

PROTECTION ORDER DESKBOOK

Prepared by the Protection Order Committee
of the Judicial Conference of Indiana

November 2010
Including 2012 Revisions



Published by the Indiana Judicial Center
30 South Meridian Street, Suite 900
Indianapolis, Indiana 46204-3564

Available at <http://www.in.gov/judiciary/2699.htm>

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The text and forms contained in this Deskbook are available at the
judicial branch website: <http://www.in.gov/judiciary/2699.htm>

All updates will be placed on this website.



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FOREWARD

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:

<http://www.in.gov/judiciary/2699.htm>

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 Division of State Court Administration. 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 Deskbook and the forms for distribution in July. This edition took two years and many hours of work from committee members, staff, and other judicial officers throughout the state. We appreciate the assistance of all who contributed to this edition.

Christopher A. Newton
Judge, Vigo Superior Court
Chair, Protection Order Committee
September 2010

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Jane A. Seigel

Court Alcohol & Drug Programs

Lisa White, Administrator, Court Alcohol & Drug Programs

DuAne L. Young, Assistant Administrator, Court Alcohol & Drug Programs

Justin E. Miller, Program Coordinator, Court Alcohol Drug Programs & Problem Solving Courts

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Vicki L. Davis, Assistant Education Director

Barbara Arnold Harcourt, Court Personnel Education Attorney

Anne G. Jordan, Education Attorney

Jenny C. Kidwell, Logistics & Office Administrator

Juvenile & Family Law

Jeffrey Bercovitz, Director of Juvenile & Family Law

Angela R. Reid-Brown, Court Improvement Program Administrator

Probation, Security and Interstate Compact

Robert J. Champion, Probation Administrator, Security Advisor & Deputy Compact Administrator

Turran L. Blazier, Outgoing Compact Specialist

Laura N. Hausladen, Incoming Compact Specialist

Rénita M. Wright, Senior Compact Specialist

Problem-Solving Courts

Mary Kay Hudson, Problem-Solving Courts Administrator

Jamie L. Bergacs, Assistant Administrator, Problem-Solving Courts

Research

Michael J. McMahon, Research Director

Jennifer A. Bauer, Probation & Interstate Compact Attorney

Michelle C. Goodman, Research Attorney

Diane M. Mains, Problem-Solving Courts Attorney

Julie C.S. McDonald, Research Attorney

Jennifer L. Weber, Court Alcohol & Drug Program Attorney

Staff Associates

Rebecca K. Goldstein

Wendy S. Hendricks

Michelle D. Shorter

Teri E. Simmons

November, 2009

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CHAPTER 1

GETTING STARTED / JURISDICTION / SERVICE

I. Introduction and Definitions

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, or a sex offense. 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.

The Indiana Civil Protection Order Act may be found at the following website: <http://www.in.gov/legislative/index.htm> See 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 must have the Respondent's:

- Correct name;
- Correct date of birth *or* Social Security number; and,
- Correct, current address.

The petition for a protection Order must contain "specific allegations." Flash v. Holtzclaw, 789 N.E.2d 955 (Ind. Ct. App. 2003)

B. Who can get a court order under this law?

The ICPOA was passed to promote the protection and safety of all victims of domestic or family violence, sexual assault, and stalking, and to prevent future violence against such victims. In order to apply for protection under this law, a **Petitioner** needs to have been a victim of:

- **Domestic or family violence;**
- **Stalking;** or,

- A sex offense.

"Domestic or family violence" 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 or household member.
- (2) Placing a family or household member in fear of physical harm.
- (3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.

For purposes of Ind. Code § 34-26-5, domestic and family violence also includes **stalking** (as defined in Ind. Code § 35-45-10-1) or a **sex offense** under Ind. 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.

- C. The **Respondent** must be either a:
- **Family or household member** of the Petitioner; or,
 - Person who has committed stalking or a sex offense against the Petitioner.

"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.

Note: HEA 1049, P.L. 136-2012, effective July 1, 2012 has expanded the definition of "family or household member" to include a person who is the biological parent of a child adopted by another person.

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).

D. **“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.

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)

As used in the Stalking law, **“harassment”** 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.” (Indiana Code § 35-45-10-2)

As used in the Stalking law, **“impermissible contact”** includes (but is not limited to): “Knowingly or intentionally following or pursuing the victim.” (Indiana Code § 35-45-10-3)

- E. A **“sex offense”** means one of the following crimes under Indiana law (Ind. 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.

NOTE: In order for a person to ask for an Order for Protection because he or she was 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.

II. 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 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, unlike dissolution of marriage cases. See Indiana Code § 34-26-5-4(c).
- D. Service—Courts acquire jurisdiction over parties or persons in two general ways: either a person files the case, or a person is served. See Trial Rule 4(A).

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).

- 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 Trial Rule 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 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.
- E. Special Circumstances
- 1. 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(d).

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.

2. 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.

Transfer of case to proper Court

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.

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.

I. Initial Filing

A. The Clerk's office should provide the appropriate instruction form to the Petitioner to 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.

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 State Court Administrator under Indiana Code § 34-26-5-3(e).

1. Is the Petitioner seeking protection for him/herself?

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

2. 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 his/her review. Let the Petitioner decide if he/she feels the situation falls into a proper category. It is **not** the Clerk's duty to decide if stalking or a sex crime has taken place---this decision should be left to the Judge. It is not necessary for criminal charges to have been filed for stalking or sex crimes in order for a person to apply for a Protection Order. All protection order forms are available online in both Microsoft Word and Adobe PDF format at the following URL: <http://www.in.gov/judiciary/forms/po.html>.

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 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

2. Confidential Form

The Confidential Form, PO-104, must be kept separate from all other parts of the file. This form needs to be completed by the protected party. Because of confidentiality issues, the Clerk’s copy of 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). Some counties may choose to put the Confidential Forms in a sealed envelope within the Court file. This would require close supervision by the Clerk’s Office if the public wants to view any of the case files to ensure the envelope is not opened or taken. 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

Administrative Rule 9 applies to Protection Order cases. Specific requirements for Protection Orders are provided in Admin. Rule 9 (G) (1) (b) (xiii) and Admin. Rule 9 (G) (1) (e) (i).

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. 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 Trial Rule 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.

D. 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.

II. Case Processing

- A. Assign the case to the proper Court. File-mark the Petition, and record the case number on all documents. The Clerk should place the Petition into a file folder for delivery 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 Order for Protection to the Clerk. See Indiana Code § 34-26-5-9(d). The Clerk shall provide a copy of the Order for Protection 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.

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. Send a copy of the Order Denying Petition for Order for Protection, **FORM PO-0110**, to 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 an order for protection 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 and maintained in the physical case file. Providing return of service in both manners will guarantee this vital information is available at all times (i.e., on the electronic CCS if the case file is missing or damaged, or in the physical case file if the network or automated system is momentarily down or crashes.

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 county's Admin. Rule 9 procedures.
 - 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 county's Admin. Rule 9 procedures. Only the redacted order is kept in the public portion of the file.

D. Modification 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

- 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 his/her 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 it will go into the Court file. The protected person will also need one (1) copy of the Protection Order he/she wishes 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 it should 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 from an Indian 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 state’s (or tribe’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.

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the ___ day of _____, 20___, I mailed a copy of this Summons and a copy of the Petition to the Respondent _____ by _____ mail, requesting a return receipt, at the address furnished by the Petitioner.

Dated

Clerk, _____ County Courts

RETURN ON SERVICE OF SUMMONS BY MAIL

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the Petition mailed to the Respondent, was accepted on the ___ day of ___, 20___.

I hereby certify that the attached return receipt was received by me on the ___ day of ___, 20___, showing that the Summons and a copy of the Petition was returned not accepted.

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the Petition mailed to the Respondent, was accepted by (age)___ on behalf of said Respondent on the ___ day of _____ 20___.

Clerk, _____ County Courts

SERVICE ACKNOWLEDGED

A copy of the within Summons and a copy of the Petition attached thereto were received by me at _____.

Dated

Signature of Respondent

RETURN OF SERVICE OF SUMMONS

I hereby certify that I have served the within Summons:

- (1) By delivering a copy of the Summons and a copy of the Petition to the Respondent on the ___ day of _____, 20___.
- (2) By leaving a copy of the Summons and a copy of the Petition:
 - (a) at the dwelling place or usual place of abode of the Respondent
 - (b) with a person of suitable age and discretion residing therein, namely _____ and by mailing a copy of the Summons to the Respondent, by first-class mail, to the address listed on the Summons, the last known address of the Respondent.

Sheriff of _____ County, Indiana
By: _____

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.—Also termed *ex parte hearing*.

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)

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.

I. 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. 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 proceedings, and the relationship between the parties.

A. Qualifying Acts

If the Petition does not concern an act of domestic violence, sexual abuse, or stalking, dismiss the Petition.

USE FORM PO-0109

Order Dismissing Petition for Order of Protection

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, extend or modify the Protection Order.

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.

II. **Proper Parties**

A. 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. In 2008, the definition of domestic or family violence was amended to include:

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.

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, or a sex offense 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 Division of State Court Administration has revised Form PO-0103 to name 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 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 § 35-45-10-5.

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

B. 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. 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. 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).
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(d).

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, and sex offenses. See Indiana Code § 34-26-5-2.
2. Only a Court of record may issue an Order for Protection. See Indiana Code § 34-26-5-4.

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).
 - 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).
 - 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 only be filed in the county where the Petitioner currently or temporarily resides, the Respondent resides, or where the domestic or family violence occurred. See Indiana Code § 34-26-5-4(b).
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.

Lapse of time no bar. A Court cannot deny relief solely because of lapse of time between the act of violence 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.

IV. Relief that may be granted *ex parte* and without ever holding a hearing unless the Respondent asks for one.

- A. Prohibit the Respondent from committing or threatening acts of domestic or family violence, stalking, or sex offenses against the Petitioner and/or family or household members. It should be noted the Legislature added to the definition of domestic or family violence, the following:

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.

- B. Prohibit the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the Petitioner.

- C. Order the Respondent to stay away from the Petitioner's residence, school, employment and/or other places. See Indiana Code § 34-26-5-9(b) (1), (2) & (4).

USE FORM PO-0105

Ex Parte Order for Protection

- D. 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

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

- A. Evicting the Respondent from the Petitioner's residence.
- B. Ordering the Respondent to give the Petitioner possession or use of:
 - 1. A home they both share
 - 2. A car or other motor vehicle
 - 3. Other necessary personal items
- C. 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(b) (3), (5) & (6) 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

The court should 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. Form PO-0105, paragraph seven (7.) provides this relief.

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

- A. Specifying parenting time arrangements.

- B. Ordering the Respondent to pay money to the Petitioner, or on the behalf of the Petitioner, for:
1. Attorney fees;
 2. Rent or mortgage payments;
 3. Child support, if a duty exists;
 4. Other expenses related to domestic or family violence;
 5. Costs and fees incurred in bringing the action.
- C. 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).

USE FORM PO-0112

Order for Protection (Short form)

-or-

USE FORM PO-0113

Order for Protection (Long form)

-and-

VII. *Ex parte* remedies do not include custody determinations or Brady disqualification.

- A. 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.

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).

- B. Brady disqualification. See Chapter 10 for discussion of when a Respondent may be subject to a Brady disqualification.

VIII. *Ex parte* hearings.

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 permit a prompt transfer to the proper court.

The following dialogue may be used:

1. [Place the Petitioner under oath.] State your name for the record.
2. What is your relationship to the respondent?
3. 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?
4. Do you have any children together?

5. Has a dissolution decree been entered? Has a dissolution petition been filed? In what court?
6. 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?
7. Tell me what occurred that causes you to seek an order of protection.

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

IX. Who May Grant Protection Orders – Judges or Magistrates

A magistrate may issue final protection orders without being countersigned by a judge. Indiana Code § 33-23-5-5.

X. 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. 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 (d) requires the Court to “transmit” a copy of an Order of Protection (Order, Coversheet and Confidential Form) to the clerk for processing under Ind. 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.

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. 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. The suggested dialogue set forth in Chapter 3 may be employed at the contested hearing as well.

A. Qualifying Acts.

If the Petition does not concern an act of domestic violence, sexual abuse, or stalking, dismiss the Petition.

USE FORM PO-0109

Order Dismissing Petition for Order of Protection

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.

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.

II. Proper Parties

A. 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. In 2008, the definition of domestic or family violence was amended to include:

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.

