day" orders.

USE FORM NC-0108: Pretrial Release/No Hearing

USE COVER SHEET

B. The Initial Hearing

No Contact Orders should be served by a judicial officer and reviewed with the Defendant. This should be done on the record and is usually done at the initial hearing. The Defendant should be required to indicate his or her understanding of the elements of the Order on the record. The Order indicates the possible penalties for a violation of the Order. The Defendant should be required to sign and date the Order after the Order has been served and explained. Delegating the task of reviewing a No Contact Order to Court personnel or to a law enforcement officer is discouraged. If the Defendant refuses to sign the Order, the Court may consider such refusal in determining appropriate release conditions to include considerations regarding the amount of bond or the requirement of electronic monitoring. The Defendant should be given a copy of the No Contact Order.

C. Weapons

While reviewing the No Contact Order with the Defendant, the Court should admonish the Defendant that the No Contact Order prohibits the Defendant from owning, purchasing, or possessing firearms, deadly weapons, or ammunition (Paragraph 2). The Defendant should be admonished that if the Defendant owns or possesses a firearm, deadly weapon, or ammunition they are ordered to surrender it to the Sheriff or other law enforcement agency.

The Court or the State may inquire about the possession of firearms, but Defendant may invoke his or her right to remain silent.

BEST PRACTICE NOTE: Courts should develop written protocols with local law enforcement agencies regarding Court Orders to confiscate firearms, ammunition, and deadly weapons for safekeeping while Protection Orders or No Contact Orders are in effect. The protocols should include sections on storage of the items as well as procedures for returning the items. Forms and motions for the firearms surrender process, including informational handouts for defendants, are available upon request from the Family Violence Resource Attorney at Indiana Office of Court Services. See also Chapter 10.

D. Entry of No Contact Order in IDACS and NCIC

When the order is entered in the Protection Order Registry and submitted to IDACS, the Sheriff is automatically notified that an order has been issued and that the order was entered into IDACS and NCIC electronically. An order will only be entered into IDACS and NCIC with a date of birth or social security number for either the Respondent or Protected Person. The statute requires all orders be entered into the Registry by the Court. See Chapter 11 on Full Faith and Credit.

E. Violations of the No Contact Order

No Contact Orders typically bar defendants from contacting protected parties “in person, by telephone or letter, through an intermediary, or in any other way, directly or indirectly, except through an attorney of record, while released from custody pending trial. This includes, but is not limited to, acts of harassment, stalking, intimidation, threats, and physical force of any kind.” No Contact Orders may be violated by a Defendant’s harassing protected parties, even if the harassment does not involve contact between the Defendant and the protected party. See [Ajabu v. State, 677 N.E.2d 1035, 1042 \(Ind. Ct. App. 1997\), trans. denied. Alford v. State, 965 N.E.2d 133, 135 \(Ind. Ct. App. 2012\)](#)(citing [Wright v. State 688 N.E.2d 224, 226 \(Ind. Ct. App. 1997\)](#)).

Actions for violations of No Contact Orders are brought by the prosecuting attorney and include: (1) filing a petition for revocation or modification of bail (the Court must hold an evidentiary hearing on a petition of this nature); (2) filing a criminal charge of Invasion of Privacy; (3) filing other criminal charges, including Stalking, Intimidation, Battery, etc.; or (4) filing a separate case for indirect criminal contempt. The choice of remedy is at the discretion of the prosecuting attorney.

F. Termination of the No Contact Order as a Condition of Pretrial Release

Because it is a part of the bail statute, a No Contact Order as a condition of pretrial release terminates when the Court releases the bond. Although the No Contact Order terminates by operation of law, the court must file a termination notice with the Protection Order Registry.

USE FORM PO-0118 NOTICE OF TERMINATION THIS FORM
SHOULD BE COMPLETED AND FILED WHEN
THE CASE IS CONCLUDED

BEST PRACTICE NOTE: If the State files a motion to dismiss criminal charges, the court must inquire whether a No Contact Order was issued in the case, and if so, dismiss the No Contact Order. The Court may also request a filing from the prosecutor requesting a dismissal of the no contact order when the case has resolved by either a verdict, plea or dismissal.

Motions to Vacate or Modify No Contact Orders issued as a Condition of Pretrial Release while the case is pending should be set for hearing to allow both parties the opportunity to present evidence and argument as to whether the No Contact Order is supported by clear and convincing evidence. The Court is not required to vacate the No Contact Order if the Court determines the No Contact Order is necessary due to a risk of physical danger to another person posed by the Defendant.

BEST PRACTICE NOTE: The No Contact Order as a Condition of Pretrial Release can be modified in INCite to a No Contact Order as a Condition of Probation or Executed Sentence or a No Contact Order as a term of Agreement to Withhold Prosecution /Pretrial Diversion.

III. A No Contact Order as a Condition of Probation

[Indiana Code § 35-38-2-2.3](#) gives the Court the authority to enter a No Contact Order as a condition of probation, ordering the Probationer to “(18) Refrain from any direct or indirect contact with an individual and, if convicted of an offense under Indiana Code § 35-46-3, any animal belonging to the individual.”

If the Court issues a No Contact Order, then the Court shall distribute the Order to the Clerk of the Court to comply with Indiana Code § 5-2-9, and the Prosecutor shall file a Confidential Form. A violation of this Order constitutes a basis for both a violation of probation and for the filing of a separate criminal case, including Invasion of Privacy.

The Protection Order Committee recommends, in all cases where a No Contact Order is made a term of probation, that upon successful completion of probation, the Probation Officer who is supervising the case be instructed to file a Notice of Successful Completion, thereby reminding the Court to terminate its Order. Without such a notice, there is a greater risk that expired Orders will be erroneously listed in the Registry.

USE FORM NC-0102: No Contact Order – Probation or Executed Sentence

USE COVER SHEET

USE FORM PO-0104: Confidential Form

IV. A No Contact Order as a Term of Agreement to Withhold Prosecution/Pretrial Diversion

[Indiana Code § 33-39-1-8](#) gives the Court the authority to enter a No Contact Order as a term of an agreement to withhold prosecution/pretrial diversion. If the Court issues a No Contact Order, then the Court shall distribute the Order to the Clerk of the Court to comply with Indiana Code § 5-2-9, and the Prosecutor shall file a Confidential Form. A violation of this Order constitutes a basis for removal from the diversion program and a resumption of the criminal prosecution. The Prosecutor may also file a new charge of Invasion of Privacy. The terms of the signed diversion agreement should be clear as to the specific length of time the No Contact Order shall remain in place, and any conditions which may result in the No Contact Order having a variable termination date.

USE FORM NC-0101: No Contact Order - Diversion

USE COVER SHEET

USE FORM PO-0104: Confidential Form

V. A No Contact Order as a Condition of an Executed Sentence

[Indiana Code § 35-38-1-30](#) gives the Court the authority to enter a No Contact Order as a condition of an executed sentence. If the Court issues a No Contact Order, then the Court shall distribute the Order to the Clerk of the Court to comply with Indiana Code § 5-2-9, and the Prosecutor shall file a Confidential Form.

If the Defendant is placed at the Indiana Department of Correction (DOC), the Court must also forward a copy of the No Contact Order to the DOC. The DOC has indicated they could enforce any restriction on communications the Court orders.

USE FORM NC-0102: No Contact Order - Probation or Executed Sentence

USE COVER SHEET

USE FORM PO-0104: Confidential Form

Clarity Regarding Termination and Expiration of No Contact Orders and Requests to Vacate No Contact Orders

When including No Contact Orders as part of a sentence featuring a combination of executed time (prison, jail, or a community corrections program), and probation, the Court should clarify to which portion of the sentence the No Contact Order applies.

To avoid a formal sentence modification, the sentencing order should address any prerequisites for filing a motion to vacate the no contact order.

VI. Whose Responsibility is it to Complete the Confidential Form?

[Indiana Code § 33-39-1-8\(i\)\(2\)](#) requires the Prosecutor to file the Confidential Form in a criminal case when a No Contact Order is issued as a condition of pretrial diversion. [Indiana Code § 35-33-8-3.2\(f\)\(2\)](#) requires the Prosecutor to file the Confidential Form in a criminal case when a No Contact Order is issued as a condition of pretrial release. [Indiana Code § 35-38-2-2.3\(f\)\(2\)](#) requires the Prosecutor to file the Confidential Form in a criminal case when a No Contact Order is issued as a condition of probation.

VII. No Contact Orders in Juvenile Delinquency and CHINS Cases

A. No Contact Order as a Dispositional Alternative

When entering a dispositional decree for a child who has been adjudicated either a child in need of services or a delinquent child, as a result of committing status offense, a court may order a person who is a party to refrain from direct or indirect contact with the child.

1. [Indiana Code § 31-34-20-1\(a\)\(7\)](#) provides a juvenile court with the authority to enter a no contact order as part of a dispositional decree in a CHINS proceeding.
2. [Indiana Code § 31-37-19-1\(a\)\(7\)](#) provides a juvenile court with the authority to enter a no contact as part of a dispositional decree in a delinquency proceeding.
3. Both statutes require the petitioner to file a confidential form prescribed by the Division of State Court Administration.
4. Similarly, under both statutes, a copy of the dispositional decree is to be provided to each party, the sheriff, and law enforcement agency in the child's municipality. The sheriff and law enforcement agency shall maintain the decree in the depository created by Indiana Code § 5-2-9.

B. Petition for a No Contact Order in a Juvenile Case

Indiana Code § 31-34-25 and Indiana Code § 31-37-25 establish the authority and procedure for requesting an order which directs a person to refrain from direct or indirect contact with a child who has been adjudicated a CHINS or a delinquent child, respectively.

1. In a CHINS case, both an attorney for the Department of Child Services and a Guardian Ad Litem or Court Appointed Special Advocate are eligible to petition a juvenile court. In a delinquency case, a Prosecuting Attorney, Probation Officer, Department of Correction, and Guardian Ad Litem or Court Appointed Special Advocate are eligible to petition a juvenile court.
2. A petition seeking a no contact order must be verified and entitled "In the Matter of a No Contact Order for _____." Furthermore, a petition must include the following allegations:
 - That the Respondent is likely to have direct or indirect contact with the child in the absence of an Order;
 - That the child has been adjudicated a delinquent or a CHINS; and
 - That the proposed Order is in the best interest of the child.
3. Once a petition has been filed, a juvenile court may set the request for hearing either concurrently with a dispositional hearing (or modification thereto) or independently of any other hearings. Following a hearing on the petition, if a juvenile court finds the allegations contained therein are true, then a juvenile court shall issue a No Contact Order.

USE FORM NC-0103: No Contact Order – CHINS

USE COVER SHEET

USE FORM PO-0104: Confidential Form

USE FORM NC-0104: No Contact Order – Delinquency

USE COVER SHEET

USE FORM PO-0104: Confidential Form

4. Upon issuance, a No Contact Order will be entered in the Protection Order Registry and electronically submitted to IDACS and NCIC. The Sheriff will automatically receive notification of the issuance of an Order.

VIII. Whose Responsibility is it to Complete the Confidential Form?

[Indiana Code § 31-34-20-2\(2\)](#) requires the Petitioner to file the Confidential Form in a CHINS case when a No Contact Order is issued.

[Indiana Code § 31-37-19-22\(2\)](#) requires the Petitioner to file the Confidential Form in a delinquency case when a No Contact Order is issued as part of a dispositional decree.

