

SECTION BY SECTION SUMMARY OF HOUSE ENROLLED ACT 1232

Introduction

House Enrolled Act 1232 contains five (5) significant concepts that will fundamentally change Indiana's laws concerning domestic violence and protective orders. These concepts are:

- Limiting protection from abuse orders to cases involving domestic or family violence, sexual assault, and stalking;
- Consolidating all protection from abuse orders into one location in the Indiana Code—the new IC 34-26-5;
- Adopting most of the applicable provisions of the Model Code on Family Violence;
- Changing the terminology throughout the Indiana Code concerning protection from abuse orders, no-contact orders, *etc.*, so that the laws are consistent and less confusing to law enforcement officers and others. Under House Enrolled Act 1232, such orders will be classified as one of three possible types of orders: (1) Protective Orders (PO's)—which will be limited to cases involving domestic or family violence, sexual assault, and stalking; (2) No-Contact orders (NCO's)—which can be issued in cases involving juveniles under Title 31 as well as in criminal cases under Title 35; and, (3) Workplace Violence Restraining Orders (WVRO's); and,
- Creating the remedy of Workplace Violence Restraining Orders (WVRO's), using the California statute as a model.

This Bill will *not* lessen law enforcement immunity, and it will not change the fee waiver mandated by federal law.

Title 5—Changes to Definitions and Terms to Conform with New Civil Protection Order Act

Section 1 **IC 5-2-5-1** Adds relevant definitions of NCO, PO, and WVRO to reflect substantive changes in Titles 31 & 34.

Section 2 **IC 5-2-5-12** Amends the statute concerning entry of data into the IDACS computer to match the new terminology (PO, NCO, and WVRO); and, requires daily entry of data into the National Crime Information Computer's Protection Order File.

Section 3 **IC 5-2-9-2.1** Amends definitions of NCO& PO, and adds WVRO to reflect substantive changes in Titles 31 & 34.

Section 4 **IC 5-2-9-5** Changes terms to be reflect substantive changes in Titles 31 & 34 (refers to PO, NCO, & WVRO).

Section 5 **IC 5-2-9-6** Changes terms to reflect substantive changes in Titles 31 & 34.

Section 6 **IC 5-2-9-7** Same as the preceding Section.

Section 7 **IC 5-2-9-8** Same as Section 3, and requires entry of order into IDACS immediately upon receipt of the order.

Title 5—Changes to Address Confidentiality Program (ACP)

- Section 8** IC 5-26.5-1-6 Removes the requirement of an Indiana domicile for participation in the ACP.
- Section 9** IC 5-26.5-1-8 Adds the definition of “sexual assault” to the ACP statute.
- Section 10** IC 5-26.5-1-9 Adds the definition of “stalking” to the ACP statute.
- Section 11** IC 5-26.5-2-1 Adds emancipated minors to the list of qualified participants in the ACP.
- Section 12** IC 5-26.5-2-2 Adds victims of sexual assault and stalking to the list of qualified participants in the ACP.
- Section 13** IC 5-26.5-2-6 Changes the expiration date of the ACP to two (2) years for all participants.
- Section 14** IC 5-26.5-2-7 Changes citation to reconcile with IC 5-26.5-2-6.
- Section 15** IC 5-26.5-2-10 Changes citation to reconcile with IC 5-26.5-2-7.
- Section 16** IC 5-26.5-2-11 Adds a section concerning what happens when a participant changes his or her name.
- Section 17** IC 5-26.5-3-2 Removes language concerning revocation of participation in the ACP.
- Section 18** IC 5-26.5-3-7 Adds immunity from civil liability for employees of the Attorney General for damages arising from the ACP.
- Section 19** IC 5-26.5-4-5 Changes the citation to conform with other amendments.