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, or a sex offense 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 Division of State Court Administration 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 § 35-45-10-5.

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

B. 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. 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, but the petition may be transferred for hearing to a Court having juvenile jurisdiction. See Indiana Code § 34-26-5-2(d).

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, and sex offenses. See Indiana Code § 34-26-5-2.

2. Only a Court of record may issue an Order for Protection. See Indiana Code § 34-26-5-4.

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).
 - 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).
 - 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 only be filed in the county where the Petitioner currently or temporarily resides, the Respondent resides, or where the domestic or family violence occurred. See Indiana Code § 34-26-5-4(b).
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.

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: www.in.gov/attorneygeneral/2375.htm. 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 § 34-26-5-8. The Petitioner is responsible for completing the prescribed forms.
2. Notice of the hearing. The Court must give notice of the hearing by ordinary 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).
3. Time 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(b).
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(b).

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.

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

D. Evidentiary Matters

1. Subject Matter. The only proper subjects of a Protection Order hearing are domestic or family violence, stalking, and sex offenses. 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, or a sex offense has occurred, Indiana Code § 34-26-5-9(a) and (f);
 - whether a Respondent represents a credible threat to the safety of a Petitioner or a member of the Petitioner's household, Indiana Code § 34-26-5-9(f); 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(f).
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).

4. Lapse of time no bar. A Court cannot deny relief solely because of lapse of time between the act of violence 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.
5. Rules of Evidence Apply. The statute makes no provision for relaxed rules of evidence.
6. Child Hearsay. One frequent evidentiary challenge is child hearsay. Exceptions such as excited utterance may apply. Be aware of the potential impact of the United States Supreme Court's ruling in Crawford v. Washington, 124 S.Ct. 1354 (2004) regarding the admissibility of child hearsay.

BEST PRACTICE NOTE: Judges should consider the appointment of a guardian *ad litem* in situations where they are suspicious of child abuse or neglect, but the evidence of child abuse or neglect is inadmissible.

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, or a sex offense by a preponderance of the evidence. Essany v. Bower, 790 N.E.2d 148 (Ind. Ct. App. 2003); Indiana Code § 34-26-5-9 (f).

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. Mutual Orders. As discussed elsewhere in this Deskbook, mutual Orders for Protection are not entitled to full faith and credit. Trial Courts have a duty to hold evidentiary hearings in Protection Order cases, and cannot issue mutual Orders unless separate Petitions were filed. Maurer v. Maurer, 712 N.E.2d 990 (Ind. Ct. App. 1999).
10. 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 (e).
- B. Effect on other cases.
 1. Order in other case. An Order for 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. See Indiana Code § 34-26-5-9(g). Even though the language of Indiana Code § 34-26-5-9(g) 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 § 34-36-5-9(b).

VI. Relief

- A. Relief that may be granted *ex parte* and without ever holding a hearing unless the Respondent asks for one.
 1. Prohibiting the Respondent from committing or threatening acts of domestic or family violence, stalking, or sex offenses 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(b)(1), (2) & (4).

USE FORM PO-0105 *Ex Parte* Order for Protection

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:
 - a. A home they both share
 - b. A car or other motor vehicle
 - c. Other necessary personal items
3. 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(b)(3), (5) & (6) 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 altogether.

Parenting Time:

The determination of parenting time require a hearing and that hearing should be held in the court having jurisdiction of the parties' children.

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, Scope I, 1.]

If the respondent has been convicted of a crime of domestic or family violence, see Indiana Code § 31-17-2-8.3 about the requirement of supervised parenting time.

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;
 - e. 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.
See Indiana Code § 34-26-5-9 (c) (2), (3) & (4).

USE FORM PO-0112 Order for Protection (Short form if parenting time arrangements are simple or not needed)

-or-

USE FORM PO-0113 Order for Protection (Long form for more complex relief)

-and-

BEST PRACTICE NOTE: If necessary, 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. The law enforcement agency notifies the Court whether the Respondent has surrendered the weapon.

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.

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. 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. 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.

- 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

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

When seeking to prohibit family or domestic violence, the parties and the Court should proceed under Indiana Code § 34-26-5 for entry of an Order for Protection. A restraining order under Trial Rule 65 should be used for minor acts of harassment or incivility.

- A. Orders for Protection address violence. An Order for Protection under Indiana Code § 34-26-5 is the preferred remedy when seeking to prohibit family or domestic violence. The Order for Protection is entered into the state computer system referred to as the Protective Order Registry (POR) which automatically notifies the Indiana law enforcement database called IDACS and the federal database called NCIC. If violated, the respondent may be prosecuted under the Invasion of Privacy statutes. See Indiana Code § 35-46-1-15.1. Conversely, a Trial Rule 65 temporary restraining order would not be entered into any of these databases, 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. A petition for contempt of court is used as the proper procedure for enforcing a violation of a restraining order.
- B. Trial Rule 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. See 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 the State of Indiana with the intent of depriving the Court of jurisdiction over such child. A temporary restraining order should be used for acts of harassment or incivility where violence is not involved.

II. Where Should the Protection Order Petition be Filed?

The Petition for a Protection Order should be filed in the Court exercising jurisdiction over the parties' dissolution, paternity, legal separation, CHINS or guardianship case.

- 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. See Indiana Code §§ 34-26-5-6 (3) & (4)

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. 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.

- B. 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 and any paternity, juvenile, family or domestic relations cases; and, any criminal case involving the parties or a child of a party. See Indiana Code § 34-26-5-5.
- C. 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. See Indiana Code § 34-26-5-9(g).
- D. A parent in a paternity action may request a Protection Order against the other parent to prevent family or domestic violence 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 § 34-14-16-1. This does not prohibit hearing an *ex parte* matter and transferring the case in accordance with paragraph A. above.
- E. Likewise, either party to a dissolution may request a Protection Order against the other to prevent family or domestic violence 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.
- F. 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” 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 (b), 31-15-5-1.
- B. 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.
- C. 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 should be transferred to a court with juvenile jurisdiction. Indiana Code § 34-26-5-2(d).

- D. 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.

USE FORM PO-0122

- E. 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 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.

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(b) & (c) sets forth the relief which a Court may grant in a protective 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 adapted 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:

1. 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 and/or the Order of Protection. Refer to Paragraph 2, Forms PO-0105 and PO-0112. For example, paragraph 2 of the Order could prohibit contact "except for telephonic, e-mail or text messages only regarding child related issues only." It is recommended that the Petitioner be asked under oath if he/she believes this type of contact can occur safely and without risk of domestic violence; or

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. See 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 cases. The Court shall review each Petition separately in an individual or a consolidated hearing and grant or deny each Petition on the Petitioner's individual merits. If the trial Court finds cause to grant both Petitions, the Court must do so by separate Orders with specific findings. See 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. See Indiana Code § 34-26-5-9
- D. An Order for Protection is effective for two (2) years unless the Court orders another expiration date. See Indiana Code § 34-26-5-9(e).
- E. An Order for Protection does not raise an inference or presumption in a subsequent case or hearing. See Indiana Code § 34-26-5-9(h).
- F. A Court may not order mediation for resolution of the issues in a Protection Order case involving family or domestic violence. See Indiana Code § 34-26-5-15. However, this does not preclude mediation in other cases involving the same parties.
- G. A Court may appoint a Guardian *ad litem* to represent a child of one or both of the parties to a Protection Order case. See Indiana Code § 34-26-5-19.
- H. Forms. 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 State Court Administrator 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 of protection. Orders of 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 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.

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 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, Scope I, 1.]

If the respondent has been convicted of a crime of domestic or family violence, see Ind. Code 31-17-2-8.3 about the requirement of supervised parenting time.

VII. Child Protection Orders for Removal of Alleged Perpetrators.

A. Filing of Petition

A petition 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. See Indiana Code § 31-34-2.3-1.

BEST PRACTICE NOTE: The Department of Child Services should file the petition 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 petition states facts sufficient to satisfy the following:

(1) There is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse.

(2) There is not time for an adversary hearing given the immediate danger to the physical health or safety of the child.

(3) The child is not in danger of child abuse or neglect from a parent or other adult with whom the child will continue to reside in the child's residence.

(4) 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 for 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. A parent or other adult who *knowingly* or *intentionally* fails to comply with these requirements commits a Class A misdemeanor. See Indiana Code §§ 31-34-2.3-6 and 31-34-2.3-7.

USE FORM CHPO-0100

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 pursuant to 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' petition 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 TEMPORARY CHILD PROTECTIVE ORDER -
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 Class D 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) 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 clear and convincing evidence that the defendant poses a risk of physical danger to another person... to assure the public’s physical safety... (3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Require the defendant to refrain from any direct or indirect contact with an individual...

(7) Release the defendant on personal recognizance unless: (A) the state presents evidence relevant to a risk by the defendant: (i) of nonappearance; or (ii) to the physical safety of the public; and (B) the court finds by a preponderance of the evidence that the risk exists.

(8) Impose any other reasonable restrictions designed to assure the defendant’s presence in court or the physical safety of another person or the community.”

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.

The Protection Order Committee recommends that, at the outset of each bond hearing on a case with a victim, Judges routinely ask the prosecutor to make a record regarding whether the State has complied with the victim rights laws.

If a Defendant does not post bond and remains in jail, but violates a No Contact Order directly or indirectly by writing letters or phoning the victim, the prosecutor may determine that there is not 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.

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 No Contact Order Pretrial Release/No Hearing for defendants charged with a violent crime that has resulted in bodily injury. They may be ordered to have no contact with the victim, whether held or while on bail, for up to ten (10) days or until the initial hearing, whichever occurs first. No hearing is required.

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. Page 3 of 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 decide not to release the Defendant. 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 ask whether the Defendant owns or possesses a weapon. The judicial officer should make this inquiry while reviewing the portion of the No Contact Order that prohibits the Defendant from owning or possessing firearms, deadly weapons, or ammunition (Paragraph 2). If the Defendant owns or possesses a firearm, deadly weapon, or ammunition he or she should be ordered to surrender it to the Sheriff or other law enforcement agency.

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. See 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 the order is entered into IDACS and NCIC electronically. An order will not be entered into IDACS and NCIC unless the Respondent is identified by a full date of birth or a complete Social Security Number. The statute requires all orders be entered into the Registry by the court.

E. Violations of the No Contact Order

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 or Extension of the No Contact Order

Because it is a part of the bail statute, a No Contact Order of this nature terminates when the Court releases the bond. A Court that desires to extend the provisions of a No Contact Order may do so by making “no contact” a provision of an Order of probation. **FORM PO-0118**, the Notice of Termination, should be completed and filed when the case is concluded.

A Court that desires to extend the provisions of a No Contact Order may do so by making “no contact” a provision of an Order of probation or as a provision of the Order of an executed sentence.

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. 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 revocation of probation and for the filing of a separate criminal case, including Invasion of Privacy.

USE FORM NC-0102 No Contact Order While on Probation

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.

USE FORM NC-0101 No Contact Order Upon Agreement To Withhold Prosecution/Pretrial 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 While on Probation or Executed Sentence

USE COVER SHEET

USE FORM PO-0104

Confidential Form

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. Who is eligible to apply? Any of the following can apply to the Court for an Order preventing direct or indirect contact with a child:

1. CHINS
 - Attorney for Department of Child Services
 - Guardian Ad Litem or Court Appointed Special Advocate
2. Delinquency
 - Prosecuting Attorney
 - Probation Officer
 - Department of Correction
 - Guardian Ad Litem or Court Appointed Special Advocate

B. Verification

The Petition for the No Contact Order must be verified. Indiana Code § 31-37-25-2 and Indiana Code § 31-34-25-2.

C. Requirements of the Petition. Indiana Code § 31-37-25-3 and § 31-34-25-3.

The petition shall be entitled, “In the Matter of a No Contact Order for _____” and must allege:

- 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 child or a CHINS; and,
- That the proposed Order is in the best interests of the child.

D. Hearings and Findings on the Petition. Indiana Code § 31-37-25-4 and § 31-34-25-4.

- The hearing on the Petition can either be held concurrently with a dispositional hearing, modification hearing or independently of other hearings.
- If the Court finds that the allegations contained in the Petition are true, then the Court shall issue an 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

E. Entry of No Contact Order in IDACS/NCIC

When the order is entered in the Protection Order Registry and submitted to IDACS and NCIC electronically, the Sheriff is automatically notified that an order was issued.