IX. Juvenile Court Order to Control Conduct

Pursuant to [Indiana Code § 31-32-13-1\(1\)](#), upon either its own motion or that of a party to the case or a representative thereof, including any person providing services to the child or his/her parent, guardian, or custodian, a juvenile court may enter an order to control the conduct of any person in relation to the child. Following the juvenile court's issuance of a hearing notice to a person, whose conduct is sought to be controlled, the motion may either be set for an expedited hearing or heard in conjunction with any other form of hearing or proceeding authorized under the juvenile law. The issuance of an order under this section need only be based upon a finding of good cause, which can be supported by any evidence put into the record, including other juvenile law hearings or proceedings concerning the child who is the subject of the order. The order must specifically identify the person(s) and act(s) to be regulated. The petitioner is responsible for filing the confidential form with the clerk's office, following the issuance of an order.

X. Juvenile Court Order to Control Conduct

Pursuant to [Indiana Code § 31-32-13-1\(1\)](#), upon either its own motion or that of a party to the case or a representative thereof, including any person providing services to the child or his/her parent, guardian, or custodian, a juvenile court may enter an order to control the conduct of any person in relation to the child. Following the juvenile court's issuance of a hearing notice to a person, whose conduct is sought to be controlled, the motion may either be set for an expedited hearing or heard in conjunction with any other form of hearing or proceeding authorized under the juvenile law. The issuance of an order under this section need only be based upon a finding of good cause, which can be supported by any evidence put into the record, including other juvenile law hearings or proceedings concerning the child who is the subject of the order. The order must specifically identify the person(s) and act(s) to be regulated. The petitioner is responsible for filing the confidential form with the clerk's office, following the issuance of an order.

The Order remains in effect for a period of one year and may be extended for additional one-year increments, following an annual review of the order by the juvenile court. Alternatively, a juvenile court may amend or dissolve an order, after a demonstration of either a change or new development of circumstances.

Regarding emergency circumstances, if either a juvenile court's record or a moving party's testimony or affidavit establishes the existence of an emergency, a juvenile court may enter an order without a hearing. Such emergency order is only valid for up to seventy-two hours. Any extension of an emergency order must be based upon good cause shown on the record.

XI. Confidentiality of No Contact Order Records

To be effective, No Contact Orders must identify the protected parties by using their names, not initials, including juvenile protected parties. Defendants must be given notice of the identities of the individuals with whom they are barred from having contact. Law enforcement must be able to determine the identities of protected parties when relying upon paper copies of No Contact Orders, and when relying upon information found in the Protection Order Registry. See [Indiana Rules On Access to Court Records 5\(C\)\(2\)](#).

CHAPTER 7

WORKPLACE VIOLENCE RESTRAINING ORDERS (WVRO)

Under [Indiana Code § 34-26-6](#), Courts can issue Orders to protect an employee from unlawful violence or credible threats of violence. These Orders can be requested by the employer of a person who is the target of unlawful violence or credible threats of violence and will be enforced by law enforcement officers. These Orders are called “Workplace Violence Restraining Orders” (WVROs).

There are two kinds of WVROs—a Temporary Restraining Order (TRO) issued without a hearing that lasts a MAXIMUM of 15 days; and an Injunction (an Order issued AFTER a hearing) that lasts up to three (3) years. See [Indiana Code § 34-26-6-9](#).

There are three parties named in the caption of a WVRO case: (1) the Plaintiff, who is the Employer; (2) the Defendant, who is the person to be restrained; and (3) the Protected Employee.

ONLY the employer may ask the Court for a WVRO. The Plaintiff needs to file a Petition in a Court of record, on behalf of their Employee, against the Defendant, in order to obtain this type of Order. A Court hearing must be scheduled within 15 days of the filing of the Petition. See [Indiana Code § 34-26-6-8](#).

I. Jurisdiction and Venue

A. Unlike the Indiana Civil Protection Order Act (Indiana Code § 34-26-5), the Indiana Workplace Violence Restraining Order (WVRO) statute does not specifically contain any section addressing jurisdiction or venue. Therefore, ordinary rules governing jurisdiction and venue apply. See Indiana Rules of Trial Procedure [4.4](#) and [75](#). Under the “Long Arm” provisions of Indiana Rules of [Trial Procedure 4.4 \(A\)\(8\)](#), there is strong support for commencing litigation in the county of the employee’s workplace where the unlawful violence has occurred or has been threatened.

B. Person Restrained. A WVRO can be entered against a Defendant whose egregious conduct affects the employee at the employee's workplace. However, the Defendant may work and\reside in a different county or state.

[Fuchs v. Riverbend Assisted Living, 59 N.E.3d 269 \(Ind.Ct.App.2016\).](#)

Fuchs repeatedly harassed, screamed at, and intimidated Riverbend employees. Although Fuchs may have been protesting the care his mother was receiving, his behavior went far beyond advocating for his mother. Repeatedly screaming, threatening, cursing, getting in employees' faces, and backing employees into corners does not serve a legitimate purpose. Further, Rice and Smith testified that they were scared of Fuchs, and Wheeler testified that she was afraid Fuchs was going to initiate a physical altercation with her. Given Fuchs's repeated conduct, a reasonable person would fear for his or her safety.

- C. Workplace-Based. [Indiana Code § 34-26-6-6](#) makes it apparent that WVRO actions are to be centered on the employee's workplace. Therefore, the location of the unlawful violence is a crucial factor. See [Indiana Code § 34-26-6-1](#) and [Indiana Code § 34-26-6-6](#), which emphasize the employee's place of work as a necessary element of this type of action.
- D. Acts Serving as a Basis for Jurisdiction. [Indiana Rules of Trial Procedure 4.4\(A\)\(8\)](#) provides: "Any person or organization that is a nonresident of this state, a resident of this state who has left the state, or a person whose residence is unknown, submits to the jurisdiction of the courts of this state as to any action arising from the following acts committed by him or her or his or her agent: (8) abusing, harassing, or disturbing the peace of, or violating a protective or restraining order for the protection of, any person within the state by an act or omission done in this state, or outside this state if the act or omission is part of a continuing course of conduct having an effect in this state. In addition, a court of this state may exercise jurisdiction on any basis not inconsistent with the Constitutions of this state or the United States."
- E. Authority of the Court to Issue a WVRO. Workplace Violence Restraining Orders provide injunctive relief. Only Courts that have jurisdiction to enter Orders for injunctive relief may issue WVRO's.

II. Who Can Get a Court Order Under This Law?

- A. This statute allows employers to obtain Court Orders prohibiting unlawful violence or credible threats of violence against their employees. To get an Order under this law, the Plaintiff must be an "employer."
- B. An "employer" means:
- an individual;
 - a partnership;
 - an association;
 - a limited liability company;
 - a corporation;
 - a business trust;
 - the state;

- a governmental agency; or
- a political subdivision; that has at least two (2) employees during any work week. See [Indiana Code § 34-26-6-4](#).

C. When the employer is a corporation, the employer must be represented by counsel in the WVRO case. See [Indiana Code § 34-9-1-1\(a\)](#).

III. Whom Can an Employer Protect Under This Law?

- A. Under this statute, employers can obtain Workplace Violence Restraining Orders (WVRO's) that last up to 3 years on behalf of their employees.
- B. An "employee" means a person employed or permitted to work or perform a service for remuneration, a member of a board of directors for a private, public, or quasi-public corporation, an elected or appointed public officer, and a volunteer or an independent contractor who performs services for an employer at the employer's place of work. See [Indiana Code § 34-26-6-3](#).

IV. Grounds For Obtaining A WVRO

- A. An employer may seek a temporary restraining order or an injunction on behalf of an employee to prohibit further violence or threats of violence by a person under this law if:
1. An employee has experienced unlawful violence or a credible threat of violence from any person;
 2. The unlawful violence or credible threat of violence did occur at the employee's workplace or can reasonably be construed to be carried out at the employee's workplace;
 3. The defendant's conduct is not part of a labor dispute; and,
 4. The defendant is not engaged in constitutionally protected activity.

See Indiana Code §§ [34-26-6-6](#); [34-26-6-0.5](#); and [34-26-6-15\(1\)](#).

- B. **“Unlawful violence,”** [Indiana Code § 34-26-6-5](#), is defined as battery under [Indiana Code § 35422](#), or stalking under [Indiana Code § 354510](#). A “battery” occurs when one person knowingly or intentionally touches another person in a rude, insolent, or angry manner, except in self-defense or defense of others. “Stalking” means a knowing or intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened, and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity.
- C. **“Credible threat of violence”** means “a knowing and willful statement or course of conduct that does not serve a legitimate purpose and that causes a reasonable person to fear for the person's safety or for the safety of the person's immediate family.” See [Indiana Code § 34-26-6-2](#).
- D. **“Course of conduct”** means a pattern of conduct composed of a series of acts over a period of time, however short, indicating a continuity of purpose that includes:
1. Following or stalking an employee to or from the employee's place of work;
 2. Entering the employee's place of work;
 3. Following an employee during the employee's hours of employment;
 4. Making telephone calls to an employee during the employee's hours of employment;
 5. Sending correspondence to an employee by means such as public or private mail, interoffice mail, fax, or electronic mail.
- See [Indiana Code § 34-26-6-1](#).

V. Forms Needed to Obtain a WVRO or to Object to a WVRO

- A. Where to Find Forms Online. Workplace Violence forms are available from the County Clerk’s office, or from the following Web site:
<https://www.in.gov/courts/iocs/publications/po-forms/>
Forms are available in both .PDF and WORD formats.

See Instructions for Petitions to Prohibit Workplace Violence, including Instructions for Plaintiffs and Defendants, Form WV-0100, for additional information regarding the use of the forms and the steps to be followed in initiating or responding to this type of action.

B. **Mandatory Use of Designated Forms.** The Office of Judicial Administration shall develop forms, instructions, and rules for the scheduling of hearings and other procedures under this chapter. A party to an action under this chapter must use the forms developed by the Office of Judicial Administration. See [Indiana Code § 34-26-6-13\(a\)](#).

1. Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee (“Petition”). This form tells the Court the facts of the Plaintiff’s case and what relief the Plaintiff wants the Court to order. The use of this form is mandatory.

USE FORM WV-0101 Petition of Employer for Injunction Prohibiting
Violence or Threats of Violence
Against Employee / Application for Temporary Restraining Order

USE COVER SHEET

USE FORM PO-0104 Confidential Form

2. Order to Show Cause and Temporary Restraining Order. The Order to Show Cause, when signed by the Court, tells the Defendant to come to Court for the hearing. It may include a Temporary Restraining Order which takes effect immediately and remains in effect until the hearing (which SHALL occur within 15 days). A Temporary Restraining Order is one type of WVRO. It is the responsibility of the judicial officer issuing the Order to complete Sections I and II (pages 2 and 3) of the Confidential Form.

USE FORM WV-0102 Order to Show Cause (Workplace Violence)
& Temporary Restraining Order

USE COVER SHEET

USE FORM PO-0104 Confidential Form

3. Response to Petition of Employer for Injunction Prohibiting Violence or Threats of Violence (“Response”). The Defendant may file a responsive pleading that explains excuses, justifies, or denies the alleged unlawful violence or credible threat of violence. The Defendant files this form to state objections to the relief the Plaintiff has asked for, and to give his or her side. The use of this form is mandatory.

USE FORM WV-0104 Response to Petition of Employer for
Injunction Prohibiting Violence or Threats of
Violence Against Employee

4. Order After Hearing on Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee (“Injunction”). This is the form Order signed by the court after the hearing. This Order may remain in effect for not more than three (3) years.

USE FORM WV-0106

Order After Hearing on Petition of Employer
for Injunction Prohibiting
Violence or Threats of Violence Against Employee

USE COVER SHEET

USE FORM PO-0104

Confidential Form

5. Proof of personal service and proof of service of completed response. These forms are used to show that the other party has been served with the legal documents as required by law.

