



Reprinted
February 19, 2010

**ENGROSSED
HOUSE BILL No. 1234**

DIGEST OF HB 1234 (Updated February 18, 2010 3:55 pm - DI 107)

Citations Affected: IC 25-15; IC 35-33.

Synopsis: No contact orders and next of kin control of bodies. Requires a court to include as a condition of bail the requirement that a defendant charged with a violent crime that results in bodily injury to a person refrain from any direct or indirect contact with the victim for 10 days after release or until the initial hearing, whichever occurs first, if the defendant is released to bail without the court having held a bail hearing in open court. Prohibits certain persons from making certain determinations concerning the remains of a decedent if the decedent had filed a protection order against the person and the protection order currently is in effect.

Effective: July 1, 2010.

Reske, VanDenburgh

(SENATE SPONSORS — BECKER, LANANE, ZAKAS, BRODEN, BREAUX,
RANDOLPH, HEAD, HOLDMAN)

January 11, 2010, read first time and referred to Committee on Judiciary.
January 20, 2010, reported — Do Pass.
January 25, 2010, read second time, ordered engrossed.
January 26, 2010, engrossed. Read third time, passed. Yeas 90, nays 5.

SENATE ACTION

February 1, 2010, read first time and referred to Committee on Judiciary.
February 11, 2010, amended, reported favorably — Do Pass.
February 18, 2010, read second time, amended, ordered engrossed.

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EH 1234—LS 6172/DI 106+



Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

ENGROSSED HOUSE BILL No. 1234

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

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

1 SECTION 1. IC 25-15-2-24 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2010]: **Sec. 24. "Protection order" means an injunction or other**
4 **order issued by a tribunal of the issuing state or Indian tribe to**
5 **prevent an individual from:**

6 (1) **engaging in violent or threatening acts against;**
7 (2) **engaging in harassment of;**
8 (3) **engaging in contact or communication with; or**
9 (4) **being in physical proximity to;**
10 **another person, including temporary and final orders issued by**
11 **civil and criminal courts.**

12 SECTION 2. IC 25-15-9-18, AS AMENDED BY P.L.143-2009,
13 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2010]: Sec. 18. (a) Except as provided in subsection (b), the
15 following persons, in the order of priority indicated, have the authority
16 to designate the manner, type, and selection of the final disposition and
17 interment of human remains:

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- 1 (1) An individual granted the authority in a funeral planning
- 2 declaration executed by the decedent under IC 29-2-19.
- 3 (2) An individual granted the authority in a health care power of
- 4 attorney executed by the decedent under IC 30-5-5-16.
- 5 (3) The individual who was the spouse of the decedent at the time
- 6 of the decedent's death.
- 7 (4) The decedent's surviving adult child. If more than one (1)
- 8 adult child is surviving, any adult child who confirms in writing
- 9 that the other adult children have been notified, unless the
- 10 licensed funeral director or licensed funeral home receives a
- 11 written objection from another adult child.
- 12 (5) The decedent's surviving parent. If the decedent is survived by
- 13 both parents, either parent has the authority unless the licensed
- 14 funeral director or licensed funeral home receives a written
- 15 objection from the other parent.
- 16 (6) The individual in the next degree of kinship under IC 29-1-2-1
- 17 to inherit the estate of the decedent. If more than one (1)
- 18 individual of the same degree survives, any person of that degree
- 19 has the authority unless the licensed funeral director or licensed
- 20 funeral home receives a written objection from one (1) or more
- 21 persons of the same degree.
- 22 (7) In the case of an indigent or other individual whose final
- 23 disposition is the responsibility of the state or township, the
- 24 following:
- 25 (A) If none of the persons identified in subdivisions (1)
- 26 through (6) is available:
- 27 (i) a public administrator, including a responsible township
- 28 trustee or the trustee's designee; or
- 29 (ii) the coroner.
- 30 (B) A state appointed guardian.
- 31 (b) If:
- 32 (1) the death of the decedent appears to have been the result of:
- 33 (A) murder (IC 35-42-1-1);
- 34 (B) voluntary manslaughter (IC 35-42-1-3); or
- 35 (C) another criminal act, if the death does not result from the
- 36 operation of a vehicle; and
- 37 (2) the coroner, in consultation with the law enforcement agency
- 38 investigating the death of the decedent, determines that there is a
- 39 reasonable suspicion that a person described in subsection (a)
- 40 committed the offense;
- 41 the person referred to in subdivision (2) may not authorize or designate
- 42 the manner, type, or selection of the final disposition and internment of

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human remains.