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.

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**” (WVRO's).

There are two kinds of WVRO's—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.

There are three parties named in the caption of a WVRO case: the employer, who is the Plaintiff; the person to be restrained, who is the Defendant; and, the Protected Employee. Only the employer may ask the Court for these Orders. The Plaintiff needs to file a Petition in a Court of record, on behalf of his or her employee, against the Defendant to get this type of Order. There will be a Court hearing within 15 days of the filing of the Petition.

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 Trial Rules 4.4 and 75. Under the “Long Arm” provisions of Trial Rule 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.

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 Trial Rule 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 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.

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 for the definition of “employee.”

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 § 35-42-2, or stalking under Indiana Code § 35-45-10. 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.
- "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.
- C. **"Course of conduct"** means a pattern of conduct composed of a series of acts over 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 Found**

Workplace Violence forms are available from the County Clerk’s office, or from the following Web site: <http://www.in.gov/judiciary/forms/po.html>

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 Division of State Court Administration has developed 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 Division of State Court Administration. See Indiana Code § 34-26-6-13.

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 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 that takes effect immediately and stays in effect until the hearing (not more than fifteen 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)

and

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 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. See Indiana Code § 34-26-6-10.

2. Notice to law enforcement must be made by the Protective Order Registry. (POR)
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. Trial Rule 65(B). The Plaintiff, or the Plaintiff's attorney, must comply with Trial Rule 65 with respect to required notice to the Defendant. Certification of compliance with 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; TR 65(B); Form **WV-0101**; In Re Anonymous, 729 N.E.2d 566 (Ind. 2000); and In the Matter of 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: Trial Rule 65(F) provides: "(F) 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. Trial Rule 65(B)
Because no immediate, *ex parte* relief is sought, Trial Rule 65(B) is inapplicable.

C. Notice
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.

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. **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**

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(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 Class D felony if the person has a prior unrelated conviction for an offense under this section.

CHAPTER 8

ENFORCEMENT OF PROTECTION 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 Ind. 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 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. In addition to or instead of filing the crime of Invasion of Privacy, in the appendix to this Chapter 8 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. Where a No Contact Order has been issued under Ind. Code § 35-33-8-3.2(a)(4) or under 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; order good 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. 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)

- C. 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, Ind. 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 section of the Indiana Civil Benchbook (Second Edition 2007, Contempt is Tab 70) for an in-depth analysis of the types of contempt and procedural requirements or to the Indiana Domestic Relations Benchbook (September 2007, Chapter 18).

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. (Indiana Civil Benchbook Second Edition 2007, par. 70.10.100) 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. (Indiana Civil Benchbook Second Edition 2007, par. 70.30.200) 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 him/her self of the contempt.

In addition to or instead of being prosecuted for the crime of invasion of privacy, a person who violates a protective order can be held in contempt. A judge should determine whether to proceed in a civil contempt or criminal prosecution, but not both, to avoid potential problems with double jeopardy. Incarceration for a civil contempt might preclude a subsequent criminal prosecution. Webster v. State, 673 N.E.2d 509 (Ind. Ct. App. 1996), *trans. denied*. See also Jones v. State, 812 N.E.2d 820 (Ind. Ct. App. 2004).

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 he/she has 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 Civil Benchbook par. 70.30.710 et. seq.
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 Civil Benchbook par. 70.30.710 et. seq.

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*. (emphasis added)

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-day 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(i) 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. Ind. Code § 34-26-5-9 (j)

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.

COMMON DOMESTIC VIOLENCE CHARGES

Invasion of Privacy (Class A Misdemeanor) Ind. Code § 35-46-1-15.1 through-20

Knowingly violating a protection, no-contact, or workplace violence restraining order. This crime includes violations of such orders issued by other states and Indian tribes. The offense is a **Class D felony** if the defendant has a prior, unrelated conviction for Invasion of Privacy (does not need to be on the same victim, or involve the same court order).

Battery (Class B Misdemeanor) Ind. Code § 35-42-2-1

Knowingly touching another person in a rude, insolent, or angry manner. The offense is a **Class A misdemeanor** if the act results in bodily injury to any person other than the defendant. The crime is a **Class D felony** if it is committed by a person age 18 or older on a person who is under the age of 14 and if it results in bodily injury to the victim. The crime is also a **Class D felony** if the defendant has a prior, unrelated conviction for Battery on the same victim, and if the victim suffers bodily injury during the instant offense.

Domestic Battery (Class A Misdemeanor) Ind. Code § 35-42-2-1.3

Knowingly touching another person in a rude, insolent, or angry manner, and causing bodily injury to that victim, while the defendant and the victim are: current or former spouses; have a child in common; or, live together or have lived together as if they were spouses. The offense is a **Class D felony** if the defendant has a prior, unrelated conviction for Domestic Battery (does not need to be on the same victim).

Criminal Recklessness (Class B Misdemeanor) Ind. Code § 35-42-2-2

Recklessly performing an act that creates a substantial risk of bodily injury to another person. The offense is a **Class A misdemeanor** if the defendant uses a motor vehicle to commit it (and a conviction *requires* a suspension of the defendant's driver's license for a period of 60 days to 2 years (Ind. Code § 9-30-13-1). The offense is a **Class D felony** if it is committed while armed with a deadly weapon, or if it results in serious bodily injury to another person.

Criminal Confinement (Class D Felony) Ind. Code § 35-42-3-3

Knowingly confining another person without that person's consent, *or* removing a person by force, the threat of force, fraud, or enticement from one place to another.

Intimidation (Class A Misdemeanor) Ind. Code § 35-45-2-1

Communicating a threat to another person with the intent that the other person engage in conduct against that person's will, or be placed in fear of retaliation for a prior lawful act. The offense is a **Class D felony** if the threat is to commit a forcible felony, or if the person to whom the threat is communicated is a witness (or the spouse or child of a witness) in any pending criminal proceeding against the person making the threat.

Harassment (Class B Misdemeanor) Ind. Code § 35-45-2-2

Communicating with another person by telephone, mail, e-mail, etc. with the intent to harass, annoy, or alarm another person but with no intent of legitimate communication. The offense includes telephone calls regardless of whether a conversation takes place.

Criminal Mischief (Class B Misdemeanor) Ind. Code § 35-43-1-2

Recklessly damaging or defacing the property of another person without that person's consent. The offense is a **Class A misdemeanor** if it causes a monetary loss of at least \$250 but less than \$2,500, or if the property damaged was a moving motor vehicle. The crime is a **Class D felony** if it causes a monetary loss of at least \$2,500. If a defendant uses a motor vehicle to

commit Criminal Mischief, the sentencing court may impose an optional suspension of the defendant's driver's license for a period of 60 days to 2 years (Ind. Code § 9-30-13-3).

Residential Entry (Class D Felony)

Ind. Code § 35-43-2-1.5

Knowingly breaking and entering the dwelling of another person.

Criminal Trespass (Class A Misdemeanor)

Ind. Code § 35-43-2-2

- Knowingly entering the real property of another person while not having a contractual interest in that property, and after having been denied entry by that person or the person's agent.
- Knowingly refusing to leave the real property of another person while not having a contractual interest in that property, and after having been asked to leave by that person or the person's agent.
- Knowingly interfering with the possession or use of the property without the other person's consent.
- Knowingly entering the dwelling of another person while not having a contractual interest in the property, without the other person's consent.

The offense is a **Class D felony** if the defendant has a prior, unrelated conviction for Criminal Trespass on the same property.

Stalking (Class D Felony)

Ind. Code § 35-45-10-5

A knowing repeated or continuing harassment of another person that causes the other person that causes the other person to feel terrorized, frightened, intimidated, or threatened, and that would also cause a reasonable person to feel terrorized, frightened, intimidated, or threatened. The crime is a **Class C felony** if it occurs while a protection, no-contact, or workplace violence restraining order is in effect; *or*, if it is accompanied by a threat of serious bodily injury, sexual battery, or death; *or*, if it is committed while the defendant already has an open criminal complaint of stalking pending against him or her involving the same victim. The crime is a **Class B felony** if it occurs while the defendant is armed with a deadly weapon, *or* if the defendant has a prior, unrelated conviction for stalking the same victim.

**Unlawful Possession of a Firearm
by a Domestic Batterer (Class A Misdemeanor)**

Ind. Code § 35-47-4-6

Knowingly possessing a firearm after having been convicted of Domestic Battery.

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CHAPTER 9 MODIFICATION//TERMINATION

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.

USE FORM PO-0115 Petition to Modify an Order for Protection and Request for a Hearing

USE FORM PO-0117 Notice of Modification

2. If the Petition for modification requests the following relief:
 - a request that the Respondent be removed from a residence
 - a request that personal property be transferred to a petitionerthe petition may be granted immediately; however, the court must set a hearing to occur within thirty (30) days.
3. If the Petition for modification requests the following relief:
 - any change in parenting time, or child support;
 - 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;
 - 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;a hearing must be set before the relief can be granted.
4. Termination or modification at request of Respondent. The statute makes no provision for modification or termination at the request of the Respondent. A Respondent seeking relief from the Order should proceed under Trial Rule 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(a).

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

1. A parent, guardian, prosecutor, Attorney for the Office of Family and Child Services, a probation officer, a caseworker, the Department of Correction, or a Guardian *ad litem* may request that a No Contact Order be modified on behalf of a child.
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 FORM PO-0117

Notice of Modification

II. **Termination of Protection 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 an 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 Order is issued as a condition of probation, it expires at the time the probation ends. The Notice of Termination, **FORM PO-0118**, should be completed by the prosecutor.

USE FORM PO-0118

Notice of Termination

C. CHINS/Juvenile

The persons who may request that a court terminate a No Contact Order include: a parent, guardian, prosecutor, Attorney for the Department of Child Services, a probation officer, a caseworker, the Department of Correction, or a guardian *ad litem*.

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

CHAPTER 10
FEDERAL AND STATE FIREARMS LAWS AND PROTECTION, NO
CONTACT, AND WORKPLACE VIOLENCE RESTRAINING
ORDERS

I. Indiana Law

A. Surrender of Weapons Under Indiana Law

“... 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(f).

B. 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.

C. Notice to Indiana State Police

This form must be used to give notice to the Indiana State Police of federal firearm restrictions. See Indiana Code § 34-26-5-9 (d) (5).

USE FORM PO-114

Notice to Indiana State Police Re:
Firearms

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. ***Indiana Code § 34-26-5-9 (f) provides weapons should be surrendered. However, federal statute indicates after an order of Protection is entered, the respondent shall not possess a firearm. See 18 U.S.C. § 922 (g) (8), 922 (d) (8), 922 (g) (d).*** It is strongly encouraged that weapons be surrendered immediately after a hearing in which confiscation of weapons was ordered. Once the weapon has been ordered to be surrendered, the respondent should not handle it in any way. It is not advisable to permit a respondent to handle a weapon once he or she has been ordered to surrender it. Confiscation of weapons should take place within twenty-four (24) hours of the hearing, if the 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. ***Utilize 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 a firearm(s), ammunition at a specified date and time, deadly weapons 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 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. ***Telephone Reporting***—At the hearing, give the defendant a written advisory that states the following:
 - (1) the defendant should report to local law enforcement by calling the listed telephone number within twenty-four (24) hours of the hearing;
 - (2) the defendant must speak with a specific officer or leave a voicemail message for that officer identifying all weapons;
 - (3) the officer will compare the firearms that the defendant identified over the phone with state databases regarding firearm ownership;
 - (4) the officer will contact the defendant with final instructions. The officer will then report to the Court regarding the status of the weapons.

- c. ***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.

- d. ***Allow Defendant to Sell Weapons to a Licensed Dealer***—The state of California allows defendants the opportunity to sell the weapons to a licensed dealer, provided the defendant provides a receipt to the Court within a specified period of time.

BEST PRACTICE NOTE: 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 [*sic*] 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).

- E. Please refer to “Protection Orders and Federal Firearms Prohibitions” and “Misdemeanor Crimes of Domestic Violence and Federal Firearms Prohibitions” Bench Cards in Appendix III.

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 forms PO-112 and PO-113, which are Orders for Protection issued after a hearing. 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 8 on page 3 of forms PO-112 and PO-113 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 with 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 8 of the after hearing orders in forms PO-112 and PO-113.

Brady disqualification may be ordered and designated as part of No Contact Orders issued in probation cases by the use of 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(c)(4) & -9(f)	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(c)(4) & -9(f)	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(c)(4) & -10(b)(2)	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.