USE FORM WV-0103 (Plaintiff)

Proof of Personal Service (Workplace Violence)

FORM WV-0105 (Defendant)

Proof of Service of Completed Response
(Workplace Violence)

C. Service of Process: Time Limits and Manner of Service.

1. Time limits for service on Defendant: “A defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and a notice of the hearing not less than five (5) days before the hearing. However, the court may, for good cause, upon the filing of a motion by a plaintiff or upon the court’s own motion, shorten the time for service on the defendant.” Emphasis added. See [Indiana Code § 34-26-6-10](#).
2. Notice to law enforcement must be made by the Protective Order Registry. (POR) See also Paragraph XIV below.
3. Proof of service forms for WVRO’s state that someone who is not a party to the legal action and who is 18 years of age or older may serve certain papers to the other party. See **Forms WV-0103 and WV-0105**.

VI. Immediate Temporary Restraining Order Issued Without a Hearing

- A. Immediate Temporary Restraining Order (TRO) issued without hearing. If a Plaintiff (employer) seeks to obtain, on behalf of an employee, an immediate Temporary Restraining Order, without a hearing at which the other person (Defendant) has an opportunity to be present or heard, to prohibit further violence or threats of violence by that person, the employer's Petition must include: (1) an affidavit that shows, to the satisfaction of the Court, reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the Defendant; and (2) demonstrates that great or irreparable harm has been suffered by the employee or will be suffered by the employee. An affidavit is not required if the employer has personal knowledge of the actions of the Defendant. See [Indiana Code § 34-26-6-7](#).
- B. [Indiana Rules of Trial Procedure 65\(B\)](#). The Plaintiff, or the Plaintiff's attorney, must comply with Indiana Trial Rule 65 with respect to required notice to the Defendant. Certification of compliance with Indiana Trial Rule 65 is accomplished when the Plaintiff completes paragraph 6 of the Petition. For more information on avoiding prohibited ex parte communications with only one party, please refer to Chapter 3 of this Deskbook on Ex Parte Proceedings and Orders. See [Indiana Code § 34-26-6-7](#); [Indiana Rules of Trial Procedure 65\(B\)](#); Form WV-0101; [In Re Anonymous, 729 N.E.2d 566 \(Ind. 2000\)](#); and [In re Anonymous, 786 N.E.2d 1185 \(Ind. 2003\)](#).
- C. Early Hearing. A court shall hold a hearing not more than fifteen (15) days after a Petition for an immediate Temporary Restraining Order is filed. See [Indiana Code § 34-26-6-8](#).

NOTE: [Indiana Rules of Trial Procedure 65\(F\)](#) provides: "Statutory Provisions Unaffected by this Rule. Nothing in this rule shall affect provisions of statutes extending or limiting the power of a court to grant injunctions."

VII. Injunction or Restraining Order Issued After a Hearing (Not Immediate)

- A. Injunction or Restraining Order. If a Plaintiff seeks to obtain an Injunction or Restraining Order, without immediate relief, on behalf of an employee to prohibit further violence or threats of violence by a person, the Petition must state facts to support the claim that:
1. the employee has suffered unlawful violence or a credible threat of violence from the person; and,
 2. the unlawful violence has been carried out at the employee's place of work or the credible threat of violence can reasonably be construed to be carried out at the employee's place of work by the Defendant.
See [Indiana Code § 34-26-6-6](#).
- B. [Indiana Rules of Trial Procedure 65\(B\)](#). Because no immediate, ex parte relief is sought, Indiana Trial Rule 65(B) is inapplicable.
- C. NOTICE of the hearing SHALL be given to the Defendant.

VIII. Court's Role at the Hearing

At the hearing, the Court shall: "(1) receive testimony and may make independent inquiry; and (2) if the defendant is a current employee of the entity requesting the injunction, receive testimony of the employer's decision to retain, terminate, or otherwise discipline the defendant." See [Indiana Code § 34-26-6-8](#).

IX. Proof Required

If the Judge finds by clear and convincing evidence that the Defendant engaged in unlawful violence or made a credible threat of violence, the Court shall issue an Injunction prohibiting further unlawful violence or credible threats of violence. See [Indiana Code § 34-26-6-8](#).

USE FORM WV-0106

Order After Hearing on Petition of Employer for Injunction
Prohibition Violence or Threats of Violence Against Employee

USE COVER SHEET
USE FORM PO-0104

Confidential Form

X. Warning Required in Every WVRO

[Indiana Code § 34-26-5-3\(c\)](#), requires a particular warning must be printed in boldface type or in capital letters on a Workplace Violence Restraining Order. See Forms WV-0102 and WV-0106.

“VIOLATION OF THIS ORDER IS PUNISHABLE BY CONFINEMENT IN JAIL, PRISON, AND/OR A FINE.

IF SO ORDERED BY THE COURT, THE RESPONDENT IS FORBIDDEN TO ENTER OR STAY AT THE PETITIONER'S RESIDENCE OR RESIDENCE OF ANY CHILD WHO IS THE SUBJECT OF THE ORDER, EVEN IF INVITED TO DO SO BY THE PETITIONER OR ANY OTHER PERSON. IN NO EVENT IS THE ORDER FOR PROTECTION VOIDED.

PURSUANT TO [18 U.S.C. § 2265](#), THIS ORDER FOR PROTECTION SHALL BE GIVEN FULL FAITH AND CREDIT IN ANY OTHER STATE OR TRIBAL LAND AND SHALL BE ENFORCED AS IF IT WERE AN ORDER ISSUED IN THAT STATE OR TRIBAL LAND. PURSUANT TO [18 U.S.C. § 922\(g\)](#), ONCE A RESPONDENT HAS RECEIVED NOTICE OF THIS ORDER AND AN OPPORTUNITY TO BE HEARD, IT IS A FEDERAL VIOLATION TO PURCHASE, RECEIVE, OR POSSESS A FIREARM WHILE SUBJECT TO THIS ORDER IF THE PROTECTED PERSON IS:

- A. THE RESPONDENT'S CURRENT OR FORMER SPOUSE;
- B. A CURRENT OR FORMER PERSON WITH WHOM THE RESPONDENT RESIDED WHILE IN AN INTIMATE RELATIONSHIP; OR
- C. A PERSON WITH WHOM THE RESPONDENT HAS A CHILD. INTERSTATE VIOLATION OF THIS ORDER MAY SUBJECT THE RESPONDENT TO FEDERAL CRIMINAL PENALTIES UNDER [18 U.S.C. § 2261](#) AND [18 U.S.C. § 2262](#).”

See [Indiana Code § 34-26-5-3\(c\)](#).

XI. Term of Injunction and Renewal/Modification/Termination

- A. An Injunction issued under [Indiana Code § 34-26-6-8](#), after a hearing, may remain in effect for not more than three years. See [Indiana Code § 34-26-6-9](#).

- B. Not more than three months before the expiration of an Injunction, a Plaintiff may apply for a renewal of the Injunction by filing a new Petition under Indiana Code § 34-26-6-8. See [Indiana Code § 34-26-6-9](#).
- C. No specific forms for requesting a renewal or modification of a WVRO are currently available. However, Protection Order forms for renewal or modification may be adapted. SEE FORM PO-0115 and FORM PO-0116.
- D. Whenever a WVRO is extended, renewed, or modified, the Court must use FORM PO-0117.
- E. Whenever a WVRO is terminated, the Court must use FORM PO-0118. This Form is also appropriate when the Court holds a hearing resulting in the termination of a TRO and issuance of a WVRO Injunction.

XII. Fees

A filing fee may not be charged for a WVRO. See [Indiana Code § 34-26-6-14](#).

XIII. A Few Reasons Why a Request for a WVRO May be DENIED

The Court reviewing the Petition will carefully examine the information in the Petition to determine if the situation meets the statutory, or legal, requirements for a WVRO. Some of the most common reasons why the WVRO might be denied include:

1. The parties do not fit the statutory, or legal, definition of “employer” and “employee”.
2. The parties do not meet Indiana residency or employment requirements.
3. The factual allegations do not meet the statutory, or legal, definitions of “unlawful violence”, or of a “credible threat of violence”.
4. The allegations are vague. They lack a clear and understandable description of the time, place, or acts of the incident.
5. The Plaintiff, who is relying solely on what another person saw or told the Plaintiff, failed to attach a sworn affidavit from that other person as required.

XIV. Delivery of Documents to Law Enforcement

The Court shall order a plaintiff or the attorney for a Plaintiff to deliver a copy of a TRO, an injunction or the modification or termination of a TRO or injunction to a law enforcement agency requested by the Plaintiff and approved by the Court. The copy(ies) must be delivered by the close of the business day on which the Order is granted. In addition, notice to law enforcement must be made by the Protective Order Registry. (POR)

XV. Intentional Violations

- A. [Indiana Code § 34-26-6-12](#) provides: "An intentional violation of a temporary restraining order or an injunction issued under this chapter is punishable as set forth under Indiana Code § 35-46-1-15.1."
- B. [Indiana Code § 35-46-1-15.1\(a\)\(3\)](#) provides that a person who knowingly or intentionally violates a Workplace Violence Restraining Order issued under Indiana Code § 34-26-6 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.
- C. [Indiana Code § 35-46-1-15.1\(b\)](#) provides "[i]t 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.
- D. [Indiana Code § 35-46-1-15.1\(c\)](#) provides that a "sex offender under [Indiana Code § 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 Indiana Code § 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;
 - (4) 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."

- E. [Indiana Code § 35-46-1-15.1\(d\)](#) provides “[t]he 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).”
- F. [Indiana Code § 35-46-1-15.1\(e\)](#) provides “[s]ubsection (c) does not apply to a sex offender who has obtained a waiver of residency under [Indiana Code § 35-38-2-2.5](#) or [Indiana Code § 35-38-1-33](#).”

CHAPTER 8

Enforcement of Protection Orders/No Contact Orders

Violations of protective orders can be enforced by:

- I. Criminal Prosecution
- II. Revocation of Bail or Pretrial Release
- III. Revocation of Probation
- IV. Termination of Pre-Trial Diversion
- V. Contempt
- VI. GPS Tracking Device
- VII. Other Sanctions

The term “protective order” is defined by [Indiana Code § 5-2-9-2.1](#). The definition includes all of the various types of protective orders (there are thirteen Indiana Code subsections which authorize protective orders), all of which must be retained in the Indiana protective order registry under [Indiana Code § 5-2-9-5.5\(b\)](#).

I. Criminal Prosecution

- A. A person who violates a protective order commits the crime of Invasion of Privacy. The definition of that crime under [Indiana Code § 35-46-1-15.1](#) includes violations of all of the types of protective orders and no contact orders. In addition to or instead of filing the crime of Invasion of Privacy, Appendix 3 is a non-exclusive list of crimes that could be filed in domestic violence cases depending upon the circumstances.

II. Revocation of Bail or Pretrial Release

- A. Violence or Threats of Violence Against Employee Condition of Bail: Where a No Contact Order has been issued under [Indiana Code § 35-33-8-3.2\(a\)\(4\)](#) or [Indiana Code § 35-33-8-3.6](#) (no contact order issued as a condition of bail when defendant is charged with a violent crime that results in bodily injury to a person and defendant is released to bail without holding a bail hearing in open court; include as a condition of bail the requirement that the defendant refrain from any direct or indirect contact with the victim for ten days or until initial hearing, whichever occurs first; order can be reinstated or modified at the initial hearing) as a condition of bond or release on personal recognizance, a violation of such an Order is a basis for revocation.
- B. Condition of Pretrial Release: Prosecutors and Courts should proceed with revocation of pretrial release just as if the Defendant had committed any other criminal offense while on bond or pretrial release. See [Indiana Code § 35-33-8-5](#) (Alteration or revocation of bail or order for release on personal recognizance) and [Indiana Code § 35-40-6-6](#) (Motion under [Indiana Code § 35-33-8-5](#) requesting revocation of bond or order for personal recognizance).