(c) If the coroner, the funeral director, the crematory authority, or the cemetery representative, in consultation with:

(1) the law enforcement agency investigating the death of the decedent; or

(2) any other individual with knowledge of a protection order; determines that the decedent had filed a protection order against the person described in subsection (a) and the protection order is currently in effect, the person described in subsection (a) may not authorize or designate the manner, type, or selection of the final disposition and internment of human remains.

~~(c)~~ **(d) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, the funeral director, the crematory authority, or the cemetery representative shall inform the cemetery owner or crematory authority of the determination under subsection (b)(2) or subsection (c).**

(e) If a coroner, funeral director, crematory authority, or cemetery representative is notified of the existence of a protection order that is currently in effect under subsection (c) by an individual who is not a law enforcement officer, the coroner, funeral director, crematory authority, or cemetery representative shall consult with a law enforcement agency to determine the existence of a protection order that is in effect. If the law enforcement agency cannot determine the existence of a protection order that is in effect, the law enforcement agency shall consult the protective order registry established under IC 5-2-9-5.5.

SECTION 3. IC 35-33-8-3.2, AS AMENDED BY P.L.111-2009, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3.2. (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 a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

(1) Require the defendant to:

(A) execute a bail bond with sufficient solvent sureties;

(B) deposit cash or securities in an amount equal to the bail;

(C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;

(D) post a real estate bond; or

(E) perform any combination of the requirements described in

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clauses (A) through (D).
If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. The defendant must also pay the fee required by subsection (d).

- (2) Require the defendant to execute:
 - (A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and
 - (B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection (b), and the fee required by subsection (d). In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) **Except as provided in section 3.6 of this chapter**, require the defendant to refrain from any direct or indirect contact with an individual and, if the defendant has been charged with an offense under IC 35-46-3, any animal belonging to the individual, including if the defendant has not been released from lawful detention.

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1 (5) Place the defendant under the reasonable supervision of a
 2 probation officer, pretrial services agency, or other appropriate
 3 public official. If the court places the defendant under the
 4 supervision of a probation officer or pretrial services agency, the
 5 court shall determine whether the defendant must pay the pretrial
 6 services fee under section 3.3 of this chapter.

7 (6) Release the defendant into the care of a qualified person or
 8 organization responsible for supervising the defendant and
 9 assisting the defendant in appearing in court. The supervisor shall
 10 maintain reasonable contact with the defendant in order to assist
 11 the defendant in making arrangements to appear in court and,
 12 where appropriate, shall accompany the defendant to court. The
 13 supervisor need not be financially responsible for the defendant.

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

21 (8) Require a defendant charged with an offense under IC 35-46-3
 22 to refrain from owning, harboring, or training an animal.

23 (9) Impose any other reasonable restrictions designed to assure
 24 the defendant's presence in court or the physical safety of another
 25 person or the community.

26 (b) Within thirty (30) days after disposition of the charges against
 27 the defendant, the court that admitted the defendant to bail shall order
 28 the clerk to remit the amount of the deposit remaining under subsection
 29 (a)(2) to the defendant. The portion of the deposit that is not remitted
 30 to the defendant shall be deposited by the clerk in the supplemental
 31 public defender services fund established under IC 33-40-3.

32 (c) For purposes of subsection (b), "disposition" occurs when the
 33 indictment or information is dismissed or the defendant is acquitted or
 34 convicted of the charges.

35 (d) Except as provided in subsection (e), the clerk of the court shall:
 36 (1) collect a fee of five dollars (\$5) from each bond or deposit
 37 required under subsection (a)(1); and
 38 (2) retain a fee of five dollars (\$5) from each deposit under
 39 subsection (a)(2).

40 The clerk of the court shall semiannually remit the fees collected under
 41 this subsection to the board of trustees of the public employees'
 42 retirement fund for deposit in the special death benefit fund. The fee

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1 required by subdivision (2) is in addition to the administrative fee
2 retained under subsection (a)(2).

3 (e) With the approval of the clerk of the court, the county sheriff
4 may collect the bail posted under this section. The county sheriff shall
5 remit the bail to the clerk of the court by the following business day
6 and remit monthly the five dollar (\$5) special death benefit fee to the
7 county auditor.

8 (f) When a court imposes a condition of bail described in subsection
9 (a)(4):

- 10 (1) the clerk of the court shall comply with IC 5-2-9; and
- 11 (2) the prosecuting attorney shall file a confidential form
- 12 prescribed or approved by the division of state court
- 13 administration with the clerk.