Title 31—Changes to Definitions to Conform with the New Civil Protection Order Act

- Section 20** IC 31-9-2-29.5 Adds the definition of “crime involving domestic or family violence” based on the term as it is used in the Model Code on Family Violence. This definition is referred to in both IC 31-14-14-5 and IC 31-17-2-8.3, below. These statutes require a rebuttable presumption of supervised visitation for a parent who has been convicted of a “crime involving domestic or family violence”.
- Section 21** IC 31-9-2-42 Changes the term “domestic violence” to “domestic or family violence” based on the Model Code on Family Violence. We use this term throughout the new portions of the Indiana Code. For the text of the new definition, please refer to Section 41 of this Summary.
- Section 22** IC 31-9-2-44.5 Adds the definition of “family or household member” based on the Model Code on Family Violence. Since we are limiting the availability of PO’s to cases involving domestic or family violence (except for cases involving sexual assault and stalking), we need to define the scope of that concept. For the text of this definition, please refer to Section 42 of this Summary.
- Section 23** IC 31-9-2-89 Amends the definition of “person” to include a minor for purposes of the Model Code’s definition of “domestic or family violence”.

Title 31—Paternity Cases—Changes to Terms to Conform with New Civil Protection Order Act; Supervised Visitation

- Section 24** IC 31-14-13-2 Changes terminology to “domestic *or* family”

violence in statute outlining the factors for custody decisions in paternity cases (see Section 21 above, IC 31-9-2-42).

Section 25 IC 31-14-14-5 Broadens the list of crimes for which a conviction would cause a presumption of supervised visitation in paternity cases, from domestic battery *only*, to a “crime involving domestic or family violence” (see Section 20 above, IC 31-9-2-29.5).

Section 26 IC 31-14-16-1 Concerns PO’s issued in paternity cases; refers the parties and the Court to the new PO statute (see Section 56, below, IC 34-26-5) so that from now on, a “protective order” will mean an order issued under IC 34-26-5.

Title 31-Dissolution and Legal Separation Cases

Section 27 IC 31-15-4-1 Parallels Section 26 above, in that it refers the party desiring protection from abuse (as opposed to, say, a restraining order so that a spouse doesn’t dispose of marital assets) directly to IC 34-26-5, our new PO statute (see Section 56, below).

Section 28 IC 31-15-4-2 This is a technical change, to be consistent with the preceding statute/Section, to keep PO’s separate from other orders issued at this stage of a dissolution or legal separation.

Section 29 IC 31-15-4-3 Deletes protective order-type provisions from the list of orders a judge may issue, because this relief is addressed in IC 31-15-4-1 (which directs the person to the PO statute). The goal is to consolidate all protection from abuse orders into one statute—IC 34-26-5.

Section 30 IC 31-15-4-10 Adds “or family” to “domestic violence” in order to be consistent with the Model Code, and the terminology elsewhere in the changes we’re suggesting. Changes the grammar slightly.

Section 31 IC 31-15-5-1 Deals with PO’s issued as a part of a divorce or legal separation. Instead of having a separate kind of protective order under IC 31-15 (which is what we have now), we refer the parties directly to the new PO statute, IC 34-26-5. Also, we specify that a “protective order” is one that prevents violence (as opposed to disposal of assets).

Title 31-Custody

Section 32 IC 31-17-2-8 Matches the language in the paternity statute above (Section 24, above); just adds “or family” to “domestic violence” in the list of factors a judge should consider.

Section 33 IC 31-17-8.3 There was not a statute like this in this part of the Indiana Code, even though there is one in the corresponding part of the paternity statute (IC 31-14). We believe this was an inadvertent oversight on the part of the legislature. The proposed language is the same language as Section 25, above (IC 31-14-14-5), with the substitution of crimes involving “domestic or family violence” for the sole offense of domestic battery.

Title 31-C.H.I.N.S.

Section 34 IC 31-34-20-2 Calls this type of order a “no-contact order” instead of a “protective order” to differentiate between the two types of orders. Under our proposal, a PO can only be an order issued under IC 34-26-5. Of course, if a child needs a protective order, he or she can get one under our proposal. If the only purpose of the order issued as part of a C.H.I.N.S. case is to prohibit contact with the child, it is really a NCO.