New Charge

- C. The prosecutor may file a new charge of Invasion of Privacy, [Indiana Code § 35-46-1-15.1](#) and ask for consecutive sentences if the Defendant is convicted of both crimes.

III. Revocation of Probation

- A. Where a No Contact Order has been issued under [Indiana Code § 35-38-2-2.3](#) as a condition of probation, a violation of the Order is an appropriate basis for revocation of the Defendant's probation. Probation officers, prosecutors, and Courts should proceed with revocation of probation just as if the Defendant committed any other serious criminal offense while serving probation.
- B. The Prosecutor may also file a new charge of Invasion of Privacy, [Indiana Code § 35-46-1-15.1](#) and ask for consecutive sentences if the Defendant is convicted of both crimes.

IV. Termination of Pretrial Diversion

- A. Where a Prosecutor has included a no contact order as a condition in a pretrial diversion contract ([Indiana Code § 33-39-1-8](#)), a violation of the no contact order is a material violation of the contract. The Prosecutor may terminate the contract and reactivate the original prosecution.
- B. The Prosecutor may also file a new charge of Invasion of Privacy, [Indiana Code § 35-46-1-15.1](#) and ask for consecutive sentences if the Defendant is convicted of both crimes.

V. Contempt

Judges may wish to refer to the Contempt chapter of Indiana Civil Benchbook for an in-depth analysis of the types of contempt and procedural requirements or to the Indiana Domestic Relations Benchbook.

Indirect civil contempt in a protective order case is not an offense against the dignity of the court but is for the benefit of a Petitioner who has been damaged by the failure of Respondent to comply with the protective order (see Contempt chapter of the Indiana Civil Benchbook). Criminal contempt can be prosecuted only by a prosecuting attorney or state official (e.g. attorney

disbarment proceedings prosecuted by the Indiana Supreme Court Disciplinary Commission) but civil contempt can be prosecuted by a private individual either with an attorney or pro se. The objective of criminal contempt is immediate punishment for defying the court's authority whereas the objective of civil contempt is to coerce compliance with the protective order by giving the Respondent a chance to purge themselves of the contempt.

Double Jeopardy Ramifications

In [*United States v. Dixon*, 509 U.S. 688 \(1993\)](#), the Supreme Court addressed the question of whether subsequent criminal proceedings covering conduct which was previously the subject of a contempt proceedings violated the Double Jeopardy Clause. The Court, in a divided 5-4 decision, held that they did not. In reaching this conclusion, the Court overruled [*Grady v. Corbin*, 495 U.S. 508, \(1990\)](#), which established a "same conduct" test in double jeopardy proceedings. Therefore, when the double jeopardy clause is implicated in contempt proceedings, the "same elements" test from [*Blockburger v United States*, 284 U.S. 299 \(1932\)](#) should be applied. See also [*Buford v. State*, 139 N.E.3rd 1074, \(Ind. Ct. App. Dec. 23, 2019\)](#).

The imposition of a sentence for the crime of escape and a sentence for direct criminal contempt arising out of a single incident where the defendant left the courtroom after he had been verbally ordered to remain in open court to await transfer to jail does not violate double jeopardy principles. [*Ellis v. State*, 634 N.E.2d 771 \(Ind. Ct. App. 1994\)](#).

A civil contempt imprisonment order was coercive in the sense that the goal was to secure future compliance with a temporary restraining order; imprisonment for contempt was not punishment, and subsequent criminal charges on the same conduct were not barred on double jeopardy principles. [*Webster v. State*, 673 N.E.2d 509 \(Ind. Ct. App. 1996\)](#).

Procedural Requirements for Civil Contempt Proceedings

Civil Contempt Checklist:

1. The information or petition for contempt is prepared by the Petitioner *pro se* or by Petitioner's attorney and must clearly and distinctly set forth the facts alleged to constitute the contempt including the date, time and place, and must be verified. No new case number is assigned—it is given the same case number as the protective order case already in existence. If the Petitioner does not have personal knowledge of the violation the Petition should contain verified affidavits signed by persons who do have such personal knowledge.

USE FORM PO-0126 Petition for Contempt

2. Issue an Order to Appear or Rule to Show Cause specifying the location, time and place for the hearing, Respondent must be personally served so they have actual notice of the hearing.

USE FORM PO-0128 Order to Appear

USE FORM PO-0127 Address Verification Form

3. At the hearing, if Respondent does not appear with an attorney, inquire if Respondent is going to hire an attorney. If the Respondent requests an attorney, the court should determine if the Respondent is indigent, and if so, appoint an attorney. [Branum v. State, 822 N.E.2d 1102, \(Ind. Ct. App. 2005\)](#), reaffirmed as clarified, [829 N.E.2d 622; Indiana Code § 34-10-1-2](#).
4. Hear evidence at the hearing. The court should consult the Civil Benchbook to check current law concerning burden of proof and standard of proof. See the Contempt Chapter, Civil Benchbook.
5. If contempt is found, impose an appropriate remedy. The court should consult the Civil Benchbook for the appropriate remedies and the distinction between remedies for civil and criminal contempt. See Contempt Chapter, Civil Benchbook.

USE FORM PO-130 Order Finding Respondent in Civil Contempt
for Failure to Obey Order of Protection

Two cases uphold a court's right to enforce a protective order through contempt:

In [Carter v. Johnson, 745 N.E.2d 237 \(Ind. Ct. App. 2001\)](#), there were three ex parte hearings. After the first ex parte hearing the trial court issued an ex parte Protection Order against Carter. After the order was served on Carter, Petitioner appeared before the court at a second ex parte hearing and testified concerning Carter's violations of the order. The court found probable cause to believe that Carter had violated the order and ordered Carter's

arrest. Carter was arrested and posted bond. Petitioner then appeared before the court for a third ex parte hearing after which the court found probable cause to believe that Carter committed indirect contempt of court and again ordered Carter arrested but this time ordered that Carter be held without bond.

Before being incarcerated Carter never appeared personally at any of the three ex parte hearings in the trial court nor did he commit any direct acts of contempt of court in the presence of the judge. The trial court denied Carter's emergency petition for an order to rescind the warrants for his arrest. Carter brought this case upon an interlocutory appeal. Nothing in the record indicated that the State charged Carter with any offense, so no arrest warrant could be issued in that regard.

The appellate court stated that Carter could have been found to have committed indirect contempt but reversed the trial court's order incarcerating Carter because of failure to comply with due process.

In [*Flash v. Holtsclaw*, 789 N.E.2d 955 \(Ind. Ct. App. 2003\)](#), the parties had been romantically involved with each other. Petitioner Holtsclaw was granted a temporary protective order against Flash. Petitioner filed her first contempt petition, a hearing was held, Flash was found to be in contempt and the court issued a civil contempt sanction of sixty days imprisonment and all of it was suspended on condition of no contact. Further motions were filed, a hearing was held, Flash was found to be in contempt and was ordered to serve the previously suspended sixty days in jail plus an additional ninety days in jail.

The appellate court upheld the trial court's entire order except for the additional ninety days in jail, stating that the trial court properly ordered Flash to serve the suspended sixty days, but the ninety days additional sentence was purely punitive and gave Flash no opportunity to avoid the term of imprisonment and was "improper in civil contempt proceedings."

VI. GPS Tracking Device

In conjunction with any other remedies for contempt, [*Indiana Code § 34-26-5-9\(k\)*](#) provides that upon a finding of a violation of an order for protection issued under [*Indiana Code § 34-26-5-9*](#) the court may require respondent to wear a GPS TRACKING DEVICE with victim notification capabilities.

The costs for the GPS device must be assessed by the court. In addition to the Respondent, this statute has a unique provision which permits the costs to be paid by the victim, a petitioner, another person, an organization, or agency. [*Indiana Code § 34-26-5-9\(k\)*](#).

USE FORM PO-0129

Order Finding Violation of Order of Protection and
Requiring Respondent to Wear A GPS Device

VII. OTHER SANCTIONS

It is within a trial courts inherent power to fashion an appropriate remedy for the disobedience of its order. [*Williamson v. Creamer*, 722 N.E.2d 863 \(Ind. Ct. App. 2000\)](#). An abuse of discretion occurs only when the trial court's decision is against the logic and effect of the facts and circumstances before it. [*Meyer*, 707 N.E.2d at 1031](#). In appropriate cases, a court may order compensation for damages or order the offending party to perform community service.

CHAPTER 9

MODIFICATION, TERMINATION AND EXPUNGEMENT OF PROTECTION ORDERS

I. Modification of Protection Orders

A. Civil Protection Orders

1. A Petitioner may file a Petition to modify a Protection Order by filing Protection Order Form PO-0115. See [Indiana Code § 34-26-5-8](#) and [Indiana Code § 34-26-5-9](#). If the modification would not require a hearing under [Indiana Code § 34-26-5-9\(b\)](#), the Court may grant the Petition for modification ex parte, (e.g. an address change). Even if the modification does not require a hearing, the Court must take steps to ensure that the Respondent is served with a copy of the modified Order. *Either party at any time after service of the modification may request a hearing. The hearing must be held not more than thirty (30) days after the request for 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 for the hearing. A party may only request one (1) hearing on a Petition. Indiana Code § 34-26-5-10(a).*

USE FORM PO-0115 Petition to Modify an Order for Protection

USE FORM PO-0117 Notice of Extension or Modification

USE FORM PO-0121 Order Modifying an Order for Protection
Adding Brady Law Prohibition

2. If the Petition for modification requests the following relief:
 - a request that the Respondent be removed from a residence;
 - a request that the Respondent be ordered to stay away from a specified place;
 - a request for possession of or protection of an animal;
 - a request that personal property be transferred to a Petitioner;

any other miscellaneous relief designed to protect the safety and welfare of Petitioner that is not listed in Section 3 below;

the Petition may be granted immediately; however, the Court must set a hearing to occur within thirty (30) days.

See [Indiana Code § 34-26-5-9](#) and [Indiana Code § 34-26-5-10](#).

3. If the Petition for modification requests the following relief:
 - any change in parenting time, pay for the support of a petitioner and each minor child;
 - a request that the Respondent pay attorney fees;
 - a request that the Respondent make mortgage or rental payments;
 - a request that the Respondent reimburse the Petitioner for expenses related to the domestic or family violence, stalking, or a sex offense;
 - pay the costs incurred in connection with the use of GPS tracking device;
 - pay the costs and fees incurred by a petitioner in bringing the action;
 - prohibit the Respondent from using or possessing a firearm, ammunition, or deadly weapon or order the Respondent to surrender a firearm, ammunition, or deadly weapon;
 - permit the respondent and petitioner to occupy the same location for any purpose;a hearing must be set before the relief can be granted.

See [Indiana Code § 34-26-5-9\(d\)](#).

4. Termination or modification at request of Respondent. Although the statute makes no provision for modification or termination at the request of the Respondent, the Court may set these requests for a hearing to provide relief e.g. permission to attend certain events. A Respondent seeking relief from the Order should proceed under [Indiana Rules of Trial Procedure 59](#) or [60](#).
5. Modification of Protection Orders. If a Petitioner requests the Protection Order to be modified, please see [Indiana Code § 34-26-5-9](#), which outlines the relief available, and [Indiana Code § 34-26-5-10](#), which sets out the requirements related to a hearing on the modification request.
6. If an Indiana Protection Order is modified or extended, the person who obtained the modification or extension must file a Notice of Extension or Modification, FORM PO-0117, with the Clerk of the Court. See [Indiana Code § 5-2-9-6 \(f\)](#).