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

(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

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.

Such term does not include antique firearms.

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 Secretary 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 Secretary of the Treasury find 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.

Antique Firearm

(16) The term "antique firearm" means—

- (A) any firearm (including any firearm with a match lock, 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.

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.

Misdemeanor Crime of Domestic Violence

(33) (A) Except as provided in subparagraph (C), the term "misdemeanor crime of domestic violence" means an offense that—

- (i) is a misdemeanor under Federal or State 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 case; 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.

(ii) 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.

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.

Federal Domestic Violence Firearm Legislation: Scope of the Official Use Exception in Order of Protection Cases

By Nancy Turner, Coordinator, *Police Response to Violence Against Women Project*, IACP

Representatives of the International Association of Chiefs of Police, the Department of Justice, and the Bureau of Alcohol, Tobacco, and Firearms (ATF), met in 2000 to clarify the scope of the Official Use Exception under the Gun Control Act, 18 U.S.C. § 925(a)(1).

The Gun Control Act makes it unlawful for a person who is the subject of a qualifying protection order to possess or receive firearms or ammunition (section 922(g)(8) of the Gun Control Act). Under ATF's interpretation of the Official Use Exception, this provision does not apply to persons "performing official duties on behalf of a Federal, State or local law enforcement agency."

In a memorandum issued in February 2001, the ATF states that this exception applies "as long as the officer is authorized or required to receive or possess that firearm in his or her official duties." According to the ATF, "the authorization must be by statute, regulation, or official department policy" and applies to both department-issued weapons and those purchased by the officer if he or she is authorized or required to purchase their service weapon.

With respect to the issue of whether officers are allowed under the exception to carry their service weapons while off duty, the ATF says that if officers are "authorized or required to carry their service weapon at all times, the exception applies to their service weapon at all times." The memo goes on to say that "the exception does not apply for officers who are 'off-duty' at the end of a shift, and are not authorized by statute, regulation, or official department policy to possess their duty weapons for the purpose of performing official duties."

While the federal firearm law allows officers who are the subject of a restraining order to receive or possess firearms in the course of their official duties, state and local laws may be more prohibitive. Law enforcement agencies are encouraged to establish guidelines that are more restrictive than the federal provisions to enhance the safety of all concerned and protect against liability. For example, an agency might prohibit officers who are subject to restraining orders from receiving or possessing firearms when they are off duty.

It is still a violation of federal law for an officer subject to a restraining/protection order to receive or possess a firearm in a personal capacity.

CHAPTER 11

FULL FAITH AND CREDIT / NCIC / IDACS

- I. **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. Criminal Protection Orders are called No Contact Orders in Indiana, whether issued *ex parte*, after a hearing or by agreement.
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).
 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, custody matters would better 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 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.” 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 an Order for Protection determines the identity of the protected person (s), the terms and conditions of the Order, and its duration. Orders for Protection issued outside of Indiana should be enforced by Indiana courts even if the terms are not provided under Indiana law, including permanent (nonexpiring) 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 was 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 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 Judicial Technology and Automation Committee (JTAC) in the Division of State Court Administration.
1. Ind. Code § 35-26-5 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 (b) 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.

PROTECTION ORDERS AND FEDERAL FIREARMS PROHIBITIONS

Persons subject to a qualifying protection order under federal law are generally prohibited from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). Violation of this prohibition while the order remains in effect is a federal offense punishable by up to ten years imprisonment. 18 U.S.C. §§ 922(g)(8), 924(a)(2).

The following list enumerates the elements that define a qualifying protection order under the federal firearms prohibition. **Generally, a defendant/respondent subject to a protection order that includes one element (indicated by a diamond) from each section listed below is covered by the federal firearms prohibition.**

I. HEARING

- ❖ Defendant/Respondent received **actual notice** and had an **opportunity to participate**.

II. INTIMATE PARTNER

Plaintiff/Petitioner is an **intimate partner** of the Defendant/Respondent, (18 U.S.C. § 921(a)(32)) that is:

- ❖ a **spouse** of Defendant/Respondent;
- ❖ a **former spouse** of Defendant/Respondent;
- ❖ an individual who is a **parent** of a child of Defendant/Respondent; **or**
- ❖ an individual who **cohabitates or has cohabited** with Defendant/Respondent.

III. RESTRAINS FUTURE CONDUCT

- ❖ The order **restrains** Defendant/Respondent from **harassing, stalking, or threatening** the intimate partner, child of the Defendant/Respondent, or child of the Defendant/Respondent's intimate partner; **or**
- ❖ The order **restrains** Defendant/Respondent from engaging in other conduct that would place the intimate partner in **reasonable fear of bodily injury** to the partner or child.

IV. CREDIBLE THREAT OR PHYSICAL FORCE

- ❖ The order includes a finding that Defendant/Respondent is a **credible threat** to the physical safety of the intimate partner or child; **or**
- ❖ The order, by its terms, explicitly prohibits the use, attempted use, or threatened use of **physical force** against the intimate partner or child that would reasonably be expected to cause bodily injury.

For further information about firearms prohibitions or section 922(g)(8), contact your local Field Division of the Bureau of Alcohol, Tobacco and Firearms by calling (800) 800-3855. For general information about protection orders and firearms, contact the Full Faith and Credit Project at (800) 256-5883.

MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE AND FEDERAL FIREARMS PROHIBITIONS

Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV) generally are prohibited under federal law from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). This prohibition also applies to federal, state, and local governmental employees in both their official and private capacities. Violation of this prohibition is a federal offense punishable by up to ten years imprisonment. See 18 U.S.C. § 922(g)(9); see also 18 U.S.C. §§ 921(a)(33), 924(a)(2), 925(a)(1); 27 C.F.R. §§ 178.11, 178.32.

A qualifying MCDV is an offense that:

- ❖ Is a federal, state, or local offense that is a misdemeanor under federal or state law;
- ❖ Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon; and,
- ❖ At the time the MCDV was committed, the defendant was:
 - ◆ A current or former spouse, parent, or guardian of the victim;
 - ◆ A person with whom the victim shared a child in common;
 - ◆ A person who was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian; or,
 - ◆ A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.

EXCEPTIONS: A person has not been convicted of a qualifying MCDV:

- ❖ IF the person was not represented by counsel — unless he or she knowingly and intelligently waived the right to counsel;
- ❖ IF the person was entitled to a jury trial AND the case was not tried by a jury — unless the person knowingly and intelligently waived the right to jury trial; or,
- ❖ IF the conviction was set aside or expunged; the person was pardoned; or, the person's civil rights — the right to vote, sit on a jury, and hold elected office — were restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense).

BUT: This exception does NOT lift the federal firearms prohibition if:

- ◆ the expungement, pardon, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or,
- ◆ the person is otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

FOR FURTHER INFORMATION ABOUT SECTION 922(g)(9) OR FEDERAL FIREARMS PROHIBITIONS GENERALLY, CONTACT YOUR LOCAL FIELD DIVISION OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS BY CALLING (800) 800-3855. FOR FURTHER INFORMATION ABOUT DOMESTIC VIOLENCE GENERALLY, CONTACT THE NATIONAL CENTER ON FULL FAITH AND CREDIT AT (800) 256-5883 EXT. 2.

How can I make my orders easier to enforce?

The issuing court determines who is restrained, the duration of the restraint, the relief that is available, and the conduct that is prohibited or required.

Crafting an Enforceable Order

- Use clear and concise language in a legible order.
- Avoid vague and unenforceable terms such as “reasonable.” For example, in orders involving no contact or stay away provisions, include, when appropriate, the exact distance that a respondent must stay away.
- Do not leave important terms of the order “upon the agreement of the parties.” For example, when crafting visitation provisions, be precise about times and location, including relevant addresses, persons, and duration. When prohibiting contact or communication, provide specific examples of the prohibited activities (e.g., using telephone, fax machine, electronic mail, and third-party contacts).
- Be sure that law enforcement can easily read, understand, and identify enforceable provisions in the order.
- Indicate on the face of the order that the respondent had or will have notice and an opportunity to be heard within the time required by the law of the issuing jurisdiction. It is good practice to have the respondent, if present, sign an acknowledgment of service on the order.
- Make a written finding that the court has personal and subject matter jurisdiction to issue the protection order.
- Make specific written findings of abuse and indicate that the abuse meets the statutory standards for issuance of a protection order.
- State the order’s expiration date, if any, or state that the order is a lifetime or permanent order.
- Cite the statute upon which the court’s decision and order are based. Where applicable, cite the statutory provision upon which specific relief is based (e.g., provisions providing for specific economic relief or catch-all provisions).
- Do not issue mutual orders (see Mutual Protection Orders below).

NOTE

***Mutual Protection Orders** are single orders that provide relief against the original petitioner, as well as the respondent. Such orders should not be issued. Instead, courts should require the respondent to file a separate petition or complaint for a protection order; make a specific finding that each party (including the respondent) is entitled to relief, and issue a separate order. Mutual orders are not entitled to full faith and credit against the petitioner except under very limited circumstances (see Enforcing Court card for details).*

Complying with Legal Requirements

- Do not notify the respondent that a protection order was registered or filed in your jurisdiction (18 U.S.C. § 2265(d)(1)).
- Do not post on a publicly available Internet site that a protection order has been registered, filed, or issued in your jurisdiction unless the petitioner so requests and does so on the record, orally or in writing (18 U.S.C. § 2265(d)(3)).

How do I facilitate inter-jurisdictional enforcement?

Facilitating Full Faith and Credit

- Indicate in writing or certify on the order that the order complies with VAWA's Full Faith and Credit provision (18 U.S.C. § 2265) and meets the protection order definition under 18 U.S.C. § 2266.
- State in the order that custody and visitation provisions within the order are enforceable under the federal full faith and credit provision. Also note compliance, where applicable, with the Uniform Child Custody Jurisdiction Act (UCCJA) or the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). State that any modifications to custody and visitation provisions must comply with those statutes, as well as the federal Parental Kidnapping Prevention Act (PKPA) (28 U.S.C. § 1738(A)) (see Issuing and Enforcing Child Custody, Visitation, and Support Provisions Within Protection Orders cards).
- Consult with the enforcing court, if requested, to clear up ambiguities, verify validity, and establish the status of service.
- Enter orders, as soon as possible, into the Protection Order File of the National Crime Information Center (NCIC POF) and all other accessible databases.
- Include in orders the typed name of the judge, the address and phone number of the court, and where available, the court's email contact information, the state protection order registry telephone number, and any other useful contact information for the court.
- Include language that explains how the current order adopts, modifies, overrules, or supersedes prior protection order provisions or orders from your or any other jurisdiction.

NOTE

Civilian orders are entitled to enforcement on military installations, but military orders are not entitled to enforcement in civilian courts (see 10 U.S.C. § 1561(a)) (see Military Protection Orders on inside cover).

What else should I do to facilitate protection?

Facilitating Protection

- Provide protected parties with certified copies of the order and suggest that they keep one with them at all times or that they talk to an advocate about the pros and cons of doing so.
- Include the required judicial notification regarding federal firearms laws (see Firearms card for further details regarding judicial notification and other firearms considerations).
- Inform the parties orally and in writing that the order is enforceable in all 50 states, U.S. territories, tribal lands, the District of Columbia, and on military installations without registration by the petitioner or notice of registration to the respondent.
- State that violation of the order, in addition to any state or tribal sanctions, may subject the respondent to prosecution for such federal crimes as:
 - Firearms or ammunition possession (see Firearms card for details);
 - Interstate travel to commit domestic violence (18 U.S.C. § 2261);
 - Interstate stalking (18 U.S.C. § 2261A); and
 - Interstate violation of a protection order (18 U.S.C. § 2262).
- Provide the protected party with the National Domestic Violence Hotline number ((800)799-SAFE, TTY (800)787-3224) and information on local victim services.

For technical assistance on adopting a generally recognizable first page for protection orders, please contact the National Center for State Courts/Project Passport at (800) 616-6160.

The enforcing jurisdiction uses its enforcement procedures to enforce the terms of the protection order as written by the issuing jurisdiction.

What is the source of my authority?

Full Faith and Credit

Since 1994, the VAWA's Full Faith and Credit provision (18 U.S.C. § 2265) has required every jurisdiction in the United States to recognize and enforce valid protection orders.