Section 35 IC 31-34-25 This Section outlines the procedure for obtaining a NCO as a part of a C.H.I.N.S. case.

Title 31—Delinquency

Section 36 IC 31-37-19-2 Merely clarifies the existing statute to include the more precise language identifying the order in question as a NCO.

Section 37 IC 31-37-19-22 Same as the preceding Section.

Section 38 IC 31-37-25 This Section outlines the procedure for obtaining a NCO as a part of a delinquency case.

Title 33—Allen and St. Joseph County Courts

Section 39 IC 33-5-5.1-8 This is the statute concerning Allen County commissioners, magistrates, referees, *etc.* Changes the citation to the PO statute based on our proposed changes to that statute. Also, changes the terminology (to “domestic or family violence”) to match the Model Code language we’ve incorporated in our new PO statute.

Section 40 IC 33-5-40-73 This is the statute concerning St. Joseph County magistrates. The changes match those discussed in the preceding Section.

Title 34—Changes to Definitions to Conform with New Civil Protection Order Act

Section 41 IC 34-6-2-34.5 Adds the definition of “Domestic or family violence” from the Model Code, and found in our proposed, revised PO statute. “ ‘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 IC 43-26-5, domestic and family violence also includes stalking (as defined in IC 35-45-10-1) or a sex offense under IC 35-42-4.”

Section 42 IC 34-6-2-44.8 Adds the definition of “Family or household member”. This is based on the Model Code’s definition, with some additions. This change in the law is necessary because we are proposing limiting the availability of PO’s

to cases involving family or household members—*i.e.*, domestic or family violence cases only. “ ‘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).”

Section 43 IC 34-6-2-48.5 Changes the citation referred to in the “Foreign protection order” definition to match the relevant portion of our proposed PO statute.

Section 44 IC 34-6-2-49 Removes the citation to the chapter of Title 34 concerning foreign protection orders (currently Chapter 2.5) in the “Governmental entity” definition. The PO statute we are proposing contains its own language concerning foreign protection orders.

Section 45 IC 34-6-2-66.7 Changes the citation referred to in the “Indian tribe” definition to match the relevant portion of our proposed PO statute.

Section 46 IC 34-6-2-71.7 Changes the citation referred to in the “Issuing state or Indian tribe” definition to match the relevant portion of our proposed PO statute.

Section 47 IC 34-6-2-73.3 Changes the citation referred to in the “Law enforcement officer” definition to match the citation of the proposed PO statute.

Section 48 IC 34-6-2-103 Clarifies the definition of “Person”. Note that, for purposes of the proposed PO statute *only*, it will include minors.

Section 49 IC 34-6-2-121.4 Substitutes “Protected person” for “Protected individual”, and makes other changes in terminology consistent with the proposed PO statute.

Section 50 IC 34-6-2-121.6 Slightly changes the terminology in the definition of “Protection order” to match that used in the proposed PO statute, and changes the relevant citation.

Section 51 IC 34-6-2-123 Deletes the reference to what will be the repealed foreign protection order statute from the “Public employee” definition. Please see the note for Section 45, above.

Section 52 IC 34-6-2-130.7 Changes the citation in the definition of “Respondent” *vis-à-vis* foreign protection orders. Please see the note for Section 44, above.

Section 53 IC 34-6-2-138 Deletes the reference to what will be the old foreign protection order statute in the definition of “Sheriff”. Please see the note for Section 44, above.

Section 54 IC 34-6-2-140 Changes the citation in the definition of “State” *vis-à-vis* foreign protection orders. Please see the note for Section 44, above.

Section 55 IC 34-6-2-144.2 Changes the citation in the definition of “Tribunal” *vis-à-vis* foreign protection orders. Please see the note for Section 44, above.