B. Juvenile and CHINS No Contact Orders, and Child Protective Orders

1. The child, a parent, guardian, custodian, court appointed special advocate, guardian ad litem, or Attorney for the Department of Child Services, may request that a No Contact Order be modified on behalf of a child. See [Indiana Code § 31-34-23-1](#), which lists who may request a modification of a juvenile dispositional decree generally. See also [Indiana Code § 29-3-9-1\(a\)](#) which defines "Department" as the Department of Child Services.

2. The Court may modify a No Contact Order if it is found to be in the best interest of the child.
3. If the Court grants the request for modification, the Court must take steps to ensure that the restrained person is served with a copy of the modified Order.
4. The statute is silent on who may request a modification of a child protective order under [Indiana Code § 31-34-2.3](#).

BEST PRACTICE NOTE:

Since the restrained person is required to sign a No Contact Order, the Committee recommends that judicial officers set requests for modification of these Orders for hearing.

USE FORMS NC-0107

Order Vacating or Modifying No Contact Order

II. Extensions of Protection Orders

A. Civil Protection Orders

1. Indiana statute permits filing for extension of protection orders. However, due process requires the court to conduct a hearing, providing notice to the Respondent and an opportunity for the Respondent to object to the extension.
2. Without proper notice, a Respondent may be charged with a criminal offense, without knowing they are committing a crime. In many instances, the protected person may not have an updated address for the Respondent. Therefore, unless service can be perfected before the expiration date of the original order, it may be more practical to file a new petition for a protection order.
3. The petition to extend must be filed in time to obtain service upon the Respondent and conduct a hearing. The Committee recommends the filing of the petition no less than thirty days prior to expiration. If the Petitioner does not file the Petition for Extension timely, it is suggested a new Petition for Order for Protection be filed ex parte.

USE FORM PO-0116

Verified Petition to Extend Order for Protection

USE FORM PO-0132

Findings and Order Granting Verified Petition for Extension of Existing Order for Protection

4. The requirements to extend an existing Order of Protection was first discussed in [A.N. v. K.G., 3 N.E.3d 989, rehearing granted, 10 N.E.3d 1270 \(Ind. Ct. App. 2014\)](#) and [J.K. v. T.C., 25 N.E.3d 179 \(Ind. Ct. App. 2015\)](#), provide that extensions “must be based upon evidence that a protective order currently is “necessary to bring about a cessation of the violence or the threat of “violence” because of a continuing threat of harm.” J.K. Factors justifying an extension include:
 1. Actions which caused the original issuance of the protective order;
 2. Actions which have occurred since the original protective order;

3. Whether the original concerns of the Petitioner still exist at present.

The Court may extend the original protective order based upon any of these factors or different factors found by the Court. This was clarified in *J.K.*, supra, directing trial courts to determine what new evidence the Petitioner can show to justify an extension, not merely relying on whether the protective order has been effective. Specific findings to justify an extension are needed.

The Supreme Court of Indiana addressed the requirements to extend an existing protective order in [S.H. v. D.W., 139 N.E.3d 214 \(Ind. 2020\)](#). The Indiana Supreme Court agreed with many of the prior holdings of the Court of Appeals, including the *A.N.* and *J.K.* holdings, supra. The Supreme Court held not only must there be a current threat posed by the respondent, but that the threat must be “credible”, meaning plausible or believable. *Ibid.*, headnote 4. But see discussion on page 4 of the *S.H. v. D.W.* decision which discusses a one-time threat that would justify extending an order for protection where a respondent issues what the Court referred to as a “perpetual threat”, such as “You’ll never be safe. You’ll never know when I’ll show up. You better always be looking over your shoulder. Because one day I’ll get you.”

Evidence that the respondent violated a protective order may alone justify extending the order of protection’s duration because it shows a disregard of judicial efforts to protect the petitioner. [S.H. v. D.W., 139 N.E.3d 214 \(Ind. 2020\)](#).

5. The duration of the extension is presumed to be for two (2) years, “unless another date is ordered by the court.” [Indiana Code § 34-26-5-9, A.N. v. K.G., 3 N.E.3d 989 \(Ind. Ct. App. 2014\), rehearing granted, 10 N.E.3d 1270 \(Ind. Ct. App. 2014\)](#) (Findings required to extend an Order of Protection past two years. Order of 28-year extension was unreasonable without specific findings.) In *J.K.* an extension for five (5) years instead of two (2) years was looked at with disfavor without specific findings. If the Respondent is a sex or violent offender who is required to register as a lifetime sex or violent offender, and the Petitioner was the victim that resulted in said requirement, the Protection Order Issued After a Hearing is for an indefinite duration unless another date is ordered by the Court.
6. The Court must make specific findings to extend beyond two years, with the exception of qualifying orders issued indefinitely for victims of sex offenses. For example, if the Respondent is serving a prison term, a Protection Order could be extended for the entire length of the sentence.

III. Termination of Orders

A. Civil Protection Orders

1. A Petitioner may request that the Court dismiss and terminate an Order for Protection by filing FORM PO-0108. The Petitioner may also make an oral request, on the record, for the

dismissal or termination of an Order for Protection. If such a request is made the Court shall, without delay or any conditions, dismiss the case without prejudice. [Indiana Code § 34-26-5-12](#).

USE FORM PO-0108	Petitioner's Verified Request for Dismissal
USE FORM PO-0109	Order Dismissing Petition for Order for Protection
USE FORM PO-0118	Notice of Termination

2. If the ex parte Order has been set for hearing and the Petitioner fails to appear, the Court may or may not choose to dismiss the matter, without prejudice, just as it would any other civil action.
3. If there is no request by a party to terminate a Protection Order it will terminate on the date designated in the Order. If no date is designated, the Order will terminate two years from the date of issuance.
4. If an Indiana Protection Order is terminated, the person who obtained the Order must file a Notice of Termination, FORM PO-0118, with the Clerk of the Court. [Indiana Code § 5-2-9-6\(e\)](#).

B. Criminal No Contact Orders

1. When a request is made to terminate a No Contact Order, the court may choose to set a hearing to determine whether there is any additional threat of harm to the victim/witness or to ensure that the victim is not being coerced in any way into requesting the termination of the No Contact Order. Unlike a Protection Order, the Court is not required to dismiss a No Contact Order on the victim's request. The Notice of Termination FORM PO-0118 should be completed if a dismissal is granted. See [Indiana Code § 5-2-9-6 \(e\)](#).
2. The Court may consider notifying a victim advocate, if one is available, to speak with the victim regarding the request for termination. The Committee recommends that the judicial officer speak with the victim advocate on the record in order to avoid improper ex parte communications.
3. If a no contact order is issued as a condition of pretrial release, it terminates upon final disposition of the case (unless terminated earlier by Order of the Court). If the no contact order is issued as a condition of probation, it expires at the time the probation ends. In those cases, the Notice of Termination, FORM PO-0118, should be completed by the probation officer. If the order is issued as a condition of an executed sentence, it expires at the time the executed sentence ends. The person charged with supervising the executed sentence should complete the Notice of Termination, FORM PO-0118.

USE FORM PO-0118	Notice of Termination
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C. CHINS/Juvenile

1. The persons who may request that a court terminate a No Contact Order include: a parent, guardian, Attorney for the Department of Child Services, court appointed special advocate or a guardian *ad litem*.
2. The Court may dismiss or terminate a No Contact Order if it is found to be in the best interest of the child. The Notice of Termination Form, PO-0118, must be completed.

USE FORM PO-0118

Notice of Termination

IV. Expungement of Protection Orders

A. Application

1. The subject of a protection order (Original Respondent) may petition to expunge a protection order under [Indiana Code § 34-26-7.5](#).
2. Expungement may be granted when a protection order was issued to the Plaintiff but was subsequently terminated due to the: dismissal of the petition before a court hearing on the protection order; denial of the protection order upon the order of the court; or failure of the Plaintiff to appear at the court hearing on the protection order.
3. Expungement may also be granted when a protection order is reversed or vacated by an appellate court.
4. Expungement may be granted when a petition for a protection order was filed but the court did not grant the petition.

V. Petition

1. The petition to expunge may be made at any time after the Court dismisses or denies an order for protection following issuance of an order for protection ex parte, as described in [Indiana Code § 34-26-7.5-1\(1\)](#).
2. The petition to expunge shall be filed with the Court that issued or denied the protection order and in the cause the protection order was issued under.
3. The petition to expunge must be filed under seal, verified, and include the following information:
 - The Petitioner's full name;
 - The Petitioner's date of birth;
 - The Petitioner's address;
 - The case number or court cause number, if available;
 - The Petitioner's Social Security number;
 - The Petitioner's driver's license number;
4. The date of the order for protection or order for protection ex parte, if applicable;

5. A description of why the Petitioner is entitled to relief, including all relevant dates;
6. Certified copies of the following if applicable: the order for protection; the order for protection ex parte; the order denying an order for protection; the opinion from the appellate court reversing or vacating an order for protection or an order for protection ex parte; and
Any other information the Petitioner believes may assist the court.
See [Indiana Code § 34-26-7.5-3](#)

Note:

If a petition is filed that is not under seal with an appropriate Access to Court Record form i.e. Form PNW-0102, the court should order the document be held as confidential.

VI. Duties of the Court

1. Unless the petition is incomplete or conclusively indicates that the Petitioner is not entitled to relief, the Court shall:
 - redact the Petitioner’s date of birth; Social Security number; and driver’s license number from the petition;
 - serve a copy of the redacted petition on the Plaintiff who originally sought the protection order (Original Petitioner); and
 - set the matter for hearing.

See [Indiana Code § 34-26-7.5-4](#)

USE FORM PO-0134

2. The Plaintiff who originally sought the protection order is entitled to appear at the hearing, however, the Court may issue an order to expunge a protection order without holding a hearing if the Plaintiff who originally sought the protection order waives in writing the right to appear at the hearing and the petition conclusively indicates that the Petitioner is entitled to relief. [Indiana Code § 34-26-7.5-4](#)
3. The Petitioner (Original Respondent) has the burden of proof in a proceeding to expunge a protection order. The Court shall order the protection order expunged if the Petitioner proves by a preponderance of the evidence that the Petitioner is entitled to relief. [Indiana Code § 34-26-7.5-5](#).

USE FORM PO-0135 Order on Expungement of Protection Order

USE FORM PO-0136 Order Denying Petition for Expungement

The Court shall expunge the records in accordance with [Indiana Code § 34-26-7.5-6](#).

CHAPTER 10

FEDERAL AND STATE FIREARMS LAWS AND PROTECTION, NO CONTACT, AND WORKPLACE VIOLENCE RESTRAINING ORDERS

I. Indiana Law

- A. Surrender of Weapons: “Upon a showing of domestic or family violence 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.” See Indiana Code § 34-26-5-9(h).

The court may only prohibit a Respondent from using or possessing a firearm, ammunition, or deadly weapon after notice and a hearing. Indiana Code § 34-26-5-9(d)(4).

BEST PRACTICE NOTE: The Committee urges judges to meet with local law enforcement agencies to develop written protocols for the court-ordered confiscation or surrender of weapons and ammunition. The protocols should include a discussion of storage, as well as rules for returning the weapons. Forms and motions for the firearms surrender process, including informational handouts for respondents, are available upon request from the Family Violence Resource Attorney at Indiana Office of Court Services. See Appendix 4 for examples of firearm surrender forms.