These jurisdictions include:

- A state and its political subdivisions;
- A tribal government;
- The District of Columbia; and
- A commonwealth, territory, or possession of the U.S. (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands).

Is the order enforceable?

What Are the Elements of an Enforceable Order?

A protection order from another jurisdiction that has these elements must be afforded a presumption of enforceability:

- The respondent has been given notice and an opportunity to be heard, or, in the case of an *ex parte* order, the respondent will be given notice and an opportunity to be heard within a reasonable time, consistent with the requirements of due process.
- The issuing court had personal and subject matter jurisdiction to issue the order.
- The order has not expired.

What terms must I enforce?

Enforcing Protection Orders of Other Jurisdictions

- Enforce the terms of the order as written by the issuing jurisdiction, even if the **enforcing jurisdiction** lacks authority to enter such terms, e.g.:
 - The category of protected persons would not be eligible for relief in the enforcing jurisdiction (e.g., dating partners, same-sex partners);
 - The order contains relief unavailable in the enforcing jurisdiction;
 - The order has a longer duration than provided for in the enforcing jurisdiction; or
 - The order calls for surrender of weapons and the enforcing jurisdiction has no such provision.
- Use the enforcement procedures of the **enforcing jurisdiction**.
 - Treat the violation as a criminal offense if it is criminalized in the enforcing jurisdiction.
 - Issue orders to take physical custody of children where provided for in the enforcing jurisdiction for custody violations.
 - Award attorney's fees if sought and if provided for in the enforcing jurisdiction.
 - Impose sanctions for violations as provided for in the enforcing jurisdiction.
- Do not notify the respondent or post on a publicly available Internet site that a protection order has been registered, filed, or issued in your jurisdiction unless the petitioner so requests, and does so on the record, orally or in writing (18 U.S.C. § 2265(d)(1) and (3)).
- Do not require registration/filing or notice of either as a prerequisite for enforcement of valid protection orders from other jurisdictions (18 U.S.C. § 2265(d)(1)).

What procedures should I apply?

What about orders against both parties?

Mutual Orders

Mutual orders, which provide relief against the original petitioner as well as the respondent, are fully enforceable against the respondent. Provisions against the petitioner are not entitled to interstate/tribal enforcement unless (a) a cross or counter petition, complaint, or other written pleading was filed by the respondent seeking such a protection order; and (b) the court made specific findings that each party was entitled to such an order.

What else should I do to facilitate protection?

Facilitating Protection

- Communicate with the issuing court to clear up ambiguities, verify validity, and establish the status of service if these issues are raised.
- Ensure that court clerks and staff are familiar with and comply with the provisions of VAWA/Full Faith and Credit and provisions of federal grant programs that prohibit charging filing and service fees, as well as other fees or costs, related to protection orders (see 42 U.S.C. § 3796 hh(c)(4)) (see Frequently Asked Questions on STOP Formula Grants available at http://www.ovw.usdoj.gov/docs/FAQ_FINAL_nov_21_07.pdf).
- Provide protected parties with the National Domestic Violence Hotline number ((800) 799-SAFE, TTY (800) 787-3224) and information on local victim services.
- Inform the issuing court of the disposition of any enforcement proceeding by filing a copy of the order with the issuing court.
- Initiate discussions with contiguous jurisdictions regarding procedures for cross enforcement of protection orders.

Are there firearms considerations?

Firearms

- See the Firearms card for further details regarding judicial notification and other firearms considerations.

APPENDIX I

DEFINITIONS

Appendix I Important Definitions

1. **“Crime involving domestic or family violence”**

IC 31-9-2-29.5

IC 35-41-1-6.5

“Crime involving domestic or family violence” means a crime that occurs when a family or household member commits, attempts to commit, or conspires to commit any of the following against another family or household member:

- (1) A homicide offense under IC 35-42-1.
- (2) A battery offense under IC 35-42-2.
- (3) Kidnapping or confinement under IC 35-42-3.
- (4) A sex offense under IC 35-42-4.
- (5) Robbery under IC 35-42-5.
- (6) Arson or mischief under IC 35-43-1.
- (7) Burglary or trespass under IC 35-43-2.
- (8) Disorderly conduct under IC 35-45-1.
- (9) Intimidation or harassment under IC 35-45-2.
- (10) Voyeurism under IC 35-45-4.
- (11) Stalking under IC 35-45-5.
- (12) An offense against family under IC 35-46-1-2 through IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.

2. **“Domestic or family violence”**

IC 31-9-2-42

IC 34-6-2-34.5

"Domestic or family violence" means, except for an act of self defense, the occurrence of one (1) or more 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 or household member *without legal justification*.

(2) Placing a family or household member in fear of physical harm *without legal justification*.

(3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.

For purposes of *IC 22-4-15-1 and IC 34-26-5*, domestic or family violence also includes stalking (as defined in *IC 35-45-10-1*) or a sex offense under *IC 35-42-4*, whether or not the stalking or sex offense is committed by a family or household member.

(Note: *Italicized language is found in the Title 31 definition only.*)

3. **“Family or household member”**

IC 31-9-2-44.5

IC 34-6-2-44.8

(a) An individual is a "family or household member" of another person if the individual:

- (1) is a current or former spouse of the other person;
- (2) is dating or has dated the other person;
- (3) is engaged or was engaged in a sexual relationship with the other person;
- (4) is related by blood or adoption to the other person;
- (5) is or was related by marriage to the other person;
- (6) has or previously had an established legal relationship:
 - (A) as a guardian of the other person;
 - (B) as a ward of the other person;
 - (C) as a custodian of the other person;
 - (D) as a foster parent of the other person; or
 - (E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D); or
- (7) has a child in common with the other person.

(b) An individual is a "family or household member" of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) applies if the individual is a minor child of one (1) of the persons.

4. **“Family or household member”**

IC 35-41-1-10.6

(a) An individual is a “family or household member” of another person if the individual:

- (1) is a current or former spouse of the other person;
- (2) is dating or has dated the other person;
- (3) is or was engaged in a sexual relationship with the other person;
- (4) is related by blood or adoption to the other person;
- (5) is or was related by marriage to the other person;
- (6) has or previously had an established legal relationship:
 - (A) as a guardian of the other person;
 - (B) as a ward of the other person;
 - (C) as a custodian of the other person;
 - (D) as a foster parent of the other person; or
 - (E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D); or
- (7) has a child in common with the other person.

(b) An individual is a “family or household member” of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) applies if the individual is a minor child of one (1) of the persons.

5. **“Crime of domestic violence”**
IC 35-41-1-6.3

"Crime of domestic violence," for purposes of IC 3-7-13-5 and IC 33-28-4-8, means an offense or the attempt to commit an offense that:

(1) has as an element the:

(A) use of physical force; or

(B) threatened use of a deadly weapon; and

(2) is committed against a:

(A) current or former spouse, parent, or guardian of the defendant;

(B) person with whom the defendant shared a child in common;

(C) person who was cohabiting with or had cohabited with the defendant as a spouse, parent, or guardian; or

(D) person who was or had been similarly situated to a spouse, parent, or guardian of the defendant.

ADDITIONAL DEFINITIONS

34-6-2-103(c) "**Person**", for purposes of section 44.8 of this chapter, means an adult or a minor.

34-6-2-121.4 "**Protected person**" means a petitioner or a family or household member of the petitioner who is protected by the terms of a civil protective order issued under IC 34-26-5.

34-6-2-121.6 (a) "**Protection order**" or "**order for protection**", for purposes of sections 48.5, 121.4, and 130.7 of this chapter and IC 34-26-5, means an injunction or other order issued by a tribunal of the issuing state or Indian tribe to prevent an individual from:

- (1) engaging in violent or threatening acts against;
- (2) engaging in harassment of;
- (3) engaging in contact or communication with; or
- (4) being in physical proximity to;

another person, including temporary and final orders issued by civil and criminal courts.

(b) The term does not include a support or child custody order issued under the dissolution and child custody laws of a state or Indian tribe, except to the extent that the order qualifies as a protection order under subsection (a) and is entitled to full faith and credit under a federal law other than 18 U.S.C. 2265.

(c) The term applies to an order regardless of whether the order is obtained by filing an independent action or as a pendente lite order in another proceeding if any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

34-6-2-130.7 "**Respondent**", for purposes of IC 34-26-5, means the individual against whom the enforcement of a protection order is sought.

35-45-10-1. "**Stalk**" defined. As used in this chapter, "stalk" means a knowing or an 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. (emphasis added)

35-45-10-2. "**Harassment**" defined. As used in this chapter, "harassment" 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. (emphasis added)

35-45-10-3. "**Impermissible contact**" defined. As used in this chapter, "impermissible

contact" includes but is not limited to knowingly or intentionally following or pursuing the **victim**. (emphasis added)

35-45-10-4. "**Victim**" defined. As used in this chapter, "victim" means a person who is the object of stalking.

35-42-4. A "**sex offense under IC 35-42-4**" means: Rape, Criminal deviate conduct, Child molesting, Child exploitation, Vicarious sexual gratification, Child solicitation, Child seduction, Sexual battery, and, Sexual misconduct with a minor.

APPENDIX II

IMPORTANT CASES

Appendix II
INDIANA CASES DEALING WITH PROTECTIVE ORDERS

1. Tillman v. Snow, 571 N.E.2d 578 (Ind. Ct. App. 1991)
2. State ex rel. Meade v. Marshall Superior Court II, 644 N.E.2d 87 (Ind. 1994)
3. Rzeszutek v. Beck, 649 N.E.2d 673 (Ind. Ct. App. 1994)
4. Hallberg v. Hendricks County Office of Family and Children, 662 N.E.2d 639 (Ind. Ct. App. 1996)
5. Van Santen v. Treece, 665 N.E.2d 943 (Ind. Ct. App. 1996)
6. Pompey v. Pryner, 668 N.E.2d 1243 (Ind. Ct. App. 1996)
7. Webster v. State, 673 N.E.2d 509 (Ind. Ct. App. 1996)
8. Maurer v. Maurer, 712 N.E.2d 990 (Ind. Ct. App. 1999)
9. Holmes v. Jones, 719 N.E.2d 843 (Ind. Ct. App. 1999)
10. Guerin v. Schaefer, 727 N.E.2d 1119 (Ind. Ct. App. 2000)
11. Gordon v. Gordon, 733 N.E.2d 468 (Ind. Ct. App. 2000)
12. Garmene v. LeMasters, 743 N.E.2d 782 (Ind. Ct. App. 2001)
13. Hill v. Ramey, 744 N.E.2d 509 (Ind. Ct. App. 2001)
14. Carter v. Johnson, 745 N.E.2d 237 (Ind. Ct. App. 2001)
15. Parkhurst v. VanWinkle, 786 N.E.2d 1159 (Ind. Ct. App. 2003)
16. Flash v. Holtsclaw, 789 N.E.2d 955 (Ind. Ct. App. 2003)
17. Essany v. Bower, 790 N.E.2d 148 (Ind. Ct. App. 2003)

APPENDIX III

BENCH CARDS

PROTECTION ORDERS AND FEDERAL FIREARMS PROHIBITIONS

Persons subject to a qualifying protection order under federal law are generally prohibited from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). Violation of this prohibition while the order remains in effect is a federal offense punishable by up to ten years imprisonment. 18 U.S.C. §§ 922(g)(8), 924(a)(2).

The following list enumerates the elements that define a qualifying protection order under the federal firearms prohibition. **Generally, a defendant/respondent subject to a protection order that includes one element (indicated by a diamond) from each section listed below is covered by the federal firearms prohibition.**

I. HEARING

- ❖ Defendant/Respondent received **actual notice** and had an **opportunity to participate**.

II. INTIMATE PARTNER

Plaintiff/Petitioner is an **intimate partner** of the Defendant/Respondent, (18 U.S.C. § 921(a)(32)) that is:

- ❖ a **spouse** of Defendant/Respondent;
- ❖ a **former spouse** of Defendant/Respondent;
- ❖ an individual who is a **parent** of a child of Defendant/Respondent; **or**
- ❖ an individual who **cohabitates or has cohabited** with Defendant/Respondent.

III. RESTRAINS FUTURE CONDUCT

- ❖ The order **restrains** Defendant/Respondent from **harassing, stalking, or threatening** the intimate partner, child of the Defendant/Respondent, or child of the Defendant/Respondent's intimate partner; **or**
- ❖ The order **restrains** Defendant/Respondent from engaging in other conduct that would place the intimate partner in **reasonable fear of bodily injury** to the partner or child.