14 SECTION 4. IC 35-33-8-3.6 IS ADDED TO THE INDIANA CODE
15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2010]: **Sec. 3.6. (a) This section applies only to a defendant who
17 is charged with committing a violent crime (as defined in
18 IC 5-2-6.1-8) that results in bodily injury to a person.**

19 **(b) If a court releases a defendant described in subsection (a) to
20 bail without holding a bail hearing in open court, the court shall
21 include as a condition of bail the requirement that the defendant
22 refrain from any direct or indirect contact with the victim:**

- 23 (1) for ten (10) days after release; or
- 24 (2) until the initial hearing;
- 25 **whichever occurs first.**

26 **(c) At the initial hearing, the court may reinstate or modify the
27 condition that the defendant refrain from direct or indirect contact
28 with the victim.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1234, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LAWSON L, Chair

Committee Vote: yeas 7, nays 1.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1234, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, line 17, after "IC 5-2-6.1-8)" insert "**that results in bodily injury to a person**".

Page 4, line 21, after "victim" insert "**for ten (10) days after release**".

and when so amended that said bill do pass.

(Reference is to HB 1234 as printed January 21, 2010.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.



SENATE MOTION

Madam President: I move that Engrossed House Bill 1234 be amended to read as follows:

Page 4, line 21, after "victim" insert ":

(1)".

Page 4, line 22, delete "." and insert "**;** or

(2) until the initial hearing;
whichever occurs first.

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(c) At the initial hearing, the court may reinstate or modify the condition that the defendant refrain from direct or indirect contact with the victim."

(Reference is to EHB 1234 as printed February 12, 2010.)

HEAD

SENATE MOTION

Madam President: I move that Engrossed House Bill 1234 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 25-15-2-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 24. "Protection order" 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.

SECTION 2. IC 25-15-9-18, AS AMENDED BY P.L.143-2009, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 18. (a) Except as provided in subsection (b), the following persons, in the order of priority indicated, have the authority to designate the manner, type, and selection of the final disposition and interment of human remains:

- (1) An individual granted the authority in a funeral planning declaration executed by the decedent under IC 29-2-19.
- (2) An individual granted the authority in a health care power of attorney executed by the decedent under IC 30-5-5-16.
- (3) The individual who was the spouse of the decedent at the time of the decedent's death.
- (4) The decedent's surviving adult child. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the licensed funeral director or licensed funeral home receives a written objection from another adult child.

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(5) The decedent's surviving parent. If the decedent is survived by both parents, either parent has the authority unless the licensed funeral director or licensed funeral home receives a written objection from the other parent.

(6) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree survives, any person of that degree has the authority unless the licensed funeral director or licensed funeral home receives a written objection from one (1) or more persons of the same degree.

(7) In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following:

(A) If none of the persons identified in subdivisions (1) through (6) is available:

- (i) a public administrator, including a responsible township trustee or the trustee's designee; or
- (ii) the coroner.

(B) A state appointed guardian.

(b) If:

- (1) the death of the decedent appears to have been the result of:
 - (A) murder (IC 35-42-1-1);
 - (B) voluntary manslaughter (IC 35-42-1-3); or
 - (C) another criminal act, if the death does not result from the operation of a vehicle; and
- (2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize or designate the manner, type, or selection of the final disposition and internment of human remains.

(c) If the coroner, the funeral director, the crematory authority, or the cemetery representative, in consultation with:

- (1) the law enforcement agency investigating the death of the decedent; or**
- (2) any other individual with knowledge of a protection order; determines that the decedent had filed a protection order against the person described in subsection (a) and the protection order is currently in effect, the person described in subsection (a) may not authorize or designate the manner, type, or selection of the final disposition and internment of human remains.**

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~~(c)~~ **(d)** The coroner, in consultation with the law enforcement agency investigating the death of the decedent, **the funeral director, the crematory authority, or the cemetery representative** shall inform the cemetery owner or crematory authority of the determination under subsection (b)(2) **or subsection (c)**.

(e) If a coroner, funeral director, crematory authority, or cemetery representative is notified of the existence of a protection order that is currently in effect under subsection (c) by an individual who is not a law enforcement officer, the coroner, funeral director, crematory authority, or cemetery representative shall consult with a law enforcement agency to determine the existence of a protection order that is in effect. If the law enforcement agency cannot determine the existence of a protection order that is in effect, the law enforcement agency shall consult the protective order registry established under IC 5-2-9-5.5."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1234 as printed February 12, 2010.)

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