Federal statute indicates after an order of Protection against an intimate partner is entered, the Respondent shall not possess a firearm. See [18 U.S.C. § 922\(g\)\(8\)](#), [922\(d\)\(8\)](#). [Indiana Code § 34-26-5-9\(h\)](#) provides weapons should be surrendered. It is strongly encouraged that weapons be surrendered as soon as possible after the hearing in which confiscation of weapons was

ordered. Once the weapons have been ordered to be surrendered, the Respondent should not handle it in any way, other than to surrender the weapons to law enforcement. The Committee is aware that many surrender protocols will have the Respondent bring weapons to local law enforcement, rather than have those weapons surrendered at the time of the hearing. Confiscation of weapons should take place within twenty-four (24) hours of the hearing, if the Respondent/Defendant was present at the hearing, or within twenty-four (24) hours of service of the order. The following are examples of suitable protocols:

a. ***Surrender to local law enforcement—***

- (1) Order local law enforcement to seize known weapons at the time of service of the order. Local law enforcement may store the weapons in the local evidence storage facility until further order by the court to either return or destroy them.
- (2) Order the Respondent to surrender all firearm(s), ammunition and deadly weapons at a specified date and time, to local law enforcement authorities. They should be surrendered at a prearranged location and time to law enforcement authorities. The law enforcement authority should provide a receipt to the respondent and Respondent should be ordered to provide written compliance to the court within one business day. If the Respondent does not appear at the specified date and time or appears but does not have all of the items ordered to be surrendered, the law enforcement agency should be ordered to contact the court immediately. In addition, the law enforcement agency shall be ordered to keep the weapon for a specified period of time as ordered by the court.

b. ***Allow Friends or Family to Remove and Store—***

Storing weapons with law enforcement is strongly encouraged. The Court, however, has the authority and discretion to allow removal and storage by a reputable third party, such as a family member, friend or attorney. The third party should be mandated to come to court and affirm under penalty of perjury that they will keep the firearms and not allow the respondent to have access further order of the court.

c. ***Seizure of Weapons by Law Enforcement Officers***

[Indiana Code § 35-33-1-1.5](#) permits law enforcement officers to confiscate and remove firearms, ammunition or a deadly weapon from the scene of a crime involving domestic violence under certain circumstances.

The Red Flag /Jake Laird law does not apply to Protection Order and No Contact Order Proceedings. Indiana Code § 35-47-14 (Red Flag/"Jake Laird" law) outlines the procedure by which law enforcement officers may seize and retain firearms from a "dangerous individual" as defined by [Indiana Code § 35-47-14-1](#).

d. ***Notice to Law Enforcement of Firearm Restriction***

The court shall electronically notify each law enforcement agency required to receive notification under [Indiana Code § 5-2-9-6](#) or designated by the Petitioner of the issuance of the order and indicate on the order if the parties meet the criteria under [18 U.S.C. 922\(g\)\(8\)](#) (“Brady disqualified”):

Criteria: it is unlawful for any person to possess a firearm or ammunition who is subject to a court order that (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. See also [Indiana Code § 34-26-5-9\(e\)\(5\)](#).

e. *Return of Weapons*

A court should schedule and conduct a hearing when a Respondent requests a return of a firearm. Before the weapon is returned, the prosecutor, probation department, or law enforcement agency should conduct a record check to make sure there is no reason to prevent return of the weapon(s). This may include: (1) conviction of a misdemeanor crime of domestic violence, (2) Brady disqualification, (3) placement on probation, (4) another protection order is in effect, (5) conviction of a felony, (6) a mental or physical impairment, or (7) or any other disqualification by law.

II. Federal Law

A. Brady Act Federal Firearms Disqualification

If an Order for Protection is entered after notice and a hearing, and the Petition is filed by or on behalf of the intimate partner or a child of the Respondent, the Respondent is “Brady disqualified.” [18 USC § 922\(g\)\(8\)](#). This is automatic and nondiscretionary. The correct entries should be made on the protection order and registry. Under [18 U.S.C. 922\(g\)](#), once a Respondent has received notice of the order of protection and an opportunity to be heard, it is a federal violation to purchase, receive, or possess a firearm while subject to this order if the protected person is: (a) the respondent’s current or former spouse; (b) a current or former person with whom the respondent resided while in an intimate relationship; or (c) a person with whom the respondent has a child.

B. Definition of Intimate Partner

"Intimate partner" is defined as the spouse of the person, former spouse of the person, the parent of a child of the person, and an individual who cohabitates or has cohabited with the person. [18 USC § 921\(a\)\(32\)](#).

C. Possession of Firearms Prohibited

It is unlawful for a person who is Brady disqualified to ship, transport, possess, or receive any firearm or ammunition. [18 USC § 922\(g\)](#). This does not apply to official use by law enforcement or military personnel while on duty. [18 USC § 925\(a\)\(1\)](#).

D. Brady Law Exception for Government Agencies

An Order for Protection does not create a Brady disqualification for firearms or ammunition imported for, sold or shipped to, or issued for the use of the United States or any department or agency thereof or any state or any department, agency, or political subdivision thereof. [18 USC § 925\(a\)\(1\)](#).

Where are the Brady firearm findings and orders in the current standardized Protection Order and No Contact Order forms?

Brady disqualification means a person is prohibited from possessing or purchasing firearms. Brady firearm disqualifications require three (3) specific findings and these are found in paragraphs d, e, and f on page 2 of form PO-113 (Orders for Protection issued after a hearing) and findings 1, 2, and 3 of form PO-0121 (Order Modifying an Order for Protection Adding Brady Law Prohibition). When these three (3) findings exist the Protection Order Registry will check the "yes" box for Brady disqualification on the cover sheet (page 1) of the order. Paragraph 11 on page 3 of form PO-113 also has the firearm restriction language consistent with being Brady disqualified.

The Ex Parte Order for Protection, Form PO-0105 does not contain a finding the Respondent had notice and an opportunity to be heard, which is an essential finding for a Brady disqualification. Therefore, there is no firearm restriction in the Ex Parte Order similar to the language found in paragraph 11 of the after-hearing orders in forms PO-113.

Brady disqualification may be ordered and designated as part of No Contact Orders issued in probation cases using form NC-102. The judge must indicate the order does involve intimate partners in paragraph 4 on page 3 of the No Contact Order. The first paragraph of this form indicates the defendant appears in person showing notice and an opportunity to be heard, and the respondent represents a credible threat to the protected party.

Brady disqualification in pretrial release, diversion or juvenile no contact orders may occur only upon the court making specific findings required by the Brady Act.

COMPARISON TABLE OF STATE AND FEDERAL PROTECTION ORDER AND FIREARMS LAWS

Indiana	Federal
Any relationship that qualifies for a protection order qualifies for a restriction on the Respondent's right to possess a firearm IC 34-26-5-2 & -9	Only 3 kinds of relationships qualify for a restriction on the Respondent's right to possess a firearm: (1) current or former spouses; (2) people with a child in common; and, (3) current or former cohabitants 18 USC §§922(g)(8) and 921(32)
Covers firearms, ammunition, and deadly weapons IC 34-26-5-9(d)(4) & -9(h)	Covers firearms and ammunition 18 USC §922(g)
Allows the Court to order confiscation of firearms, ammunition, and deadly weapons, and allows the Court to prohibit possession of those items IC 34-26-5-9(d)(4) & (h)	Prohibits possession of firearms and ammunition 18 USC §922(g)
Does not require special language/findings in order to confiscate/prohibit possession	For a protection order to qualify under federal law for a prohibition of possession of firearms or ammunition, it must contain certain language and findings 18 USC §§922(g)(8)(B) & (C)
The Court must hold a hearing before confiscation and/or prohibition can be ordered IC 34-26-5-9(d)(4) & -10(c)	The Court must have held a hearing, the Respondent must have received "actual notice" of the hearing, and the Respondent must have had an opportunity to participate in the hearing 18 USC §922(g)(8)(A)

BEST PRACTICE NOTE: When considering motions to confiscate or prohibit possession of firearms, note that Indiana law is more inclusive than the federal law. For example, Indiana law includes "deadly weapons," allows for the actual confiscation of firearms, and does not require special language or findings in order to confiscate or prohibit possession.

Indiana Civil Order of Protection Cases Addressing Firearm Reductions

[Moore v. Moore, 904 N.E.2d 353 \(Ind. Ct. App. 2009\):](#)

Importance of Cover Sheet: The Court of Appeals held that the trial court's order of protection was erroneous because it didn't provide the protection necessary to bring about the cessation of violence or the threat of violence. Among other things, the trial court failed to check "yes" on the cover sheet regarding whether the Respondent was Brady disqualified, and the order was insufficient, even though it contained language prohibiting the Respondent from using or possessing a firearm, ammunition, or deadly weapon.

[*Fox v. Bonam*, 45 N.E.3d 794 \(Ind. Ct. App. 2015\)](#):

Basis for Firearm Restriction: The Court of Appeals vacated a portion of an order for protection on the specific basis recited in the Order. The trial court's firearm restriction rested solely on Brady disqualification under [18 U.S.C. 922\(g\)](#), and because the Respondent did not qualify as an "intimate partner" under Brady, that portion of the order was vacated. The Court of Appeals did not address the argument made by Respondent that the language of [Indiana Code § 34-26-5-9\(f\)](#) now [Indiana Code § 34-26-5-9\(h\)](#) was not an independent grant of authority to restrict firearms under every order of protection.

Federal Firearms Statutes

18 U.S.C. § 922(g)(8)

(g) It shall be unlawful for any person

(8) who is subject to a court order that

- (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
- (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury[.]
to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(d)(8)

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that

- (A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and
- (B) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
- (C) (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

18 U.S.C. § 922(g)(9)

(g) It shall be unlawful for any person

(9) who has been convicted in any court of a misdemeanor crime of domestic violence, ...to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(d)(9)

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

18 U.S.C. § 921 – Definitions

1. Firearms

(3) The term "firearm" means

- (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- (B) the frame or receiver of any such weapon;
- (C) any firearm muffler or firearm silencer; or
- (D) any destructive device.
- (E) Such term does not include antique firearms.

2. Destructive Device

(4) The term "destructive device" means

- (A) any explosive, incendiary, or poison gas
 - (i) bomb,
 - (ii) grenade,
 - (iii) rocket having a propellant charge of more than four ounces,
 - (iv) missile having an explosive or incendiary charge of more than one-quarter ounce,
 - (v) mine, or
 - (vi) device similar to any of the devices described in the preceding clauses.
- (B) any type of weapon (other than shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a

- projectile by the action of any explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and
- (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

3. Antique Firearm

(16) The term “antique firearm” means

- (A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or
- (B) any replica of any firearm described in subparagraph (A) if such replica
- (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
 - (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or
- (C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term “antique firearm” shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

4. Intimate Partner

(32) The term “intimate partner” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

5. Misdemeanor Crime of Domestic Violence

- (A) (33) Except as provided in subparagraph (C), the term “misdemeanor crime of domestic violence” means an offense that
- (i) is a misdemeanor under Federal, State, or Tribal law; and
 - (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
- (B) (i) A person shall not be considered to have been convicted of such offense for purposes of this chapter unless
- I. the person was represented by counsel in the cases; or knowingly and intelligently waived the right to counsel in the case; and
 - II. in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
 - (aa) the case was tried by a jury, or
 - (bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.
 - (iii) A person shall not be considered to have been convicted of such offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

6. 18 U.S.C. § 925. Exceptions: Relief from Disabilities

(a) (1) The provisions of this chapter [18 USCS §§ 921 et seq.], except for sections 922(d)(9) and 922(g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

CHAPTER 11

FULL FAITH AND CREDIT / NCIC / IDACS

I. Full faith and credit

Full faith and credit with respect to Protection Orders, No Contact Orders and Workplace Violence Restraining Orders is provided for under Indiana Code § 34-26-5-17, which fully incorporates federal full faith and credit requirements. What constitutes "facial validity", and the prohibition on registration as a prerequisite to enforcement are also important aspects of Indiana law.