IV. CREDIBLE THREAT OR PHYSICAL FORCE

- ❖ The order includes a finding that Defendant/Respondent is a **credible threat** to the physical safety of the intimate partner or child; **or**
- ❖ The order, by its terms, explicitly prohibits the use, attempted use, or threatened use of **physical force** against the intimate partner or child that would reasonably be expected to cause bodily injury.

For further information about firearms prohibitions or section 922(g)(8), contact your local Field Division of the Bureau of Alcohol, Tobacco and Firearms by calling (800) 800-3855. For general information about protection orders and firearms, contact the Full Faith and Credit Project at (800) 256-5883.

MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE AND FEDERAL FIREARMS PROHIBITIONS

Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV) generally are prohibited under federal law from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). This prohibition also applies to federal, state, and local governmental employees in both their official and private capacities. Violation of this prohibition is a federal offense punishable by up to ten years imprisonment. See 18 U.S.C. § 922(g)(9); see also 18 U.S.C. §§ 921(a)(33), 924(a)(2), 925(a)(1); 27 C.F.R. §§ 178.11, 178.32.

A qualifying MCDV is an offense that:

- ❖ Is a federal, state, or local offense that is a misdemeanor under federal or state law;
- ❖ Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon; and,
- ❖ At the time the MCDV was committed, the defendant was:
 - ◆ A current or former spouse, parent, or guardian of the victim;
 - ◆ A person with whom the victim shared a child in common;
 - ◆ A person who was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian; or,
 - ◆ A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.

EXCEPTIONS: A person has not been convicted of a qualifying MCDV:

- ❖ IF the person was not represented by counsel — unless he or she knowingly and intelligently waived the right to counsel;
- ❖ IF the person was entitled to a jury trial AND the case was not tried by a jury — unless the person knowingly and intelligently waived the right to jury trial; or,
- ❖ IF the conviction was set aside or expunged; the person was pardoned; or, the person's civil rights — the right to vote, sit on a jury, and hold elected office — were restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense).

BUT: This exception does NOT lift the federal firearms prohibition if:

- ◆ the expungement, pardon, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or,
- ◆ the person is otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

FOR FURTHER INFORMATION ABOUT SECTION 922(g)(9) OR FEDERAL FIREARMS PROHIBITIONS GENERALLY, CONTACT YOUR LOCAL FIELD DIVISION OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS BY CALLING (800) 800-3855. FOR FURTHER INFORMATION ABOUT DOMESTIC VIOLENCE GENERALLY, CONTACT THE NATIONAL CENTER ON FULL FAITH AND CREDIT AT (800) 256-5883 EXT. 2.

How can I make my orders easier to enforce?

The issuing court determines who is restrained, the duration of the restraint, the relief that is available, and the conduct that is prohibited or required.

Crafting an Enforceable Order

- Use clear and concise language in a legible order.
- Avoid vague and unenforceable terms such as “reasonable.” For example, in orders involving no contact or stay away provisions, include, when appropriate, the exact distance that a respondent must stay away.
- Do not leave important terms of the order “upon the agreement of the parties.” For example, when crafting visitation provisions, be precise about times and location, including relevant addresses, persons, and duration. When prohibiting contact or communication, provide specific examples of the prohibited activities (e.g., using telephone, fax machine, electronic mail, and third-party contacts).
- Be sure that law enforcement can easily read, understand, and identify enforceable provisions in the order.
- Indicate on the face of the order that the respondent had or will have notice and an opportunity to be heard within the time required by the law of the issuing jurisdiction. It is good practice to have the respondent, if present, sign an acknowledgment of service on the order.
- Make a written finding that the court has personal and subject matter jurisdiction to issue the protection order.
- Make specific written findings of abuse and indicate that the abuse meets the statutory standards for issuance of a protection order.
- State the order’s expiration date, if any, or state that the order is a lifetime or permanent order.
- Cite the statute upon which the court’s decision and order are based. Where applicable, cite the statutory provision upon which specific relief is based (e.g., provisions providing for specific economic relief or catch-all provisions).
- Do not issue mutual orders (see Mutual Protection Orders below).

NOTE

***Mutual Protection Orders** are single orders that provide relief against the original petitioner, as well as the respondent. Such orders should not be issued. Instead, courts should require the respondent to file a separate petition or complaint for a protection order; make a specific finding that each party (including the respondent) is entitled to relief, and issue a separate order. Mutual orders are not entitled to full faith and credit against the petitioner except under very limited circumstances (see Enforcing Court card for details).*

Complying with Legal Requirements

- Do not notify the respondent that a protection order was registered or filed in your jurisdiction (18 U.S.C. § 2265(d)(1)).
- Do not post on a publicly available Internet site that a protection order has been registered, filed, or issued in your jurisdiction unless the petitioner so requests and does so on the record, orally or in writing (18 U.S.C. § 2265(d)(3)).

How do I facilitate inter-jurisdictional enforcement?

Facilitating Full Faith and Credit

- Indicate in writing or certify on the order that the order complies with VAWA's Full Faith and Credit provision (18 U.S.C. § 2265) and meets the protection order definition under 18 U.S.C. § 2266.
- State in the order that custody and visitation provisions within the order are enforceable under the federal full faith and credit provision. Also note compliance, where applicable, with the Uniform Child Custody Jurisdiction Act (UCCJA) or the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). State that any modifications to custody and visitation provisions must comply with those statutes, as well as the federal Parental Kidnapping Prevention Act (PKPA) (28 U.S.C. § 1738(A)) (see Issuing and Enforcing Child Custody, Visitation, and Support Provisions Within Protection Orders cards).
- Consult with the enforcing court, if requested, to clear up ambiguities, verify validity, and establish the status of service.
- Enter orders, as soon as possible, into the Protection Order File of the National Crime Information Center (NCIC POF) and all other accessible databases.
- Include in orders the typed name of the judge, the address and phone number of the court, and where available, the court's email contact information, the state protection order registry telephone number, and any other useful contact information for the court.
- Include language that explains how the current order adopts, modifies, overrules, or supersedes prior protection order provisions or orders from your or any other jurisdiction.

NOTE

Civilian orders are entitled to enforcement on military installations, but military orders are not entitled to enforcement in civilian courts (see 10 U.S.C. § 1561(a)) (see Military Protection Orders on inside cover).

What else should I do to facilitate protection?

Facilitating Protection

- Provide protected parties with certified copies of the order and suggest that they keep one with them at all times or that they talk to an advocate about the pros and cons of doing so.
- Include the required judicial notification regarding federal firearms laws (see Firearms card for further details regarding judicial notification and other firearms considerations).
- Inform the parties orally and in writing that the order is enforceable in all 50 states, U.S. territories, tribal lands, the District of Columbia, and on military installations without registration by the petitioner or notice of registration to the respondent.
- State that violation of the order, in addition to any state or tribal sanctions, may subject the respondent to prosecution for such federal crimes as:
 - Firearms or ammunition possession (see Firearms card for details);
 - Interstate travel to commit domestic violence (18 U.S.C. § 2261);
 - Interstate stalking (18 U.S.C. § 2261A); and
 - Interstate violation of a protection order (18 U.S.C. § 2262).
- Provide the protected party with the National Domestic Violence Hotline number ((800)799-SAFE, TTY (800)787-3224) and information on local victim services.

For technical assistance on adopting a generally recognizable first page for protection orders, please contact the National Center for State Courts/Project Passport at (800) 616-6160.

The enforcing jurisdiction uses its enforcement procedures to enforce the terms of the protection order as written by the issuing jurisdiction.

What is the source of my authority?

Full Faith and Credit

Since 1994, the VAWA's Full Faith and Credit provision (18 U.S.C. § 2265) has required every jurisdiction in the United States to recognize and enforce valid protection orders.

These jurisdictions include:

- A state and its political subdivisions;
- A tribal government;
- The District of Columbia; and
- A commonwealth, territory, or possession of the U.S. (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands).

Is the order enforceable?

What Are the Elements of an Enforceable Order?

A protection order from another jurisdiction that has these elements must be afforded a presumption of enforceability:

- The respondent has been given notice and an opportunity to be heard, or, in the case of an *ex parte* order, the respondent will be given notice and an opportunity to be heard within a reasonable time, consistent with the requirements of due process.
- The issuing court had personal and subject matter jurisdiction to issue the order.
- The order has not expired.

What terms must I enforce?

Enforcing Protection Orders of Other Jurisdictions

- Enforce the terms of the order as written by the issuing jurisdiction, even if the **enforcing jurisdiction** lacks authority to enter such terms, e.g.:
 - The category of protected persons would not be eligible for relief in the enforcing jurisdiction (e.g., dating partners, same-sex partners);
 - The order contains relief unavailable in the enforcing jurisdiction;
 - The order has a longer duration than provided for in the enforcing jurisdiction; or
 - The order calls for surrender of weapons and the enforcing jurisdiction has no such provision.
- Use the enforcement procedures of the **enforcing jurisdiction**.
 - Treat the violation as a criminal offense if it is criminalized in the enforcing jurisdiction.
 - Issue orders to take physical custody of children where provided for in the enforcing jurisdiction for custody violations.
 - Award attorney's fees if sought and if provided for in the enforcing jurisdiction.
 - Impose sanctions for violations as provided for in the enforcing jurisdiction.
- Do not notify the respondent or post on a publicly available Internet site that a protection order has been registered, filed, or issued in your jurisdiction unless the petitioner so requests, and does so on the record, orally or in writing (18 U.S.C. § 2265(d)(1) and (3)).
- Do not require registration/filing or notice of either as a prerequisite for enforcement of valid protection orders from other jurisdictions (18 U.S.C. § 2265(d)(1)).

What procedures should I apply?

What about orders against both parties?

Mutual Orders

Mutual orders, which provide relief against the original petitioner as well as the respondent, are fully enforceable against the respondent. Provisions against the petitioner are not entitled to interstate/tribal enforcement unless (a) a cross or counter petition, complaint, or other written pleading was filed by the respondent seeking such a protection order; and (b) the court made specific findings that each party was entitled to such an order.

What else should I do to facilitate protection?

Facilitating Protection

- Communicate with the issuing court to clear up ambiguities, verify validity, and establish the status of service if these issues are raised.
- Ensure that court clerks and staff are familiar with and comply with the provisions of VAWA/Full Faith and Credit and provisions of federal grant programs that prohibit charging filing and service fees, as well as other fees or costs, related to protection orders (see 42 U.S.C. § 3796 hh(c)(4)) (see Frequently Asked Questions on STOP Formula Grants available at http://www.ovw.usdoj.gov/docs/FAQ_FINAL_nov_21_07.pdf).
- Provide protected parties with the National Domestic Violence Hotline number ((800) 799-SAFE, TTY (800) 787-3224) and information on local victim services.
- Inform the issuing court of the disposition of any enforcement proceeding by filing a copy of the order with the issuing court.
- Initiate discussions with contiguous jurisdictions regarding procedures for cross enforcement of protection orders.

Are there firearms considerations?

Firearms

- See the Firearms card for further details regarding judicial notification and other firearms considerations.