Title 34—Indiana’s New Civil Protection Order Act

Section 56 IC 34-26-5 Represents a sweeping overhaul of Indiana’s statute concerning civil protective orders. The proposed law contains the following provisions that differ significantly from the existing statute:

- Limits the availability of civil protective orders to cases involving domestic or family violence, sexual assault, or stalking;
- Mandates uniform, statewide pleadings and form orders;
- Clears up existing confusion about what should be done when children are petitioners or respondents;
- Specifies record-keeping procedures and requirements, so there will not be a variation from county to county;
- Lengthens the duration of PO’s to two (2) years; and,
- Consolidates full faith and credit language and provisions regarding foreign protection orders, and includes factors for determining facial validity of foreign protection orders.

Title 34—Workplace Violence Restraining Orders

Section 57 IC 34-26-6 Builds upon the statute originally passed in last year’s session of the General Assembly. This statute is based upon California’s statute, which is generally considered to be a model in this area of the law. Please note that a WVRO could apply to situations involving domestic or family violence as well as to non-domestic cases (such as when a disgruntled employee harasses a supervisor). The WVRO lasts for three (3) years. There is no filing fee for these orders, and the statute also requires uniform, statewide forms for pleadings and orders.

Title 34—Civil Immunity for Law Enforcement Officers

Section 58 IC 34-30-2-16.5 Adds actions taken under the Address Confidentiality Program to the civil immunity “list” in Title 34.

Title 35—Arrest, Bail, and Sentencing in Cases Involving Domestic or Family Violence

Section 59 IC 35-33-1-1 Deletes Stalking from the list of misdemeanors for which a person could be arrested based on probable cause (Stalking has been a felony for the past few years).

Section 60 IC 35-33-1-1.5 Specifies the duties of a law enforcement officer responding to an incident of alleged domestic or family violence—ensuring safety, notifying alleged victim of his/her rights under IC 35-40, and confiscating firearms,

ammunition, and deadly weapons. This language is a hybrid of state statutes from New Hampshire and Maryland—however, many states currently empower their law enforcement offices to confiscate firearms for safekeeping. This proposal outlines a procedure for the return of confiscated items.

Section 61 IC 35-38-1-7.1 Changes the citation to the PO statute in the list of aggravating factors to match the citation of our proposed PO statute.

Title 35—Changes to Definitions to Conform with New Civil Protection Order Act

Section 62 IC 35-41-1-6.5 Defines “Crime involving domestic or family violence”. This definition matches the one in Title 31.

Section 63 IC 35-41-1-10.7 Defines “Family or household member”. Matches the definition found in Titles 31 and 34. For the text of this definition, please refer to Section 42 of this Summary.

Section 64 IC 35-41-1-22 Broadens the definition of “Person” to include a minor, since the PO statute includes references to minors.

Title 35—New Crime

Section 65 IC 35-42-1-4 Establishes the new crime of Involuntary Manslaughter as a Class D felony for reckless supervision of a child by a child care provider.

Title 35—Stalking and Invasion of Privacy

Section 66 IC 35-45-10-5 Changes citations to the new PO statute, the NCO’s issued under Title 31, and the new WVRO statute. Also, incorporates the same terminology as used in Titles 5, 31, and 34—NCO’s, PO’s, and WVRO’s.

Section 67 IC 35-46-1-15.1 Streamlines the list of orders for which violation is a crime; incorporates the new citations mentioned above, and uses the new terminology (orders are classified as either PO’s, NCO’s, or WVRO’s). Raises the severity level of the crime to a Class A misdemeanor, and makes a repeat violation a Class D felony. Deletes the language referring to mandatory jail time, out of concern that some judges may read this to mean that a Defendant could *only* get five (5) days.

Section 68 IC 35-46-1-20 Changes the citation to the statute concerning foreign protection orders.

List of Repealed Statutes and Effective Dates

Section 69 Contains the list of statutes that will necessarily be repealed if the preceding 68 Sections are enacted.

Section 70 Specifies effective dates and savings clauses for this law.

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