- A. "Full faith and credit" is a legal term that requires jurisdictions to honor and enforce Orders issued by Courts in other jurisdictions.
- B. Full faith and credit for Orders for Protection is an important aspect of the federal Violence Against Women Act (VAWA) of 1994.

"Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe or territory (the issuing State or Indian tribe or territory) shall be accorded full faith and credit by the court of another State, Indian tribe or territory (the enforcing State or Indian tribe or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State, Indian tribe or territory." [18 U.S.C. § 2265\(a\)](#).

- C. [18 U.S.C. § 2265\(b\)](#) sets two (2) conditions for validity of an Order for purposes of extending full faith and credit to that Order: jurisdiction and procedural due process.
 - 1. The Court that issued the Order must have had personal jurisdiction over the parties and subject matter jurisdiction over the case.
 - 2. The Respondent must have had notice and an opportunity to be heard. This does not mean the Respondent has to have been present at a hearing. The Respondent need only be given

an opportunity to appear and be heard. Ex Parte Orders are to be given full faith and credit if the Respondent was (or will be) given notice and an opportunity to be heard within a reasonable period of time.

3. In addition, Indiana Code § 34-26-5-17 requires the Order to identify the Protected Person and the Respondent and to be currently in effect.

D. The VAWA full faith and credit provisions apply to both civil and criminal Protection Orders.

1. Mutual Protection Orders from other jurisdictions may be enforced against the Respondent, but not against the Petitioner, unless specific findings of abuse were made against the Petitioner in the Order, or unless the Respondent filed a separate Petition/complaint against the Petitioner. 18 U.S.C. § 2265(c) and Indiana Code § 34-26-5-17(d).
2. Under the VAWA, orders with respect to custody are entitled to interstate enforcement only to the extent that they are entitled to full faith and credit under another Federal law. See 18 U.S.C. § 2266(5), the definition of "Protection Order." Because Indiana's Protection Order statutes do not provide for custody determinations, best practice is for all custody matters to be handled under the Uniform Child Custody Jurisdiction Law as a separate cause of action.
3. Protection Orders issued by Tribal Courts and Territories are entitled to full faith and credit enforcement.
4. "Limits on Internet publication of registration information. A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes." 18 § U.S.C. 2265(d)(3).

E. Certification of a Protection Order is not required under Indiana law. A certified copy usually contains a stamp, a seal, the issuing Judge's signature, and a notation that it is an authentic duplicate of the original Order. The VAWA does not require an Order to be "certified" to be enforced. Protected parties may want certified copies if they plan to register the Order in other jurisdictions.

F. Application of Laws

1. The jurisdiction issuing a Protection Order determines the identity of the protected person(s), the terms and conditions of the Order, and its duration. Protection Orders issued

outside of Indiana should be enforced by Indiana courts even if the terms are not provided under Indiana law, including permanent (non-expiring) orders.

2. The enforcing jurisdiction determines the methods of enforcement, whether the responding law enforcement agency has arrest authority, detention and notification procedures, and penalties or sanctions for violations of an Order.

G. The first page of Indiana's standard Orders, commonly referred to as a "cover sheet," and is designed to be consistent with jurisdictions surrounding Indiana. The information provided facilitates full faith and credit enforcement. This information is also very helpful for enforcement within Indiana.

II. National Crime Information Center (NCIC), Indiana Data And Communication System (IDACS) and the Protective Order Registry (POR)

NCIC, IDACS and the POR all contain registries of Orders that can be accessed by law enforcement agencies.

- A. Law enforcement officers may access the national registry to confirm the status of an Order. There are many limitations to this database that result in enforceable Orders not appearing in the registry. The lack of NCIC confirmation should not be used as a basis to conclude the Order is not in effect or valid. Contact information is included on the first page of Indiana's standard Orders to provide law enforcement officers or Courts with direct access to an issuing jurisdiction or Court.
- B. IDACS is maintained by the Indiana State Police and links information into NCIC. The Protection Order Registry is maintained by the Indiana Office of Court Technology (IOCT) in the Office of Judicial Administration.
 1. Indiana Code § 34-26-5-3 requires entry of a Protective Order to the Protective Order Registry.
 2. Like NCIC, IDACS or the Protection Order Registry may be used to confirm an Order, but NOT to determine that a Protection Order, No Contact Order, or Workplace Violence Restraining Order does not exist or is not enforceable. Issuing Courts are the best resource for determining the validity of Orders.

Federal Full Faith & Credit Statutes

18 USC §2265. Full Faith and Credit Given to Protection Orders

- (A) Full Faith and Credit. - Any protection order issued that is consistent with subsection of this section by the court of one State or Indian tribe or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe or territory) and enforced by the court and law enforcement personnel of the other state, Indian tribal government or Territory as if it were the order of the enforcing State, Indian tribe or territory.
- (B) Protection Order. - A protection order issued by a State, tribal or territorial court is consistent with this subsection if
1. such court has jurisdiction over the parties and matter under the law of such State, Indian tribe or territory; and
 2. reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.
- (C) Cross or Counter Petition. - A protection order issued by a State, tribal or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if
1. no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
 2. a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.
- (D) Notification and Registration. -
1. Notification. A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal or territorial jurisdiction unless requested to do so by the party protected under such order.
 2. No prior registration or filing as prerequisite for enforcement. Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal or territorial jurisdiction.

3. Limits on Internet publication of registration information. A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration or filing of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.
- (E) Tribal Court Jurisdiction. - For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

18 USC §2266 Definitions

In this chapter:

(5) Protection order. - The term "protection order" includes --

- (A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.
- (B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, pursuant to State, tribal, territorial or local law authorizing the issuance of protection orders, restraining orders or injunction for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

(8) State. - The term "State" includes a State of the United States, the District of Columbia, a commonwealth, territory, or possession of the United States.

APPENDIX 1: EMAILED ORDER TO APPEAR FROM *EX PARTE* HEARING TO PETITIONER

STATE OF INDIANA)
) SS:
 COUNTY OF) IN THE _____ CIRCUIT/SUPERIOR COURT
 _____,)
 Petitioner)
)
) VS.) CAUSE NO. ____ - ____ -PO- _____
)
)
 _____,)
 Respondent)

ORDER TO APPEAR

The Court, having NOT issued an *Ex Parte* Order for Protection, hereby sets this matter for an *Ex Parte* Hearing as follows:

DATE OF HEARING: _____
 TIME OF HEARING: _____
 LOCATION OF HEARING: _____

Date: _____ Approved and ordered by: _____, JUDGE
 _____ CIRCUIT/SUPERIOR COURT

*****IMPORTANT NOTICE*****

If you fail to appear for this *Ex Parte* Hearing, the Judge may **DENY** your request for an *Ex Parte* Order for Protection.

APPENDIX 2: SAMPLE AMENDMENT

STATE OF INDIANA)
) SS:
COUNTY OF _____)
)
) IN THE _____ CIRCUIT/SUPERIOR COURT
)
_____,)
Petitioner)
)
VS.) CAUSE NO. _____ - _____ -PO- _____
)
)
_____,)
Respondent)

PETITIONER'S AMENDMENT TO PETITION FOR EX PARTE PROTECTION ORDER

I hereby affirm under the penalties of perjury that the foregoing representations are true.

Signature

APPENDIX 3: COMMON DOMESTIC VIOLENCE OFFENSES

Battery, Indiana Code § 35-42-2-1: Battery as a **Class B misdemeanor** is defined as touching someone in a rude, insolent or angry manner. Battery with any injury, including pain, is a **Class A misdemeanor**. Battery with moderate bodily injury is a **Level 6 felony**. Battery can be a **Level 5 felony** when resulting in serious bodily injury; with a deadly weapon; or against a pregnant person which resulted in injury.

Criminal Confinement, Indiana Code § 35-42-3-3: Confinement as a **Level 6 felony** is defined as substantially interfering with the liberty of another. Confinement may also be a **Level 5 Felony** when it involves confinement of a child less than 14 years old and who is not the child of the perpetrator, confinement using a vehicle or confinement resulting in bodily injury. Confinement is a **Level 4 Felony** when it results in moderate bodily injury and is a **Level 3 Felony** when committed while armed with a deadly weapon or results in serious bodily injury.

Criminal Recklessness, Indiana Code § 35-42-2-2: Criminal Recklessness as a **Class B misdemeanor** is defined as recklessly, knowingly or intentionally performing an act that creates a substantial risk of bodily injury to another person. Criminal recklessness is a **Level 6 felony** when committed while armed with a deadly weapon and is a **Level 5 felony** when shooting a firearm into an inhabited dwelling or other building or place where people are likely to gather.

Domestic Battery, Indiana Code § 35-42-2-1.3: Domestic Battery as a **Class A misdemeanor** is defined as battery against a family or household member. If a person commits a domestic battery and has been previously convicted of a battery offense or strangulation, that is domestic battery as a **Level 6 felony**. Domestic Battery can also be a Level 6 felony when committed by an adult in the presence of a child, when it results in moderate bodily injury or when committed against a person who has a protective order or no contact order protecting them from the perpetrator.

Domestic Violence Animal Cruelty, Indiana Code § 35-46-3-12.5: Domestic Violence Animal Cruelty is a **Level 6 felony** is defined as someone who knowingly or intentionally kills a vertebrate animal with the intent to threaten, intimidate, coerce, harass or terrorize a family or household member.

Harassment, Indiana Code § 35-45-2-2: Harassment is defined as making a telephone call, sending email, or otherwise communicating with a person with the intent of harassing, annoying or alarming that person and is a **Class B misdemeanor**.

Interference with Reporting a Crime, Indiana Code § 35-45-2-5: Interference with reporting a crime is a **Class A misdemeanor** is defined as interfering with or preventing an individual from using 911, obtaining medical assistance or making a report to a law enforcement officer.

Intimidation, Indiana Code § 35-45-2-1: Intimidation is a **Class A misdemeanor** and is defined as communicating a threat with the intent that another person engage in conduct against their will, to place that person in fear of retaliation for a prior lawful act or another person be placed in fear that a threat will be carried out. Intimidation is a **Level 6 felony** when the threat is to commit a forcible felony, is committed against a witness in a pending criminal proceeding against the perpetrator or the perpetrator has a prior conviction for intimidation on the same victim. Intimidation is a **Level 5 felony** when committed while drawing or using a deadly weapon.

Kidnapping, Indiana Code § 35-42-3-2: Kidnapping as a **Level 6 felony** is defined as removing a person by fraud, enticement, force or threat of force from one place to another. Kidnapping is a **Level 5 felony** when the victim is a child less than 14 years old and is not the perpetrator's child, when it is committed while using a vehicle or if the kidnapping results in bodily injury. If the kidnapping results in moderate bodily injury, that becomes a **Level 4 felony** and if the kidnapping results in serious bodily injury or is committed while armed with a deadly weapon, kidnapping is a **Level 3 felony**.

Pointing a Firearm, Indiana Code 35-47-4-3: Pointing a firearm is a **Class A misdemeanor** if the weapon is not loaded and a **Level 6 felony** if the weapon is loaded.

Possession of Firearm by a Domestic Batterer, Indiana Code 35-47-4-3: Possession of a firearm by a domestic batterer is a **Class A misdemeanor** and is defined as the knowing or intentional possession of a firearm by a person convicted of domestic battery under Indiana statute.

Residential Entry, Indiana Code § 35-43-2-1.5: Residential entry is a **Level 6 felony** and is defined as knowingly or intentionally breaking and entering the dwelling of another person.

Stalking, Indiana Code 35-45-10-5: Stalking, a **Level 6 felony**, is defined as a repeated or continuing harassment causing the victim to feel terrorized, frightened, intimidated or harassed. Stalking is a **Level 5 felony** when it occurs in violation of a protection order or no contact order or a new stalking occurs while a stalking case is with the same victim is pending. Stalking is a **Level 4 felony** when the perpetrator has a prior conviction for stalking the same victim.