APPENDIX IV

TABLE OF STATUTES AND RULES

Appendix IV TABLE OF STATUTES AND RULES

Indiana Statutes

Title 5

Ind. Code 5-2-9 (all)

Title 31

Ind. Code 31-14-16-1

Ind. Code 31-15-4-1

Ind. Code 31-15-5-1

Ind. Code 31-30-1-1

Ind. Code 31-32-13

Ind. Code 31-34-2.3

Ind. Code 31-34-20

Ind. Code 31-34-25

Ind. Code 31-37-19

Ind. Code 31-37-25

Title 35

Ind. Code 35-33-8-3.2

Ind. Code 35-33-8-5

Ind. Code 35-33-8-3.6

Ind. Code 35-38-2-2.3

Ind. Code 35-38-1-30

Ind. Code 35-42-2-1

Ind. Code 35-42-2-1.3

Ind. Code 35-42-2-2

Ind. Code 35-42-3-3

Ind. Code 35-43-1-2

Ind. Code 35-43-2-1.5

Ind. Code 35-43-2-2

Ind. Code 35-45-2-1

Ind. Code 35-45-2-2

Ind. Code 35-45-10 (all)

Ind. Code 35-46-1-15.1 through -20

Ind. Code 35-47-4-6

Ind. Code 35-50-1-2

Title 33

Ind. Code 33-39-1-8

Title 34

Ind. Code 34-26-5 (all)

Ind. Code 34-26-6 (all)

Ind. Code 34-47-3

Ind. Code 34-47-4

Indiana Rules

Trial Rules 4, 4.1, & 4.4

Trial Rule 65 (B), (E), & (F)

Trial Rule 75

Administrative Rule 9

Federal Statutes

18 USC 921 (32) & (33)

18 USC 922 (d) (8) & (9)

18 USC 922 (g) (8) & (9)

18 USC 925 (a) (1)

18 USC 2261

18 USC 2261A

18 USC 2262

18 USC 2265

18 USC 2266

APPENDIX V

OTHER RESOURCES

Appendix V
SUGGESTED READING & RESOURCES

1. The Criminalization of Domestic Violence: Promises and Limits : Jeffrey Fagan. Monograph published in January, 1996 by the NIJ (National Institute of Justice).
2. “Re-Abuse in a Population of Court Restrained Male Batterers: Why Restraining Orders Don’t Work” by Andrew R. Klein, in Eve S. Buzawa and Carl G. Buzawa, Eds., Do Arrests and Restraining Orders Work? Sage Publications, Inc., Thousand Oaks, California, 1996 (pp. 192-214).
3. See also “Effects of Restraining Orders on Domestic Violence Victims”, by Adele Harrell and Barbara E. Smith, pp. 214-243, in the same book.
4. Understanding Violence Against Women, Nancy A. Crowell and Ann W. Burgess, eds. See Chapter 4, “Prevention and Intervention”, p. 93. National Academy Press, Washington, DC 1996.
5. Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence, National Center for State Courts Research Report, Susan L. Keilitz, Project Director, with Paula L. Hannaford and Hillery S. Efke, NCSC Publication #R-201, 1997.
6. Arlene N. Weisz, Richard M. Tolman, & Daniel G. Saunders, “Assessing the Risk of Severe Domestic Violence: The Importance of Survivors’ Predictions” Journal of Interpersonal Violence, Vol. 15, No.1, January 2000 pp. 75-90, Sage Publications, Inc.
7. For information on types of injuries associated with domestic violence, see: Journal of the American Medical Association (JAMA), August 22-29, 1990, Vol. 264, No.8, p. 943.
8. “Civil Protection Orders and Risk of Subsequent Police-Reported Violence”, Victoria L. Holt, Mary A Kernic, Thomas Lumley, Marsha E. Wolf, & Frederick P. Rivara, Journal of the American Medical Association (JAMA), August 7, 2002, Vol. 288, No.5, pp.589-594.
9. “Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women”, Judith McFarlane, Ann Malecha, Julia Gist, Kathy Watson, Elizabeth Batten, Iva Hall, & Sheila Smith, American Journal of Public Health, April 2004, Vol. 94, No. 4, pp. 613-618.
10. National Resource Center on Domestic Violence (800) 537-2238
11. National Center on Full Faith & Credit Legal Office (800) 256-5883
12. National Council of Juvenile & Family Court Judges Family Violence Project

(800) 52PEACE (527-3223)

13. Family Violence Prevention Fund (415) 252-8900

14. STOP Violence Against Women Grants Technical Assistance Project (800) 256-5883

15. National Domestic Violence Hotline (800) 799-SAFE (7233)

16. Indiana Domestic Violence Hotline (800) 332-7385

INDIANA CRIMINAL STATUTES AND CASES OF NOTE

- A. Compensation for Victims of Violent Crimes**
 - 1. IC 5-2-6.1-1

- B. Law Enforcement Officers**
 - 1. Continuing education re: family violence
 - a. IC 5-2-8-1
 - 2. Continuing education re: human & sexual trafficking
 - a. IC 5-2-1-9

- C. Public Records Law**
 - 1. IC 5-14-3-4(b)(23) prohibits an incarcerated person from obtaining records from a public agency that contain personal information relating to a victim of a crime, or a family member of the victim of a crime.

- D. Address Confidentiality Program for Victims of Family Violence**
 - 1. IC 5-26.5 *et seq.*

- E. Aggressive Driving**
 - 1. IC 9-21-8-55
 - 2. Class A misdemeanor
 - 3. Describes behavior we often see in family violence cases.

- F. Registration for “Sex or Violent Offenders”**
 - 1. The list of crimes for which a convicted person must register includes crimes we could see in a family violence context (rape, sexual battery, human trafficking, criminal confinement, etc.).
 - 2. The list of crimes appears in IC 11-8-8-5.
 - 3. People to whom this law applies must now also register their e-mail addresses, IM usernames, etc. in addition to their residential address and contact information.

- G. Inheritance Laws Relating to a Parent Who Kills the Other Parent**
 - 1. IC 29-1-2-1(e) prohibits the parent who killed the other parent from receiving any share of the victim’s estate.
 - 2. IC 27-8-5-22 (c)(2) also prohibits the offending parent from receiving a refund on life insurance premiums in that situation.

- H. Rebuttable Presumption of Supervised Visitation as a Result of Conviction for a Crime Involving Family/Domestic Violence**
 - 1. IC 31-14-14-5
 - 2. IC 31-17-2-8.3

3. Definition/what kinds of crimes qualify: IC 35-41-1-6.5
4. Definition of “family or household member”: IC 35-41-1-10.6

I. Compensation for Witnesses in Criminal Cases

1. IC 33-37-10-2

J. Testimonial Privilege Between Spouses

1. Rubalcada v. State, 731 N.E.2d 1015 (Ind. 2000)
2. IC 34-46-3-1
3. Ind. Rules Evid. 501

K. Arrest/Duty of Law Enforcement Officers at Scene of Family/Domestic Violence Run

1. Probable cause arrest OK for: domestic battery; battery with injury; invasion of privacy; violating a “stay away” order issued as a condition of probation under IC 35-50-7; interference with the reporting of a crime; interfering with or preventing the reporting of a crime involving domestic or family violence (as defined in IC 34-6-2-34.5); and, carrying a handgun without a license.
 - a. IC 35-33-1-1
2. Officers have certain duties to victim, children. Officers are empowered to confiscate firearms, ammunition, or deadly weapons from the scene.
 - a. IC 35-33-1-1.5

L. Bail

1. Can place conditions on bail (including no-contact orders)
 - a. IC 35-33-8-3.2
 - b. A judge can issue a no-contact order even if a defendant has not been released from pretrial detention. See IC 35-33-8-3.2(a)(4).
2. Can consider dangerousness to others/community
 - a. IC 35-33-8-3.2
 - b. IC 35-33-8-4
3. Revocation if new arrest, or if conditions of bail are violated
 - a. IC 35-33-8-5
 - b. IC 35-40-6-6
4. Crime victim’s right to have safety considered in judge’s bail decision
 - a. IC 35-40-5-4
5. Crime victim’s right to be notified of bond hearing
 - a. IC 35-40-7-2
6. Revocation of Bail/Dangerousness
 - a. Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App.1997)
 - b. Judge in Ray was reversed for altering bail.

7. Length of time an arrested person can be held before initial hearing/Right to bail generally
 - a. Schmidt v. State, 746 N.E.2d 369 (Ind. Ct. App.2001)
8. “Cooling Off” Period/Automatic Hold
 - a. IC 35-33-1-1.7 requires the facility (jail) to keep a person arrested for a crime of domestic violence as defined in IC 35-41-1-6.3 in custody for at least 8 hours from the time the person was arrested.
 - b. IC 35-33-8-6.5 prohibits a court from releasing a person arrested for a crime of domestic violence as defined in IC 35-41-1-6.3 on bail until the person has been held at least 8 hours from the time of arrest.
 - c. NOTE: these laws refer to the narrower category of crimes (“domestic violence”) described in IC 35-41-1-6.3, as opposed to the broader category of crimes (“domestic or family violence”) listed in IC 35-41-1-6.5.

M. Victim Rights RE: Discussion of Plea Bargain/Presentence Report/Sentencing

1. IC 35-35-3-2
2. IC 35-35-3-5
3. IC 35-35-3-6
4. IC 35-35-3-7
5. IC 35-40-5-3
6. IC 35-40-5-6
7. IC 35-40-5-8
8. IC 35-40-6-7

N. Continuances in Certain Cases: Child Abuse, Sex Offenses, Neglect of a Dependent, & Battery on a Child/Endangered Adult—Discouraged; Record Necessary

1. IC 35-36-7-3

O. Child Hearsay (Including Closed Circuit Testimony)

1. Pierce v. State, 677 N.E.2d 39 (Ind. 1997)
2. Carpenter v. State, 786 N.E.2d 696 (Ind. 2003)
3. M.T. v. State, 787 N.E.2d 509 (Ind. Ct. App. 2003)
4. Crawford v. Washington, 124 S.Ct. 1354 (2004)
 - a. Applies to statements made to law enforcement personnel (not family, neighbors, friends, etc.).
5. Trujillo v. State, 806 N.E.2d 317 (Ind. Ct. App. 2004)
6. Hendricks v. State, 809 N.E.2d 865 (Ind. Ct. App. 2004)
7. Purvis v. State, 829 N.E.2d 572 (Ind. Ct. App. 2005)

8. Anderson v. State, 833 N.E.2d 119 (Ind. Ct. App. 2005)
9. Howard v. State, 853 N.E.2d 461 (Ind. 2006)
10. Tyler v. State, 903 N.E.2d 463 (Ind. 2009)
11. IC 35-37-4-6
 - a. This statute includes victims of human & sexual trafficking in list of “protected persons” who are eligible for this type of testimony.
12. IC 35-37-4-8
 - a. This statute includes victims of human & sexual trafficking in list of “protected persons” who are eligible for this type of testimony.
13. Ind. Rules Evid. 804

P. Rape Shield Statute

1. IC 35-37-4-4
2. Ind. Rules Evid. 412

Q. Keeping Victims Safe in the Courtroom/Waiting Area

1. IC 35-37-4-11

R. Victim’s Right Not to Disclose Home Address, Etc.

1. IC 35-37-4-12

S. Prior Battery on Same Victim (Evidence of Same)

1. IC 35-37-4-14
2. Ind. Rules Evid. 404(B)
3. There are many cases discussing the admissibility of prior “bad acts.”
4. One recent case is: Goldsberry v. State, 821 N.E.2d 447 (Ind. Ct. App. 2005).

T. Privileged Communications, Victim Advocates/Victim Service Providers

1. IC 35-37-6-1 *et seq.* (entire chapter)
 - a. The Indiana General Assembly significantly revised this statute in the 2008 session. The scope of the privilege is much broader. Note that employees of law enforcement agencies and prosecutors’ offices are not included in these laws.
2. Ind. Rules Evid. 501

U. Statutory Aggravator for Sentencing

1. IC 35-38-1-7.1(b)(14)
2. Triggered when a child witnesses a crime of family violence.

V. Victim’s Presence at Sentencing

1. IC 35-38-1-2
 2. IC 35-38-1-8
 3. IC 35-38-1-8.5
 4. IC 35-38-1-9 (*Note also IC 35-40-5, above)
- W. Sentence Modification/Notice to Victim**
1. IC 35-38-1-17
- X. Conditions of Probation**
1. IC 35-38-2-2.3
 2. Victim’s right to be notified of VOP hearing/modification of probation conditions.
 - a. IC 35-40-8-1, -2
- Y. Community Transition Program**
1. IC 35-38-1-24, -25
- Z. Mandatory Duties of Judge at Sentencing**
1. IC 35-38-1-7.7
 2. Judge must determine if a crime of domestic violence.
 3. Web site for form: www.in.gov/judiciary/admin/forms/domviol.html
 4. Goldsberry v. State, 821 N.E.2d 447 (Ind. Ct. App. 2005)—judge’s determination was improper.
 5. Kazmier v. State, 863 N.E.2d 912 (Ind. Ct. App. 2007)—judge’s determination was proper.
- AA. Crime Victim Notification of Defendant’s Release from Jail**
1. IC 35-40-5-2
 2. IC 35-40-7-2
- BB. Other Victim Rights Laws**
1. See IC 35-40-1 *et seq.*
 2. Indiana Constitution, Article 1, Section 13
- CC. Important Definitions**
1. “Crime of domestic violence” IC 35-41-1-6.3
 2. “Crime involving domestic or family violence” IC 35-41-1-6.5
 - a. Now includes human & sexual trafficking crimes.
 3. “Family or household member” IC 35-41-1-10.6
- DD. Serious Bodily Injury**
1. Davis v. State, 813 N.E.2d 1176 (Ind. 2004)
 2. IC 35-41-1-25 (definition)

EE. Battered Woman Syndrome Expert Testimony

1. Iqbal v. State, 805 N.E.2d 401 (Ind. Ct. App. 2004)
2. Marley v. State, 747 N.E.2d 1123 (Ind. 2001)
3. Carnahan v. State, 681 N.E.2d 1164 (Ind. Ct. App.1997)
4. Barrett v. State, 675 N.E.2d 1112 (Ind. Ct. App.1996)
5. Isaacs v. State, 659 N.E. 2d 1036 (Ind.1995)
6. Dausch v. State, 616 N.E.2d 13 (Ind.1993)
7. Ind. Rules Evid. 702
8. IC 35-41-3-11

FF. Self-Defense Statute/BWS Statute

1. IC 35-41-3-2
 - a. Now includes a discussion of both the duty to retreat and defense of an occupied motor vehicle.
2. IC 35-41-3-11

GG. Battery & Domestic Battery

1. IC 35-42-2-1
2. IC 35-42-2-1.3
 - a. Vaughn v. State, 782 N.E.2d 417(Ind. Ct. App. 2003)
3. Davis v. State, 796 N.E.2d 798 (Ind. Ct. App.2003)
4. Williams v. State, 798 N.E.2d 457 (Ind. Ct. App. 2003)
5. Holeton v. State, 853 N.E. 2d 539 (Ind. Ct. App. 2006)
6. As of July 1, 2006, Domestic Battery can be a Class D felony if the defendant commits it in the presence of a child less than 16 years old.
7. As of July 1, 2007, Battery with injury can be a Class D felony if the victim is a family or household member and if the defendant commits in the presence of a child less than 16.
8. As of July 1, 2007, Battery can be a Class C felony if it results in injury to a pregnant woman and the defendant knows the victim is pregnant.

HH. Strangulation

1. IC 35-42-2-9
2. Class D felony

II. Criminal Recklessness

1. IC 35-42-2-2
2. Normally a Class B misdemeanor. Can be a Class A misdemeanor if committed with a motor vehicle. Can be a Class D felony if committed with a deadly weapon or if serious bodily injury results.
3. As of July 1, 2006, includes an enhanced charge for aggressive driving.

- JJ. Human & Sexual Trafficking/Duties of Law Enforcement Agencies**
1. IC 35-42-3.5
 2. Basic crime is a Class B felony. Can also be an A felony if the trafficked person is under age 18.
 3. “Consumers” of trafficked people commit a C felony.
 4. Also creates a civil cause of action for victims.
 5. IC 35-42-3.5-4 enumerates special rights to which victims of this crime are entitled. The law specifies that law enforcement agencies are to help facilitate these rights.
 6. IC 35-42-3.5-4(b) also specifies duties of law enforcement agencies to victims re: LEA Declaration, Form I-914 Supplement B. This is the application for a special visa for victims of trafficking.
- KK. Criminal Mischief**
1. IC 35-43-1-2 (Class B misdemeanor and higher)
 2. Common property
 - a. IC 35-41-1-23 (b)
 3. Damage amount
 - a. Pepper v. State, 558 N.E. 2d 899 (Ind. Ct. App.1990)
- LL. Residential Entry**
1. IC 35-43-2-1.5 (Class D felony)
 2. Ellyson v. State, 603 N.E. 2d 1369 (Ind. Ct. App.1992)
 - a. This is a burglary case; however, the principle that a spouse can burglarize the other spouse’s home, even if it was once the marital residence, would appear to hold true in a residential entry case also.
- MM. Disarming a Law Enforcement Officer**
1. IC 35-44-3-3.5 (Class C felony and higher)
- NN. Intimidation**
1. IC 35-45-2-1 (Class A misdemeanor and higher)
 2. Huber v. State, 805 N.E.2d 887 (Ind. Ct. App. 2004)
- OO. Harassment**
1. IC 35-45-2-2 (Class B misdemeanor)
- PP. Interference With Reporting of Crime**
1. IC 35-45-2-5 (Class A misdemeanor)
- QQ. Stalking**
1. IC 35-45-10-1 (“stalk”)

2. IC 35-45-10-2 (“harassment”)
3. IC 35-45-10-3 (“impermissible contact”)
4. IC 35-45-10-4 (“victim”)
5. IC 35-45-10-5 (defines the crime of stalking; Class D felony and higher)
6. Johnson v. State, 648 N.E. 2d 666 (Ind. Ct. App.1995)
7. Hendricks v. State, 649 N.E. 2d 1050 (Ind. Ct. App.1995)
8. Burton v. State, 665 N.E. 2d 924 (Ind. Ct. App.1996)
9. Waldon v. State, 684 N.E.2d 206 (Ind. Ct. App.1997)
10. Landis v. State, 704 N.E. 2d 113 (Ind. 1998)
11. Johnson v. State, 721 N.E.2d 327 (Ind. Ct. App.1999)
12. Garza v. State, 736 N.E.2d 323 (Ind. Ct. App.2000)
13. Peckinpaugh v. State, 743 N.E.2d 1238 (Ind. Ct. App.2001)
14. Smith v. State, 802 N.E.2d 948 (Ind. Ct. App. 2004)
15. Smith v. State, 839 N.E.2d 780 (Ind. Ct. App. 2005)
16. Vanhorn v. State, 889 N.E.2d 908 (Ind. Ct. App. 2008)
 - a. The facts of this case may call into question the continuing validity of the Waldon case, above.
17. IC 35-38-2-2.6 allows judges to prohibit convicted stalkers from living within 1,000 feet of their victim’s residence for up to 5 years (as a condition of probation or parole).
 - a. That law also states that the victim’s address is confidential.

RR. Failure to Report a Dead Body

1. IC 35-45-19-3 (Class A misdemeanor)

SS. Invasion of Privacy

1. IC 35-46-1-15.1 (Class A misdemeanor and higher)
2. Webster v. State, 673 N.E. 2d 509 (Ind. Ct. App.1996)
 - a. double jeopardy issue
3. Huber v. State, 805 N.E.2d 887 (Ind. Ct. App. 2004)
4. Dixon v. State, 869 N.E.2d 516 (Ind. Ct. App. 2007)
 - a. Defendant alleged that victim invited him over.
 - b. Defendant also claimed he never knew about protection order.
5. Tharp v. State, 49A02-0905-CR-394 (Ind. Ct. App. 2010)
 - a. discusses element of “knowingly” when State had trouble proving service via direct evidence (although there was circumstantial & hearsay evidence of same)
 - b. interprets Dixon, *supra*, to require notice (to Respondent/Defendant) from an agent of the State re: the existence of a protection order.

TT. Unlawful Possession of a Firearm by a Domestic Batterer

1. IC 35-47-4-6 (Class A misdemeanor)

UU. Possession of a Handgun by a Domestic Batterer

1. IC 35-47-2-1

VV. Firearms and “Dangerous” People (Seizure & Retention)

1. IC 35-47-13-1 *et seq.*

WW. Restitution

1. Can order regardless of probation status.
2. IC 35-50-5-3

XX. No-Contact Orders During Incarceration/Executed Sentence (*Not Condition of Probation*)

1. IC 35-38-1-30 (2008) now empowers a judge to issue a no-contact order as a condition of a person’s executed sentence.

YY. Excited Utterances

1. Ind. Rules Evid. 803(2)
2. Domestic Battery case—victim not present at trial: Cox v. State, 774 N.E.2d 1025 (Ind. Ct. App. 2002).
3. Murder case—victim’s excited utterance used at trial: Taylor v. State, 697 N.E.2d 51 (Ind. 1998).
4. Domestic Battery case—victim present at trial, but refused to participate. This case discusses Crawford v. Washington, *supra*: Fowler v. State, 829 N.E.2d 459 (Ind. 2005) and unavailability.
5. Hammon v. State, 829 N.E.2d 444 (Ind. 2005)—*reversed* by the U.S. Supreme Court on June 19, 2006, Davis v. Washington and Hammon v. Indiana, 126 S. Ct. 2266, 165 L. Ed 2d 224.
6. Beach v. State, 816 N.E.2d 57 (Ind. Ct. App. 2004)—also discusses the issue of witness unavailability at the end of the opinion.
7. Recent (2006) U. S. Supreme Court opinions indicate that it is still permissible to use 911 calls in lieu of a victim’s testimony, but other statements by victim to law enforcement are no longer necessarily admissible as substantive evidence.
8. Collins v. State, 873 N.E.2d 149 (Ind. Ct. App. 2007)—911 call admissible under Davis, *supra*. The Court of Appeals found that the dispatcher’s questions were designed to enable the police handle an ongoing emergency.
9. Martin v. State, 885 N.E.2d 18 (Ind. Ct. App. 2008)—victim’s responses to police officers’ questions admissible under Davis, *supra*, because they were not testimonial. Court weighed the following 4 factors in determining whether the statements were testimonial: (1) relevant to establish whether defendant posed a present danger

(especially to victim's children, whom defendant had taken); (2) made while victim experiencing an ongoing emergency in that she didn't know where her children were and she feared for their safety; (3) the officers' questions sought to resolve the ongoing emergency by establishing defendant's identity, type of car he was driving, and his state of mind; and, (4) the setting for the questioning by police was highly informal (victim sitting by side of road just minutes after watching her children being driven away by the man who had battered her; she was hysterical and had blood all over her face).

ZZ. Forcing Victims to Testify—Threats by Prosecution Inappropriate

1. Fowler v. State, 829 N.E.2d 459 (Ind. 2005)

AAA. Forfeiture of Defendant's Right of Confrontation Because of Wrongdoing by Defendant

1. Boyd v. State, 866 N.E.2d 855 (Ind. Ct. App. 2007)
 - a. Defendant killed victim; she couldn't testify in domestic battery case; trial court allowed her statements in under the forfeiture doctrine.

BBB. Interference With Custody

1. IC 35-42-3-2
2. Cases involving removal of child outside of the state of Indiana: Class D felony if child less than 18 years old; a Class C felony if defendant is not the parent *and* the child is under age 14; a Class B felony if committed while armed with a deadly weapon or serious bodily injury occurs.
3. Other cases (not involving removal out of state): Class C misdemeanor; Class B misdemeanor if it occurs in violation of a court order.
4. Defense: the accused (or the child) was threatened.

CCC. Domestic Violence Animal Cruelty

1. IC 35-46-3-12 and -12.5
2. Class D felonies
3. Defined as knowingly or intentionally beating (-12) or killing (-12.5) a vertebrate animal with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.

DDD. Present-Sense Impression Exception to the Hearsay Rule

1. Ind. Rules Evid. 803(1)
2. See Amos v. State, 896 N.E.2d 1163 (Ind. Ct. App. 2008) for a good discussion of this exception, which is often overlooked by prosecutors

trying to practice evidence-based prosecution. The tragic facts of this case happen to involve domestic violence.

EEE. Right of Child Victim of Sex Offense

1. IC 35-40-5-11
2. Defense attorney may not interview child without first contacting the prosecuting attorney.
3. Outlines procedures for interview and also for court determination of details if parties are unable to reach an agreement on their own.

Prepared by: Ruth D. Reichard
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IDACS Code Definitions

The right hand margin of each Protection Order contains numbers reflecting “IDACS Codes.” The codes are used to transmit information about each protection order to law enforcement agencies throughout the nation. The codes correspond to the following information:

- 01 The respondent/defendant is restrained from assaulting, battering, threatening, abusing, harassing, following, interfering, or stalking the protected person and/or the child of the protected person.
- 02 The respondent/defendant shall not threaten a member of the protected person’s family or household.
- 03 The protected person is granted exclusive possession of the residence or household.
- 04 The respondent/defendant is required to stay away from the residence, property, school or place of employment of the protected person or other family or household member.
- 05 The respondent/defendant is restrained from making any communication with the protected person(s), including but not limited to, personal, written, or telephone contact, or their employer, employees, or fellow workers, or others with whom the communication would be likely to cause annoyance or alarm the protected person(s).
- 06 The respondent [**not the protected person**] is awarded temporary custody of the children named.
- 07 The respondent/defendant is prohibited from possessing and/or purchasing a firearm or other weapon or ammunition.
- 08 Special terms and conditions of the order, such as keeping a certain number of yards away from the protected person, or whether this is a workplace violence restraining order.