Strangulation, Indiana Code § 35-42-2-9: Strangulation is a **Level 6 felony** and is defined as a battery committed by applying pressure to the throat or neck, obstructing the nose or mouth, or applying pressure to the torso of another person that impedes the normal breathing or the blood circulation of that person. Strangulation may become a **Level 5 felony** when committed against a woman known to be pregnant or by someone who has a prior conviction for strangulation.

Trespass, Indiana Code § 35-43-2-2: Trespass is a **Class A misdemeanor** and is defined as knowingly or intentionally entering another's property or dwelling without permission, refusing to leave when asked or interfering with the person's possession or use of their property. Trespass is a **Level 6 felony** when the perpetrator has a prior conviction for trespass on the same property.

APPENDIX 4

Firearms Surrender Information: RESPONDENT

If you have an active Protective Order against you, you must:

- 1) Surrender any firearms that you own or have access to the _____ (law enforcement agency); and
- 2) Provide proof that you have surrendered your firearm(s) to the Court

Frequently Asked Questions – the Law:

- 1) ***What is considered a firearm?*** Any weapon designed, made, or adapted to expel a projectile by the action of explosive or any device readily convertible to that use.
- 2) ***Who cannot own and/or possess firearms?***
 - a. A person under an **active Protective Order (PO)** against them from their:
 - i. Intimate Partner (Current or former spouses, current or former cohabitants or parents of a child in common)
 - ii. Your biological child or your Intimate Partner's child
- 3) ***What if I don't have any firearms?*** You must still fill out the "Statement of Possession of Firearms" that confirms under penalty of perjury that you don't own or possess any firearms.
- 4) ***Do I have to turn over my firearms?*** Yes, if:
 - a. A judge grants a qualifying Protective Order against you.
 - b. A judge orders surrender of your firearms.
 - c. You are convicted of a felony or any crime with a domestic violence determination.
- 5) ***What happens if I don't surrender my firearms?***
 - a. **Contempt of court** including up to one hundred eighty (180) days in jail
 - b. **Prosecution under I.C. 35-47-4-6 Unlawful Possession of a Firearm by a Domestic Batterer, a Class A misdemeanor**
 - c. **Federal Crime** and penalty of up to ten (10) years imprisonment and/or a \$250,000 fine.

Frequently Asked Questions – Surrender:

- 6) ***When do I need to surrender my firearms?*** You must surrender your firearms **on the** _____ **(date)** after the Order of Protection has been granted against you.

- 7) *Who do I surrender my firearms to?* All firearms must be surrendered to the _____ (local law enforcement agency). Firearms must be surrendered by the date ordered by the Court.
- 8) *How do I surrender my firearms to law enforcement?*
- Leave your weapons in the vehicle.
 - Make sure each firearm is **unloaded**. **Do not bring ammunition to the Sheriff's Office. You are still prohibited from possessing ammunition but you must surrender that to a third party.**
 - Put the **firearms in the trunk of your car and lock your trunk**. If your car doesn't have a trunk, put the firearms in the back of your car out in a locked container.
 - Go to the _____ door of the _____ (local law enforcement agency) during the authorized hours.
 - Tell them you have been court ordered to turn in your firearms.
 - All passengers must exit the vehicle and wait away from the vehicle for officers.
- 9) *What documentation should I get from law enforcement about my surrender?*
- Law enforcement will give you a **receipt** for each firearm as proof that you have surrendered your firearms.
 - Bring this receipt to your firearm surrender hearing set by the Court.
- 10) *Do I have to pay law enforcement to store my firearms?* Not unless ordered by the Court.
- 11) *What if I want to surrender my firearms to a third party?*
- You may not surrender directly to a third party.** All firearms must be surrendered to the Sheriff first.
 - You must let the Court know at your protection order hearing or firearm surrender hearing that you wish to surrender to a third party. The third party must be present for the firearm surrender hearing.
- 12) *What steps does the third party have to take?*
- The third party taking possession of the firearms must be present at the firearms surrender hearing and provide contact information and identifying information.
 - The third party, if authorized to take possession of the firearms, must pick up the firearms directly from the Sheriff's Office during the authorized hours.
- 13) *What happens if I don't file a Statement of Possession of Firearms?*
- Possible **contempt of court** (penalty of up 180 days in jail and/or a fine).
- 14) *What happens if I don't attend my compliance hearing?*
- Possible **contempt of court** (penalty of up 180 days in jail and/or a fine).
- 15) *Does the Petitioner get to choose who I surrender my firearms to?*
- The Petitioner may oppose the third party transfer at the firearms surrender hearing
- 16) *Can I get my firearms back?*
- If you only had a Protective Order against you, and had no other prohibitions to possessing firearms, you can get your firearms back after the PO expires, is denied, or is dismissed.

- b. If you do not petition the Court for return of firearms within six months after the order has expired, been denied, or been dismissed, the Court may order your weapons destroyed.
- 17) *How do I get my firearms back after the Order of Protection has expired?*
- a. Fill out and file an "Application for Return of Firearm" with the Hendricks County Clerk.
 - b. The Court will send you an order for the release of your firearms.
 - c. Take the notice to _____ (local law enforcement agency). **You must take a photo ID and copy of the court's order with you.**

STATE OF INDIANA	)	SUPERIOR COURT
	)ss:	TERM
COUNTY OF	)	CASE NO.
_____)	
PETITIONER)	
)	
VS.)	
)	
_____)	
RESPONDENT.)	

RESPONDENT’S STATEMENT OF POSSESSION OF FIREARMS

ANSWER THE FOLLOWING QUESTIONS AND BRING THIS COMPLETED FORM TO THE HEARING:

1. Do you own or possess any firearm(s)?

“Firearm” means any weapon that is capable of expelling, designed to expel, or that may readily be converted to expel a projectile by means of an explosion. Indiana Code 35-47-1-5.

NO

YES

2. For each firearm you own or possess, provide the following information:

Type of Firearm	Make/Model	Serial Number	Current Location of Firearm

(If you need room for additional firearms, attach an additional sheet to this form)

I hereby swear or affirm under penalty of perjury the foregoing report of firearms is a true, accurate, and complete statement of all firearms in my possession or control. I understand that knowingly making a false statement on this form may result in a charge of perjury, a Level 6 felony punishable by a fine up to \$10,000 and imprisonment not to exceed 2 ½ years, or both.

I hereby swear that I have read this document and the facts stated in it are true.

Respondent's Signature

Date

Respondent's Printed Name

STATE OF INDIANA	)	SUPERIOR COURT
	)ss:	TERM
COUNTY OF	)	CASE NO.
)	
_____)	
PETITIONER)	
)	
VS.)	
)	
_____)	
RESPONDENT.)	

ORDER TO SURRENDER FIREARMS AND NOTICE TO APPEAR FOR FIREARM SURRENDER HEARING

The Court Orders:

- An order for protection has been entered prohibiting Respondent from using or possessing a firearm and ordering surrender of all firearms for the duration of the protection order.
- Your known firearm(s) are listed as follows:

Type of Firearm	Make/Model	Serial Number	Current Location of Firearm

Respondent may possess or transport a firearm only for the purpose of complying with this surrender order. Possessing or transporting a firearm for any other reason violates 18 U.S.C. § 922(g) and may be punishable in federal court by fine and imprisonment.

- Respondent is hereby ordered to surrender all firearms listed above as well as any other firearms Respondent owns or possesses on **[date]** between the hours of _____ to the _____ (local law enforcement agency) at

_____ (address). **You are to leave all firearms in the vehicle and follow all instructions given from the officer. Firearms must be unloaded and left in the vehicle.**

6. Respondent is ordered to bring a copy of the receipt issued by the officers to this Court prior to the firearm surrender hearing.
7. If Respondent wishes to surrender firearm(s) to a third party, **both Respondent and the third party must appear at the firearm surrender hearing.** If the Court approves the third party for transfer of the firearm, the third party may obtain the firearm(s) directly from local law enforcement.
8. Respondent has one hundred eighty (180) days from the date of expiration, denial, or dismissal of the protection order to petition this Court for the return of the firearms to Respondent or transfer to a third party. If petition for return of the firearm has not been filed within one hundred eighty (180) days of the disposition of the protection order, this Court will order the firearm destroyed.
9. Respondent is hereby ordered to appear for a firearm surrender hearing on:

Failure to appear at the hearing may result in the court issuing a warrant for your arrest.

SO ORDERED.

Judge, Superior Court

STATE OF INDIANA	)	SUPERIOR COURT
	)ss:	TERM
COUNTY OF	)	CASE NO.
)	
_____)	
PETITIONER)	
)	
VS.)	
)	
_____)	
RESPONDENT.)	

NOTICE OF FIREARM POSSESSION PENALTIES

The Court has ordered that the above-named Respondent surrender to you any firearms he or she owns or has in his koir her possession. A copy of the Court’s order to surrender firearms is attached.

YOU ARE INFORMED THAT:

1. You may not furnish to Respondent any firearm in violation of the Court’s order. This prohibition includes any firearms the Respondent is required to surrender to you and any other firearms.
2. You may not return any firearms to this person until the Court has ordered that you may return the firearms to Respondent.
3. Any person who provides a firearm to an individual who the person knows is ineligible to purchase or otherwise receive or possess a firearm for any reason other than the person’s age commits criminal transfer of a firearm, a Level 5 felony, punishable by a fine up to \$10,000 and between one and six years imprisonment. Indiana Code 35-47-2.5-16.

Provide complete contact information below:

Name

Address

Telephone Number

Email address

SO ORDERED.

Judge, Superior Court

STATE OF INDIANA)
)ss: SUPERIOR COURT
 COUNTY OF) TERM
) CASE NO.
)
)
 _____)
 PETITIONER)
)
 VS.)
)
 _____)
 RESPONDENT.)

MOTION AND DECLARATION FOR ORDER TO RELEASE WEAPONS

I am the

Petitioner

Respondent

I request that the court order the release of the firearms or other dangerous weapons surrendered to _____ (local law enforcement agency), as required by an order requiring surrender of weapons. The weapons ordered surrendered in this cause are as follows:

Type of Firearm	Make/Model	Serial Number	Current Location of Firearm

The court should order the release of firearms or other dangerous weapons because the protection order/no-contact order/restraining order/decrece that prohibited me from accessing, obtaining or possessing a firearm, or other dangerous weapon is no longer in effect.

I certify under penalty of perjury under the laws of the State of Indiana that the facts stated in this document are true.

Respondent's Signature

Date

Respondent's Printed Name

STATE OF INDIANA	)	SUPERIOR COURT
	)ss:	TERM
COUNTY OF	)	CASE NO.
)	
_____)	
PETITIONER)	
)	
VS.)	
)	
_____)	
RESPONDENT.)	

ORDER TO RELEASE WEAPONS

The Court Orders:

A Motion for an Order to Release Weapons was filed.

The court considered the motion and relevant court records; and the court finds that the order against the restrained person/defendant (name) _____ has ended and no other orders are in effect under this cause number.

There are no longer any restraints in this case prohibiting the restrained person/defendant from accessing, possessing or owning firearms or other dangerous weapons.

The _____ (local law enforcement agency) shall return the firearms or other dangerous weapons to the restrained person/defendant, but only if there are no other disqualifications that prohibit the restrained person/defendant from possessing the firearms or other dangerous weapons. If the restrained person/defendant does not provide a copy of this order to the local law enforcement agency, the agency may dispose of the firearms as unclaimed property pursuant to statute.

SO ORDERED.

 Judge, Superior Court